



A-580-904

Investigation

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May 20, 2020

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

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

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

I. SUMMARY

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

II. BACKGROUND

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

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

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

³ See Petitioners’ Letter, “Forged Steel Fittings from India and the Republic of Korea: Response on Revisions to the Scope,” dated November 4, 2019 (Scope Supplemental); *see also* Commerce’s Letter, “Phone Call with Counsel to the Petitioners,” dated November 4, 2019.

Commerce initiated this investigation on November 12, 2019.⁴ In the *Initiation Notice*, we stated that, if necessary, we would select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of FSF from Korea under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ Accordingly, on November 5, 2019, Commerce released the CBP entry data to all interested parties under an administrative protective order (APO), and invited comments regarding the data and respondent selection.⁶ On November 26, 2019, the petitioners and Samyoung Fitting Co., Ltd. (Samyoung), a Korean producer and exporter of subject merchandise, submitted comments concerning respondent selection.⁷ Both the petitioners and Samyoung argued that the HTSUS categories covered in the CBP data were overly broad, and thus, captured exporters who may not be the largest exporters of subject merchandise and, as such, requested Commerce issue quantity and value (Q&V) questionnaires to determine mandatory respondents.⁸ In response to these comments, Commerce issued Q&V questionnaires to the ten largest producers/exporters identified in the CBP data on December 3, 2019.⁹

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of FSF to be reported in response to Commerce's AD questionnaire.¹⁰ We received timely comments and rebuttal comments regarding the physical characteristics of merchandise under consideration.¹¹ Further, we received scope comments and rebuttal scope comments from certain interested parties, including the petitioners, between December 9, 2019 and May 13, 2020.¹² As explained below, we addressed the scope comments placed on the record of this investigation by interested parties in the Preliminary Scope Decision Memorandum.¹³

⁴ See *Forged Steel Fittings from India and Republic of Korea: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 64265 (November 21, 2019) (*Initiation Notice*).

⁵ See *Initiation Notice*, 84 FR at 64268.

⁶ See Memorandum, "Forged Steel Fittings from the Republic of Korea; Release of Customs Data from U.S. Customs and Border Protection," dated November 5, 2019.

⁷ See Petitioners' Letter, "Forged Steel Fittings from Korea: Respondent Selection Comments," dated November 26, 2019; see also Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea, Case No. A-580-904: Comments on CBP Data and Respondent Selection," dated November 26, 2019.

⁸ *Id.*

⁹ See Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from the Republic of Korea: Issuance of Quantity and Value Questionnaire to Exporters/Producers," dated December 3, 2019 (Q&V Questionnaire).

¹⁰ See *Initiation Notice*, 84 FR at 64266.

¹¹ See Petitioners' Letter, "Forged Steel Fittings from Korea: Comments on Product Characteristics," dated December 2, 2019; see also Samyoung's Letter, "Forged Steel Fittings from India and the Republic of Korea and India [sic], Case Nos. A-533-891 and A-580-904: Comments on Product Characteristics and Model Matching Hierarchy," dated December 2, 2019; and Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea and India, Case Nos. A-533-891 and A-580-904: Rebuttal Comments on Product Characteristics and Model Matching Hierarchy," dated December 12, 2019.

¹² See Memorandum, "Forged Steel Fittings from India and Korea: Preliminary Scope Decision Memorandum," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

¹³ *Id.*

On December 12, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of FSF from Korea.¹⁴

As noted above, we issued Q&V Questionnaires to the ten largest producers/exporters identified in the CBP data for respondent selection purposes.¹⁵ We also published the Q&V Questionnaire electronically on ACCESS.¹⁶ On December 12, 2019, we confirmed that nine of the ten Q&V Questionnaires were successfully delivered to the following companies: Keonsae High Pressure Co., Ltd. (Keonsae), Pusan Coupling Corporation (Pusan), Samyoung, Sandong Metal Industry Co., Ltd. (Sandong), SD HiTec, Shinchang Industries, Shinwoo Tech, Titus Industrial Korea Co, Ltd, and ZEOtech Co., Ltd (ZEOtech).¹⁷ The delivery of the Q&V Questionnaire to Bu Kwang Metal Co Ltd was unsuccessful because the recipient had changed its location.¹⁸

We received timely responses to the Q&V Questionnaire from the following five companies: Sandong and SD HiTec (filed jointly), Samyoung, Keonsae, and ZEOtech.¹⁹ On December 16, 2019, Pusan untimely filed a response to the Q&V Questionnaire, which we rejected.²⁰ We did not receive responses to the Q&V Questionnaire from the following four companies: Bu Kwang Metal Co Ltd, Shinchang Industries, Shinwoo Tech, or Titus Industrial Korea Co, Ltd.²¹

On January 2, 2020, Commerce limited the number of mandatory respondents selected for individual examination to the two largest producers or exporters of subject merchandise by volume based on the Q&V responses, Samyoung and Sandong.²² The same day, we issued Samyoung and Sandong the AD questionnaire.²³ On January 16, 2020, Sandong withdrew from participation in this investigation.²⁴ On January 17, 2020, Commerce selected ZEOtech as an

¹⁴ See *Forged Steel Fittings from India and Korea; Preliminary Determinations*, 84 FR 67959 (December 12, 2019).

¹⁵ See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from the Republic of Korea: Issuance of Quantity and Value Questionnaire to Exporters/Producers,” dated December 3, 2019.

¹⁶ *Id.*

¹⁷ See Commerce’s Letter, “Confirmed Delivery of Quantity and Value Questionnaires,” dated December 13, 2019.

¹⁸ *Id.*

¹⁹ See Sandong and SD HiTec’s Letter, “Antidumping Duty Investigation of Forged Steel Fittings from Korea – Response to December 3 Q&V Questionnaire,” dated December 13, 2019; *see also* Keonsae’s Letter, “Steel Forged Fittings from Korea,” dated December 13, 2019; Samyoung’s Letter, “Forged Steel Fittings from the Republic of Korea, Case No. A-580-904: Quantity and Value Questionnaire Response,” dated December 13, 2019; and ZEOtech’s Letter, “Q&V Questionnaire Response,” dated December 23, 2019. We granted ZEOtech an extension to file its Q&V questionnaire response due to technical difficulties. See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from Republic of Korea: ZEOtech Co., Ltd,” dated December 18, 2019. The companies that provided timely responses to the Q&V Questionnaire, but were not selected for individual examination, will receive the applicable all-others rate.

²⁰ See Memorandum, “Reject and Delete Pusan Q&V Questionnaire Response,” dated December 18, 2019.

²¹ See fn.17, we received confirmation that the Q&V questionnaires were successfully delivered to each company, with the exception of Bu Kwang Metal Co Ltd, because we were unable to confirm delivery of the Q&V Questionnaire to Bu Kwang Metal Co Ltd and the company never made an entry of appearance, Bu Kwang Metal Co Ltd will receive the applicable all-others rate.

²² See Memorandum, “Less-Than-Fair-Value Investigation of Forged Steel Fittings from the Republic of Korea: Respondent Selection,” dated January 2, 2020.

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

²⁴ See Sandong’s Letter, “Administrative {sic} Duty Investigation of Forged Steel Fittings from the Republic of Korea – Notice of Withdrawal from Investigation,” dated January 16, 2020.

additional mandatory respondent in this investigation, and issued the AD questionnaire to ZEOtech on the same day.²⁵ On January 24, 2020, Commerce reached out to ZEOtech to ensure it knew it was a mandatory respondent.²⁶ ZEOtech confirmed its intent to respond to the initial questionnaire on January 31, 2020.²⁷

On February 5, 2020, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.²⁸ Based on this request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on February 28, 2020, Commerce published a postponement of the preliminary determination until no later than May 20, 2020, in the *Federal Register*.²⁹

In February 2020, we received responses to section A of the Initial AD Questionnaire (*i.e.*, the section relating to general information) from Samyoung and ZEOtech, after granting both companies a two-week extension.³⁰ Between February 25 and 27, 2020, Samyoung timely filed its responses to sections B through D of the Initial AD Questionnaire (*i.e.*, sections relating to comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV)), after receiving over two weeks of additional time.³¹ On March 4, 2020, ZEOtech timely submitted its responses to sections B through D of the Initial AD Questionnaire; however, as discussed in the “application of facts available, with adverse inferences” section below, we rejected ZEOtech’s sections B through D responses on March 26, 2020.³² Between March and April 2020, we issued supplemental questionnaires to Samyoung and one supplemental questionnaire to ZEOtech,³³ and received timely responses to these questionnaires between March and May 2020.³⁴

In the *Initiation Notice*, we set a deadline for the submission of a particular market situation (PMS) allegation and supporting factual information as, “no later than 20 days after submission

²⁵ See Memorandum, “Less-Than-Fair-Value Investigation of Forged Steel Fittings from the Republic of Korea: Additional Respondent Selection for Individual Examination,” dated January 17, 2020; *see also* Commerce’s Letter, “Initial AD Questionnaire,” dated January 17, 2020.

²⁶ See Memorandum, “Forged Steel Fittings from the Republic of Korea: Email to ZEOtech Co., Ltd,” dated January 24, 2020.

²⁷ See ZEOtech’s Letter, “Response of Questionnaire {sic},” dated January 31, 2020.

²⁸ See Petitioners’ Letter, “Forged Steel Fittings from Korea: Request for Extension of Preliminary Determination,” dated February 5, 2020.

²⁹ See *Forged Steel Fittings from India and the Republic of Korea: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 11965 (February 28, 2020).

³⁰ See Samyoung’s February 11, 2020 Section A Questionnaire Response; *see also* ZEOtech’s February 21, 2020 Section A Questionnaire Response.

³¹ See Samyoung’s February 25, 2020 Section D Questionnaire Response *see also* Samyoung’s February 27, 2020 Sections B and C Questionnaire Response (Samyoung’s February 27, 2020 BCQR).

³² See Commerce’s Letter, “Rejection of Submissions,” dated March 26, 2020.

³³ See Commerce’s Letter, “First Supplemental Questionnaire for ZEOtech,” dated March 19, 2020; *see also* Commerce’s Letter, “First Supplemental Questionnaire for Samyoung,” dated March 19, 2020; Commerce’s Letter, “Second Supplemental Questionnaire for Samyoung,” dated April 10, 2020; and Commerce’s Letter, “Third Supplemental Questionnaire for Samyoung,” dated April 24, 2020.

³⁴ See ZEOtech’s March 5, 2020 First Supplemental Questionnaire Response; *see also* Samyoung’s April 19, 2020 First Supplemental Questionnaire Response; Samyoung’s April 20, 2020 Second Supplemental Questionnaire Response; Samyoung’s April 28, 2020 Third Supplemental Questionnaire Response (Samyoung’s April 28, 2020 SQR); and Samyoung’s May 6, 2020 Fourth Supplemental Section D Questionnaire Response.

of a respondent's initial section D questionnaire response." The petitioners subsequently requested two extensions to the PMS allegation deadline, totaling nine days, which we granted.³⁵

On April 2, 2020, the petitioners submitted an allegation and supporting factual information that a PMS existed in Korea during the period of investigation (POI).³⁶ We accepted the PMS allegation as timely on April 3, 2020, and invited interested parties to submit information to rebut, clarify, or correct information concerning the Petitioners' PMS Allegation.³⁷ Between April and May 2020, Samyoung and the petitioners submitted rebuttal factual information regarding the Petitioners' PMS Allegation.³⁸ On April 29, 2020, we issued the petitioners a supplemental questionnaire regarding the PMS allegation, requesting that they revise their regression analysis to conform to Commerce's practice.³⁹ The petitioners timely submitted the new regression on May 7, 2020, along with a supplementary regression containing a smaller subset of the requested data.⁴⁰ Samyoung argues that the petitioners' supplementary regression constitutes unsolicited new factual information and should be rejected;⁴¹ however, we disagree because the additional regression is a subset of the requested information.

In May 2020, we received pre-preliminary comments and rebuttal comments from the petitioners and Samyoung.⁴² Samyoung and the petitioners also requested that Commerce postpone the final determination in this investigation for a period of 135 days from the date of publication of the preliminary determination.⁴³

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

³⁵ See Commerce's Letter, "Second Extension to Submit Particular Market Situation Allegation," dated March 26, 2020.

³⁶ See Petitioners' Letters, "Forged Steel Fittings from Korea: Particular Market Situation Allegation – Qualitative Submission," and "Forged Steel Fittings from Korea: Particular Market Situation Allegation – Quantitative Submission," both dated April 2, 2020 (collectively, Petitioners' PMS Allegation).

³⁷ See Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from the Republic of Korea: Acceptance of the Particular Market Situation Allegation and Deadline for Comments," dated April 3, 2020; *see also* Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from the Republic of Korea: Extension of Deadline to Comment on Particular Market Situation Allegation," dated April 9, 2020.

³⁸ See Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea: Comments on PMS Allegation," dated April 20, 2020 (Samyoung's PMS Rebuttal Comments); *see also* Petitioners' Letter, "Forged Steel Fittings from Korea: Response to Particular Market Situation Comments," dated April 27, 2020 (Petitioners' PMS Rebuttal Comments).

³⁹ See Commerce's Letter, "PMS Allegation Supplemental Questionnaire," dated April 29, 2020.

⁴⁰ See Petitioners' Letter, "Forged Steel Fittings from Korea: Response to PMS Allegation Supplemental Questionnaire," dated May 7, 2020 (Petitioners' PMS SQR); *see also* Commerce's Letter, "Extension to Submit PMS Supplemental Questionnaire Response," dated May 8, 2020.

⁴¹ See Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea: Request to Reject Untimely New Factual Information," dated May 8, 2020.

⁴² See Petitioners' Letter, "Forged Steel Fittings from Korea: Pre-Preliminary Comments," dated May 5, 2020; *see also* Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea: Response to Petitioners' Pre-Preliminary Determination Comments," dated May 12, 2020.

⁴³ See Petitioners' Letter, "Forged Steel Fittings from Korea: Request for Extension of Final," dated May 11, 2020; *see also* Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea: Request to Postpone Final Determination," dated May 11, 2020.

III. PERIOD OF INVESTIGATION

The POI is October 1, 2018 through September 30, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was October 2019.⁴⁴

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,⁴⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴⁶ Certain interested parties commented on the scope of the FSF investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁴⁷

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

V. SCOPE OF THE INVESTIGATION

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

VI. POSTPONEMENT OF FINAL DETERMINATION

On May 11, 2020, Samyoung requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination.⁴⁸ In addition, on May 11, 2020, the petitioners requested, pursuant to 19 CFR 351.210(b)(i) and (e)(1), that Commerce postpone the final determination in the event of a negative preliminary determination.⁴⁹ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

⁴⁴ See 19 CFR 351.204(b)(1); *see also* *Initiation Notice*, 84 FR at 64265.

⁴⁵ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴⁶ See *Initiation Notice*, 84 FR at 64266.

⁴⁷ See Preliminary Scope Decision Memorandum for further discussion.

⁴⁸ See Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea: Request to Postpone Final Determination," dated May 11, 2020.

⁴⁹ See Petitioners' Letter, "Forged Steel Fittings from Korea: Request for Extension of Final," dated May 11, 2020.

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

1. Statutory Framework

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses from that party, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.⁵⁰ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁵¹ Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

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

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any

⁵⁰ See 19 CFR 351.308(a).

⁵¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

previous review under section 751 of the Act concerning the subject merchandise.⁵² Further, and under the *TPEA*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁵³

Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

2. Use of Facts Available

Sandong

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

ZEOtech

As noted above, ZEOtech was selected as a mandatory respondent in this investigation and submitted an initial questionnaire response; however, repeatedly failed to serve its submissions containing business proprietary information (BPI) on interested parties, including the petitioners. As a result, the petitioners requested three extensions to the deadlines to comment on ZEOtech’s information and to submit a PMS allegation, citing its inability to do so without ZEOtech’s complete responses.⁵⁴ In a letter to ZEOtech on March 17, 2020, we informed the company that counsel for the petitioners had not received *any* BPI versions of its submissions, despite the fact that the Certificate of Service included in ZEOtech’s BPI submissions indicated that it served parties listed on the APO service list, including the petitioners, with the BPI versions of its documents.⁵⁵ We also reminded ZEOtech of its statutory responsibility to serve a copy of each submission filed with Commerce to parties listed on the APO and public service lists simultaneously with its submission to Commerce, pursuant to 19 CFR 351.303(f)(1).⁵⁶ In

⁵² See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

⁵³ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (*TPEA*).

⁵⁴ See Petitioners’ Letters, “Forged Steel Fittings from Korea: Request for Extension of RFI Deadline,” dated March 4, 2020; “Forged Steel Fittings from Korea: Request for Extension of RFI Deadline,” dated March 17, 2020; and, “Forged Steel Fittings from Korea: Update on Service Issues,” dated March 24, 2020.

⁵⁵ See Commerce’s Letter, “ZEOtech Service Issue,” dated March 17, 2020.

⁵⁶ *Id.* at 1.

addition, we informed ZEOtech that it was possible to serve its BPI documents via email with the consent of the parties being served.⁵⁷

In our March 17, 2020 letter, we provided ZEOtech with a final opportunity to serve its BPI responses on all interested parties included on the APO list and requested that it resubmit an accurate Certification of Service to Commerce by a specified deadline. We also stated that failure to comply with Commerce's request would result in rejection of its submissions and possible reliance on facts available, including the use of adverse inferences, as provided for by section 776(a)(2)(B) of the Act, in making its determination regarding whether ZEOtech has been selling in the United States at LTFV.⁵⁸ Despite this additional opportunity and despite emails from the petitioners' counsel to ZEOtech, granting their consent to receive the BPI documents electronically, ZEOtech failed to serve the petitioners with the BPI versions of its sections B through D questionnaire response and likewise failed to resubmit an accurate Certification of Service to Commerce. ZEOtech did not report any difficulties in complying with Commerce's request nor did it request an extension of time. Consequently, Commerce rejected ZEOtech's sections B through D questionnaire responses from the record of this investigation.⁵⁹ Further, ZEOtech did not request reconsideration of Commerce's rejection of its questionnaire responses.

Due to ZEOtech's repeated failures to comply with Commerce's requests, information required to calculate a dumping margin for ZEOtech is not available on the record because ZEOtech withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not serving interested parties, thus, limiting their ability to provide timely comments. Accordingly, we preliminarily determine that the use of facts available is warranted in determining the dumping margin for ZEOtech, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.

Pusan

While Pusan submitted a response to the Q&V Questionnaire, its response was not timely and it did not request an extension of time; therefore, Pusan's Q&V response was rejected from the record of this investigation.⁶⁰ Accordingly, necessary Q&V information required to determine the largest producers/exporters of subject merchandise, pursuant to section 777A(c)(2)(B) of the Act, is not available on the record because Pusan failed to provide the information in a timely manner, and thus, significantly impeded this proceeding. As a result, we preliminarily determine that the use of facts available is warranted in determining the dumping margin for Pusan, pursuant to sections 776(a)(1) and (a)(2)(B)-(C) of the Act.

⁵⁷ *Id.*

⁵⁸ *Id.* at 2.

⁵⁹ See Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from the Republic of Korea: Rejection of Submissions," dated March 26, 2020.

⁶⁰ See Memorandum, "Reject and Delete Pusan Q&V Questionnaire Response," dated December 18, 2019.

Non-Responsive Companies

As noted above, three companies did not respond to the Q&V Questionnaire, despite confirmation that this questionnaire was successfully delivered to them.⁶¹ By refusing to respond to the Q&V Questionnaire, these companies withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested Q&V information. Moreover, necessary Q&V information required to determine the largest producers/exporters of subject merchandise, pursuant to section 777A(c)(2)(B) of the Act, is not available on the record because of these Non-Responsive Companies. Accordingly, we preliminarily determine that the use of facts available is warranted in determining the dumping margin for these companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.

3. Use of Adverse Inferences

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

Sandong

Given that Sandong failed to provide a response to Commerce's initial questionnaire and withdrew from participation in this investigation, it is reasonable to conclude that Sandong has not acted to the best of its ability to comply with Commerce's request for information. While Sandong cited difficulties in responding to Commerce's initial questionnaire due to the amount of resources participation would require, Sandong did not request to submit the information in an alternate form, and formally withdrew from this proceeding.⁶² Therefore, Commerce preliminarily finds that Sandong failed to cooperate, and thus, an adverse inference is warranted in selecting from among the facts otherwise available in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁶³

⁶¹ The three non-responsive companies are: Shinchang Industries; Shinwoo Tech, and Titus Industrial Korea Co, Ltd (collectively, Non-Responsive Companies).

⁶² See Sandong's Letter, "Administrative Duty Investigation of Forged Steel Fittings from the Republic of Korea — Notice of Withdrawal from Investigation," dated January 16, 2020.

⁶³ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014) (*NOES LTFV Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014) (*NOES LTFV Final*); see also *Notice of Final Determinations of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*Stainless Steel Japan*) (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

ZEOTECH

ZEOTECH's failure to cooperate to the best of its ability is evidenced by its refusal to serve interested parties the BPI versions of its submissions and resubmit the certification requested by Commerce. Further, ZEOTECH did not notify Commerce of any difficulties in complying with the request nor did it request reconsideration of our decision to reject its questionnaire responses. Accordingly, Commerce preliminarily determines that an adverse inference is warranted in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).⁶⁴

Pusan

Pusan did not request an extension of time to submit its response to the Q&V Questionnaire, nor did it inform Commerce of any difficulties in providing the requested information. Moreover, Pusan did not request that Commerce reconsider its decision to reject its untimely response to the Q&V Questionnaire. By failing to provide a timely response to the Q&V Questionnaire, Pusan did not act to the best of its ability. Based on this information, we preliminarily determine that an adverse inference is warranted in selecting from among the facts otherwise available, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁶⁵

Non-Responsive Companies

In the Q&V Questionnaire, we stated that, “{i}f you fail to respond or fail to provide the requested quantity and value information, please be aware that Commerce may find that you failed to cooperate by not acting to the best of your ability to comply with the request for information, and may use an inference that is adverse to your interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.”⁶⁶ The three companies that refused to respond to Commerce's request for information in the Q&V Questionnaire did not indicate that they were having difficulty providing the requested information, nor did they request to submit the information in an alternate form. Therefore, it is reasonable to conclude that these Non-Responsive Companies were not cooperative. Accordingly, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available, with respect to these Non-Responsive Companies, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁶⁷

4. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the petition, the final determination in the investigation,

⁶⁴ See, e.g., *NOES LTFV Prelim PDM* at 7-11, unchanged in *NOES LTFV Final*; see also *Stainless Steel Japan*, 65 FR at 42986 (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

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

⁶⁶ See Q&V Questionnaire.

⁶⁷ See, e.g., *NOES LTFV Prelim PDM* at 7-11, unchanged in *NOES LTFV Final*; see also *Stainless Steel Japan*, 65 FR at 42986 (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶⁸ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.⁶⁹ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.⁷⁰ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce’s practice with respect to assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin of any respondent in the investigation. In this investigation, the highest dumping margin in the Petition is 198.38 percent.⁷¹ In order to determine the probative value of the dumping margin alleged in the Petition in assigning an AFA rate, we examined the information on the record. When we compared the Petition dumping margin to the transaction-specific dumping margins for the remaining mandatory respondent, Samyoung, we found transaction-specific margins above the Petition rate. As a result, we find that the rate alleged in the Petition, as noted in the *Initiation Notice*, is within the range of transaction-specific margins computed for this preliminary determination. Accordingly, because we corroborated the Petition rate to the extent practicable within the meaning of section 776(c) of the Act, we preliminarily find the 198.38 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, we preliminarily assigned this AFA rate to Sandong, ZEOtech, Pusan, and the Non-Responsive Companies.

⁶⁸ See SAA at 870.

⁶⁹ *Id.*

⁷⁰ See section 776(d)(3) of the Act; see also, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁷¹ See *Initiation Notice*; see also Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from the Republic of Korea (Korea AD Initiation Checklist) at 9.

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

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

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)), (*i.e.*, the average-to-average (A-to-A) method), unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual transactions (*i.e.*, the average-to-transaction (A-to-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁷² Commerce finds that the DP analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-to-A method in calculating a respondent's weighted-average dumping margin.

The DP analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination codes (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the

⁷² See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

product control number (CONNUM) and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the DP analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test under the “mixed method.” If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test), demonstrate the existence of a pattern of prices that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the DP analysis, Commerce examines whether using only the A-to-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative

method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-to-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁷³

B. Results of the DP Analysis

Based on the results of the DP analysis, Commerce preliminarily finds that 61.33 percent of Samyoung's U.S. sales pass the Cohen's *d* test, and, therefore, confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce finds there is a meaningful difference between the weighted-average dumping margin calculated for Samyoung when using the A-to-A method and the weighted-average dumping margin calculated for Samyoung when using an alternative comparison method based on applying the mixed-alternative method to all U.S. Sales. Accordingly, Commerce has preliminarily determined to use the mixed-alternative method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Samyoung.⁷⁴

IX. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁷⁵ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁷⁶

⁷³ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of our differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁷⁴ See Memorandum, "Samyoung Fitting Co., Ltd. Preliminary Determination Analysis," dated concurrently with this memorandum (Samyoung Preliminary Analysis Memorandum).

⁷⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁷⁶ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

For both home market and U.S. sales, Samyoung reported the earlier of the shipment or invoice date as the date of sale, as material terms of sale are not set until that date.⁷⁷ Based on this information, and consistent with Commerce's practice,⁷⁸ we preliminarily determine that the earliest date, either the invoice date or the shipment date, as reported by Samyoung, is the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

X. PRODUCT COMPARISONS

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

In making product comparisons, we matched subject merchandise and foreign like products based on the physical characteristics reported by Samyoung in the following order of importance: finish, surface, specification, pressure rating, type, nominal pipe sizes and end finishes. For Samyoung's sales of FSF in the United States, the reported CONNUM identifies the characteristics of FSF, as exported by Samyoung.

Pressure Ratings

In the initial questionnaire, we directed Samyoung to provide the pressure ratings (a component of the CONNUM) for its FSF sales.⁷⁹ We also instructed Samyoung to code its products with no pressure requirement or a requirement under 2,000 psi as "01."⁸⁰ In response, Samyoung reported an additional category ("06") for sales of FSF that were made to customer specifications which did not include a pressure rating, but were not necessarily "contemplated to be less than 2000 psi or not required."⁸¹ In a supplemental response, Samyoung stated that the pressure rating of its products coded as "06" could be approximated from their dimensions, and illustrated its claim by reference to Exhibit B-6 of its initial sections B and C response.⁸² According to its explanation, the product referenced in B-6 would have a pressure rating greater than 2,000 psi and thus should not be coded as "01."

⁷⁷ See Samyoung February 27, 2020 BCQR at B-20 and C-18.

⁷⁸ See, e.g., *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 60627 (October 7, 2015), and accompanying PDM at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 22578 (April 18, 2016).

⁷⁹ See Samyoung's February 27, 2020 BCQR at B-12.

⁸⁰ *Id.*

⁸¹ *Id.* at B-13.

⁸² See Samyoung's April 28, 2020 SQR at 4-5; see also Samyoung's February 27, 2020 BCQR at Exhibit B-6.

Commerce's questionnaire explicitly provides for the use of additional codes.⁸³ However, the questionnaire indicates the use of additional codes should be used to account for additional pressure ratings, not to lump together products within unknown pressure ratings or products with pressure ratings that are difficult to deduce. For example, the questionnaire states the respondent should "identify . . . what pressure rating corresponds to each additional number code," thus indicating that each additional code should be associated with a unique pressure rating. The questionnaire goes on to explain that "if there is no pressure rating requirement for the product, report '01' for such a product." In a supplemental questionnaire, we directed Samyoung to support its suggestion that products coded as "06" are for applications where the customer would be concerned with pressure ratings, despite not including a pressure rating in its specification, and that products coded as "01" are for applications where the customer is not concerned with pressure ratings. Samyoung, however, simply provided the example above which indicates the product at issue has a pressure rating of 3,000 to 5,000 psi. Samyoung also suggests that everything coded as "01" is a bushing or plug, but does not make an attempt to demonstrate that no products coded as "06" might also be bushings or plugs. Samyoung's response to Commerce's supplemental questionnaire is inadequate for us to conclude that the entire class of products coded as "06" are therefore categorically different than products coded as "01" and that they should therefore be, in effect, largely excluded from the calculations (as the petitioners note, there are no products coded as "06" reported for the U.S. market). Its example also raises the question of whether Samyoung could have reported specific pressure ratings for each product based on its customers' orders and drawings. Accordingly, because we find Samyoung's assertion that the products it coded as "06" are different than products coded as "01" unpersuasive, we have recoded these products to "01" for this preliminary determination. We intend to address the issue further in another supplemental questionnaire.

XI. EXPORT PRICE

A. Export Price

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

We calculated EP for Samyoung based on FOB or CIF prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from the factory to the port of exportation, domestic brokerage and handling, international freight, marine insurance, credit, warranty expense, and bank charges), indirect selling expenses, and packing expenses in accordance with section 772(c)(2)(A) of the Act.⁸⁴

⁸³ See Samyoung's February 27, 2020 BCQR at B-12.

⁸⁴ See Samyoung Preliminary Analysis Memorandum.

XII. NORMAL VALUE

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

A. Particular Market Situation

1. Background

As noted above, the petitioners alleged that a cost-based PMS exists with respect to steel bar, a major input used to produce FSF, and that Commerce should increase Samyoung’s steel bar purchase costs by at least 10.87 percent to account for the PMS created by the distorted price of steel bar in Korea.⁸⁵ Between April and May 2020, Samyoung and the petitioners submitted factual information, comments, and rebuttal comments concerning the PMS allegation.⁸⁶

2. Interested Parties’ Arguments

Petitioners’ Qualitative Arguments:

The petitioners assert that a PMS existed in Korea such that the prices of steel bar in Korea were distorted during the POI due to the collective impact of the following four factors: (1) subsidization of Korean producers of steel bar; (2) global steel overcapacity; (3) anticompetitive strategic alliances between Korean steel producers; and (4) distortive government intervention in the Korean electricity market, which distorted the costs of steel bar in Korea.⁸⁷ Specifically:

- While Commerce has not investigated the extent to which Korean steel bar producers are subsidized by the Government of Korea (GOK), Commerce has found in separate proceedings covering other steel products, that at least two Korean steel producers, which also produce steel bar, have benefitted from countervailable government subsidies.⁸⁸ Further, the subsidies benefit all steel production and, thus, distort the costs of steel bar in Korea.
- In response to the overcapacity crisis, the GOK has engaged in restructuring and subsidization activities to bolster its struggling steel industry.⁸⁹ Specifically, the GOK has provided the shipbuilding industry with billions of dollars in subsidies to stay afloat, and enacted the “Special Act on Corporate Revitalization” which promotes restructuring in the domestic steel industry by providing prioritized support to steel producers through capital,

⁸⁵ See Petitioners’ PMS Allegation; and Petitioners’ PMS SQR.

⁸⁶ See Samyoung’s PMS Rebuttal Comments; *see also* Petitioners’ PMS Rebuttal Comments.

⁸⁷ See Petitioners’ PMS Allegation.

⁸⁸ *Id.* at 4-5.

⁸⁹ *Id.* at 5-6.

research and development, and exclusive funding from the Korea Development Bank and Ministry of Trade.⁹⁰

- Chinese-driven overcapacity in the global steel market led to large volumes of low-priced steel bar imports into Korea.⁹¹
- Commerce has recognized the impact of overcapacity on the Korean steel market with regard to hot-rolled coil (HRC) inputs. The crisis, however, extends equally to products like steel bar, that is also priced at artificially low levels due to excess capacity.⁹²
- Korea is particularly adversely affected by the global steel overcapacity crisis because it is the largest importer of steel bar from China in the world.⁹³ Between 2011 and 2019, Chinese exports of steel bar to Korea increased by 25.6 percent and by 46.4 percent globally.⁹⁴ During the same period, the average unit value (AUV) of Chinese steel bar exports to Korea declined by 32.7 percent. Further, in 2018, China accounted for 84.1 percent of Korean steel bar imports by volume, and Korea's import AUV from China was 26.7 percent lower than the AUV for all other import sources combined.⁹⁵
- Korean steel producers form strategic alliances, resulting in distorted steel input prices. The Korea Fair Trade Commission found that six Korean steel producers, one of which also produces steel bar, were involved in a steel pipe price-fixing scheme from 2003-2013.⁹⁶
- The GOK controls all aspects of the electricity market through its ownership of Korea Electric Power Corporation (KEPCO), Korea's largest electricity supplier.⁹⁷ This control places downward pressure on electricity prices.⁹⁸
- KEPCO's SEC filings indicate that the price of electricity in Korea is set by the GOK, and functions as a tool of the GOK's industrial policy, devoid of any market-based principles. During the POI, KEPCO was operating at a loss of over one hundred million U.S. dollars.⁹⁹

Samyoung's Qualitative Rebuttal Argument:

Samyoung rejects each of the petitioners' arguments and notes that the PMS allegation framework employed by the petitioners has been consistently struck down by the U.S. Court of International Trade (CIT). Samyoung also argues that the petitioners' claims are unsubstantiated and that Commerce should determine that no PMS existed during the POI.¹⁰⁰ Specifically, Samyoung makes the following points:

- In *Hyundai Steel*, the CIT examined virtually the same PMS allegation as in the present case, made in *CWP from Korea*, pertaining to HRC inputs.¹⁰¹ The CIT rejected the contention that

⁹⁰ *Id.*

⁹¹ *Id.* at 7.

⁹² *Id.* at 7-9.

⁹³ *Id.* at 9-10.

⁹⁴ *Id.*

⁹⁵ *Id.* at 10.

⁹⁶ *Id.*, at 13.

⁹⁷ *Id.* at 13-15.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Samyoung's PMS Rebuttal Comments.

¹⁰¹ *Id.* at 7 (citing *Hyundai Steel Co. v. United States*, 415 F. Supp. 3d. 1293 (CIT 2019) (*Hyundai Steel*)); and

Commerce could demonstrate the existence of a PMS based upon the collective impact of the same alleged factors of distortion when there is a lack of persuasive evidence to support any one of those allegations, as is the case in this investigation.¹⁰²

- The petitioners' qualitative PMS allegation regarding global steel overcapacity rests on generalized evidence that is non-probative of the inputs or industry in question and has been previously rejected by Commerce as evidence of a PMS.¹⁰³
- In *NEXTEEL I*, the CIT held that there was no evidence that Chinese overcapacity affected the Korean market in a way that was specific to the Korean market, concluding that, "{t}he potential broad effects on prices {of Chinese exports} creates a situation outside the scope of a PMS, as the impact of Chinese exports in the Korean market are also reflected in other markets around the world."¹⁰⁴
- The petitioners' description of the impact of Chinese exports of steel bar and wire rod on the global market is misleading because they fail to note that Chinese exports to Korea have been declining dramatically since 2016, and were lower in the POI than they have been since 2012. Similarly, the AUVs for 2018 and 2019 are higher than at any point since 2012. Thus, the record indicates that prior to and during the POI, the price of steel bar in Korea was rising and imports to Korea were decreasing. Any adverse impacts on the world market resulting from China's exports of steel bar and wire rod are no longer present.¹⁰⁵
- Korean import prices averaged 25 percent less than world import prices from 2011 through 2018 regardless of changes in import quantity. Thus, there is no indication that the lower price is due to "surges" in exports from China. Further, this consideration is irrelevant because Samyoung purchases all of its inputs from domestic suppliers.¹⁰⁶
- The petitioners' requested PMS adjustment is based solely on the purported impact of global overcapacity. Despite claiming that the PMS in Korea arises from the collective impact of four factors, the petitioners do not demonstrate any actual effect the other three factors have on Samyoung's costs of production; thus, they do not meet the definition of a PMS.¹⁰⁷
- There is no evidence that the GOK subsidizes FSF inputs. There are no countervailing duty (CVD) orders on steel bar from Korea, and the petitioners fail to provide evidence of a direct link to the cited CVD order on other Korean steel products and steel bar.¹⁰⁸
- The allegation of "strategic alliances" is recycled from Korean pipe cases and is not specific to FSF inputs, the FSF producer, or the FSF industry. Moreover, the documents pertain to a period long before the POI.¹⁰⁹
- There is no evidence of distortive intervention by the GOK in the Korean electricity market that would distort the costs of producing FSF. In *NEXTEEL I*, the CIT rejected Commerce's PMS determination and found no evidence that electricity prices charged to producers of oil

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016, 83 FR 27541 (June 13, 2018) (CWP from Korea)).

¹⁰² *Id.*

¹⁰³ *Id.* at 16.

¹⁰⁴ *Id.* at 5-6 (citing *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1350 (CIT 2019) (*NEXTEEL I*)).

¹⁰⁵ *Id.* at 16-17.

¹⁰⁶ *Id.* at 17-19.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.* at 12-14.

¹⁰⁹ *Id.* at 19-20.

country tubular goods (OCTG) were anomalous.¹¹⁰ Further, Commerce has repeatedly found that electricity in Korea is not being provided for less than adequate remuneration (*e.g.*, *WLP from Korea*).¹¹¹

Petitioners' Rebuttal Arguments:

In addition to reiterating its original arguments, the petitioners also state the following:¹¹²

- Commerce has the full authority to adjust the COP to account for the PMS. Further, the CIT cases cited by Samyoung are still subject to appeal and do not dictate the outcome of Commerce's determinations.¹¹³
- It is not necessary for Commerce to rely on a CVD rate specific to Korean steel bar producers to quantify the adjustment that should be made to Samyoung's input costs in this case, because the regression analysis provides an alternative adjustment.¹¹⁴
- Commerce has confirmed the lasting effects of the global steel overcapacity crisis and how the crisis manifests itself differently from country to country which is purportedly evidenced by the regression analysis.¹¹⁵
- Commerce has consistently found that the GOK's involvement in the electricity market contributes to a PMS. Just because electricity prices distorted by the GOK may not be found to confer benefits to particular users within Korea does not mean *ipso facto* that the same intervention does not contribute to distorted production costs in the AD context.¹¹⁶

3. Analysis

Section 504 of the *TPEA* added the concept of "particular market situation" to the definition of the term "ordinary course of trade," under section 771(15) of the Act, and for purposes of CV under section 773(e) of the Act. Through section 773(e), "particular market situation" also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology." The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."¹¹⁷ Prior to the *TPEA*, in a limited number of cases, Commerce found that particular market situations existed and, as a result, declined to use comparison market prices of the foreign like

¹¹⁰ *Id.* at 7 (citing *NEXTEEL I*, 355 F. Supp. 3d at 1350-51).

¹¹¹ *Id.* at 20-21 (citing *Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*WLP from Korea*), and accompanying IDM at Comment 1).

¹¹² See Petitioners' PMS Rebuttal Comments.

¹¹³ *Id.* at 2-7.

¹¹⁴ *Id.* at 7-8.

¹¹⁵ *Id.* at 8-9.

¹¹⁶ *Id.* at 10.

¹¹⁷ See SAA at 822.

product as the basis for NV, as provided for in section 773(a)(1) of the Act and 19 CFR 351.404(c)(2).¹¹⁸ More recently, Commerce determined that a PMS may exist where a component of the COP is distorted and outside the ordinary course of trade.¹¹⁹

The petitioners allege that a PMS existed in Korea during the POI which distorted the COP of FSF based on the following factors: (1) global steel overcapacity; (2) subsidization of Korean producers of steel bar; (3) anticompetitive strategic alliances between Korean steel producers; and (4) distortive government intervention in the Korean electricity market.¹²⁰ While section 504 of the *TPEA* does not specify whether to consider these allegations individually or collectively, we considered the four elements of the petitioners' allegation as a whole, based on their cumulative effect on the Korean FSF market through the COP for FSF and their inputs, consistent with our practice.¹²¹

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

Subsidization of Korean Steel Bar Producers

The petitioners' argument that subsidization of Korean steel producers leads to distorted steel bar prices is based partly on evidence that Korean steel producers, including companies that produce bar among many other steel products, have been found to benefit from steel subsidies in CVD proceedings covering other steel products, and that these subsidies allegedly impact the production of all steel products.¹²² In declining to find that general steel subsidies or CVD orders on *other* products contributed to a PMS in *CASTR from India*, we stated that,

¹¹⁸ Examples of investigations or reviews where we have found a PMS include *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part*, 63 FR 37331 (July 10, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

¹¹⁹ See, e.g., *OCTG 14-15 IDM* at Comment 3; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 18-24, unchanged in *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comments 2 and 3; *CWP Thailand 16-17 IDM* at Comment 2; *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 1.

¹²⁰ See Petitioners' PMS Allegation.

¹²¹ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Oman: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 22997 (April 24, 2020) (*CWP from Oman*), and accompanying IDM at Comment 1.

¹²² See Petitioners' PMS Allegation at 3-6.

“{t}he petitioner must provide evidence to link the CVD orders it references to distortions of the price of inputs used in {subject merchandise} production. It did not do so. Further, unlike the allegations in other analogous cases considering whether a PMS exists, the petitioner failed to identify a supplier, subject to a CVD order, that has supplied inputs to {the respondent} to be used in {subject merchandise}.”¹²³

In the instant investigation, the petitioners likewise fail to provide evidence demonstrating that the CVD orders it references impact steel bar prices in Korea. The fact that certain Korean steel producers benefit from subsidies related to other steel products does not, in and of itself, support the conclusion that steel bar prices are subsidized. Further, unlike in previous proceedings where this argument was supported by direct evidence of subsidies benefitting input production, and the respondent’s purchases of the subsidized input for the production of subject merchandise,¹²⁴ the steel producers subject to the cited CVD orders are not among the suppliers reported by Samyoung.¹²⁵

As additional support for its subsidization argument, the petitioners cite several articles purportedly demonstrating the GOK’s provision of subsidies to offset the effects of steel overcapacity on the Korean steel bar market.¹²⁶ However, the majority of the documents submitted by the petitioners in support of this claim do not address steel overcapacity and do not pertain to the input at issue. Specifically, the petitioners submitted several articles indicating that the GOK heavily subsidizes the Korean shipbuilding and shipping industry following a downturn in the maritime shipping industry.¹²⁷ However, the petitioners do not explain how subsidization of the Korean shipping industry affects or otherwise distorts the steel bar market such that the COP of FSF in Korea is distorted. Moreover, most of the cited shipping articles do not address global steel overcapacity, instead attributing the shipping downturn to a lack of demand for new ships following a decline in global maritime shipping, and the subsidies as means to prop up a strategic industry and compete with other nationally owned shipping companies.¹²⁸ In *Wind Towers from Korea*, where the input at issue was actually used in shipbuilding, Commerce examined the same articles related to the shipping subsidies, concluding that, “if anything, government support for the shipbuilding industry would seem to increase domestic prices for {the steel input}, rather than lower them, as the petitioner alleges.”¹²⁹

¹²³ See *Carbon and Alloy Steel Threaded Rod From India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 8818 (CASTR from India) (February 18, 2020), and accompanying memorandum, “Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation,” dated January 9, 2020, at 6.

¹²⁴ See *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715, (January 16, 2020) (*Pipe and Tube from India*), and accompanying IDM at Comment 1.

¹²⁵ See Samyoung April 20, 2020 SQR at Exhibit D-23, Excel Sheet SD-12 (6.2).

¹²⁶ See Petitioners’ PMS Allegation at 5-6.

¹²⁷ *Id.*

¹²⁸ *Id.* at e.g., Exhibit 2 (citing Exhibit 10).

¹²⁹ See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 85 FR 8560 (February 14, 2020) (*Wind Towers from Korea*), and accompanying PDM at 15.

Similarly, the petitioners also submitted information regarding GOK initiatives to support Korean steel producers following a decline in demand in the construction and oil industries,¹³⁰ which suggests that the GOK assistance is not designed to address excess capacity, as the petitioners allege, rather, it is intended to offset losses from a natural decrease in demand due to economic factors that are not particular to the Korean steel bar market. However, the petitioners make no attempt to link the referenced GOK initiatives to the input at issue. In *Wind Towers from Indonesia*, Commerce declined to find evidence of a PMS stating that, “while the petitioner put forth evidence of the GOI’s involvement in the Indonesian steel market, it provided no quantitative data to demonstrate that this involvement affected Indonesian {steel input} prices.”¹³¹ In the instant investigation, the petitioners’ argument rests on evidence of broad government assistance to Korean steel producers and does not support or otherwise quantify how such assistance distorts the price of inputs into subject merchandise. Accordingly, we preliminarily find the petitioners’ argument that subsidization of Korean steel producers distorts the steel bar market in Korea to be unsupported.

Global Steel Overcapacity

The petitioners’ argument that Chinese-driven steel overcapacity resulted in price suppression in the Korean steel bar market during the POI is not supported by the record. The petitioners cite previous cases where Commerce found a PMS with respect to HRC inputs based on evidence of declining input prices and increased imports into the home market to support the contention that global steel overcapacity was distorting the COP of the merchandise under consideration. However, in the instant investigation, rather than evidence of price depression or increased imports, the data on the record indicate that, prior to and during the POI, the price of steel bar in Korea was rising and steel bar imports to Korea were decreasing.¹³² Commerce has previously found arguments of overcapacity unsupported when prices for the input at issue are increasing and imports of the input are decreasing or remaining constant.¹³³

Strategic Alliances

In support of the assertion that strategic alliances between Korean steel producers led to anticompetitive input costs, the petitioners cite a finding by the Korea Fair Trade Commission that six Korean steel pipe manufacturers, one of which also produces steel bar, engaged in a price-fixing scheme for steel pipe bids from 2003-2013.¹³⁴ While Commerce has previously accepted this finding as evidence of strategic alliances between certain Korean HRC producers and downstream consumers, which contributed to the existence of a PMS, HRC is not an input to FSF. In *Wind Towers from Korea*, we were unpersuaded by the same argument and evidence, concluding that,

¹³⁰ See Petitioners PMS Allegation at Exhibit 2 (citing Exhibit 79).

¹³¹ See *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 8558 (*Wind Towers from Indonesia*), and accompanying IDM at 14.

¹³² See Petitioners’ PMS Allegation at Exhibit 7.

¹³³ See, e.g., *CWP from Oman* IDM at 11; see also *Wind Towers from Korea* PDM at 14.

¹³⁴ See Petitioners’ PMS Allegation at 13 and Exhibit 12-13.

“record evidence only supports the existence of strategic alliances between HRC suppliers and their downstream consumers who produce *non-subject merchandise*. There is no evidence of strategic alliances between {steel input} suppliers and {subject merchandise} producers, nor is there any evidence of such alliances affecting the price of {the steel input} in Korea and, in turn, the COP of {subject merchandise} in Korea.”¹³⁵

The petitioners likewise have not provided evidence demonstrating how a steel pipe price-fixing scheme, that did not involve subject merchandise, results in anticompetitive steel bar prices that distort the COP of FSF.

Distortions in the Energy Market

The petitioners also allege that the GOK’s control of the electricity market results in distorted energy acquisition costs and, thus, lower input prices.¹³⁶ However, Commerce considers the totality of market conditions when evaluating PMS allegations, and as noted above, we preliminarily find that no other factors alleged by the petitioners to have contributed to a PMS during the POI existed.¹³⁷ Thus, while we have considered the GOK’s involvement in the electricity sector as one factor among others that may contribute to a PMS, we have repeatedly found that this is insufficient evidence in and of itself to demonstrate the existence of a PMS.¹³⁸

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

B. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

¹³⁵ See *Wind Towers from Korea* IDM at 15.

¹³⁶ See Petitioners’ PMS Allegation at 13-15.

¹³⁷ See, e.g., *CWP from Oman* IDM at Comment 1.

¹³⁸ See, e.g., *Phosphor Copper from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016– 2018*, 84 FR 69720 (December 19, 2019), and accompanying IDM at 14.

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

C. Cost of Production Analysis

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated weighted-average COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the data submitted by Samyoung except as follows:¹³⁹

- To mitigate the cost differences unrelated to the product physical characteristics, we weight-averaged the reported conversion costs for CONNUMs that have similar product physical characteristics associated with the conversion costs; and
- We revised the G&A expense ratio to include non-operating miscellaneous income and expenses related to accounts payable.

2. Test of Comparison Market Sales Prices

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

3. Results of COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections

¹³⁹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Samyoung Fitting Co., Ltd.," dated May 20, 2020.

773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where we found that, for certain products, more than 20 percent of a Samyoung's home market sales were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Samyoung, we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-factory prices to unaffiliated customers in Korea. Samyoung reported four additional charges (processing, additional packing, inspection, and cancelation) to certain home market customers.¹⁴⁰ These charges are included as separate line items on the invoice and are not included in the gross unit price (*i.e.*, GRSUPRH) field in the home market database. Samyoung stated that the expenses associated with these additional charges are captured in the reported cost of manufacturing because they are incurred prior to the sale of the merchandise.¹⁴¹ By contrast, there are no separate line item charges for these expenses on U.S. invoices, suggesting that they are included in the price of the subject merchandise itself when sold in the U.S. market. Commerce, therefore, has no means of reducing U.S. sales prices to the same starting price as home market sales (*i.e.*, exclusive of the charges/expenses). Thus, in order to achieve the "fair comparison" called for by section 773(a), the charges must be added to home market price for purposes of determining NV. Moreover, the charges must be added to home market prices in order to achieve an accurate comparison with cost (which, as noted, includes the additional charges) for purposes of the sales below cost test.¹⁴²

We also made deductions, where appropriate, from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (*i.e.*, bank charges, imputed credit expenses, and other selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

We deducted comparison market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, imputed credit expenses, inventory carrying costs and direct selling expenses) and added U.S. direct selling expenses (*i.e.*, imputed credit expenses and direct selling expenses).

¹⁴⁰ See Samyoung's February 27, 2020 BCQR at B-25-B-27.

¹⁴¹ See Samyoung's April 28, 2020 SQR at 8.

¹⁴² See Samyoung Preliminary Analysis Memorandum.

In addition, Samyoung also reported freight revenue for certain sales. We are following our normal practice with regard to capping the amount of freight revenue allowed by the amount of corresponding freight expense incurred.¹⁴³

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and subject merchandise.¹⁴⁴

E. Calculation of NV Based on CV

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

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

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

XIII. CURRENCY CONVERSION

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

¹⁴³ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 18354 (April 6, 2015), and accompanying PDM at 6, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 59732 (October 2, 2015).

¹⁴⁴ See 19 CFR 351.411(b).

XIV. VERIFICATION

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

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

5/20/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance