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International Trade Administration
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February 10, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Determination of
the Antidumping Duty Investigation of Steel Threaded Rod
from India

SUMMARY

The Department of Commerce (“Department”) preliminarily determines that steel threaded rod from India is being, or is 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 period of investigation (“POI”) is April 1, 2012, through March 31, 2013. The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

BACKGROUND

Initiation

On June 27, 2013, the Department received an antidumping duty (“AD”) Petition concerning imports of steel threaded rod from India filed in proper form by All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (“Petitioners”).¹ The Department initiated this investigation on July 24, 2013.² The Department set aside a period of

¹ See Petitions for the Imposition of Antidumping Duties On Steel Threaded Rod from India and Antidumping and Countervailing Duties on Steel Threaded Rod from India, filed on June 27, 2013 (“Petition”).

² See *Steel Threaded Rod from India and Thailand: Initiation of Antidumping Duty Investigations*, 78 FR 44526 (July 24, 2013) (“Initiation Notice”).



time for parties to raise issues regarding product coverage and invited parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.³

On August 12, 2013, the U.S. International Trade Commission (“ITC”) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel threaded rod from India.⁴

Period of Investigation

The POI is April 1, 2012, through March 31, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was June 2013.⁵

Postponement of Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁶ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.

In addition, on November 12, 2013, Petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination.⁷ On November 29, 2013, the Department published a postponement of the preliminary AD determination on steel threaded rod from India,⁸ revising the deadline for the preliminary determination of this investigation to February 10, 2014.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 13, 2013, and December 18, 2013, Petitioners and Mangal Steel Enterprises Limited (“Mangal”), one of the mandatory respondents in this proceeding, respectively, requested that the Department postpone the final determination.⁹ In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our 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,

³ See *Initiation Notice*, 78 FR at 44526, 44527.

⁴ See *Certain Steel Threaded Rod from India and Thailand: Investigation Nos. 701 TA-498 and 731-TA-1213-1214 (Preliminary)* (August 2013); *Certain Steel Threaded Rod from India and Thailand*, 78 FR 66382 (November 5, 2013) (“*ITC Preliminary*”).

⁵ See 19 CFR 351.204(b)(1).

⁶ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated October 18, 2013.

⁷ See Letter from Petitioners, “Antidumping Duty Investigation of Steel Threaded Rod from India – Petitioners’ Request for Extension of Time for Preliminary Determination,” dated November 12, 2013.

⁸ See *Steel Threaded Rod from India: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 78 FR 71565 (November 29, 2013).

⁹ See Letter from Petitioners, “Antidumping Duty Investigation of Steel Threaded Rod from India — Petitioners’ Request for Extension of Time for Final Determination,” dated December 13, 2013; and Letter from Mangal, “Steel Threaded Rod from India: Request for Extension of the Final Determination and Provisional Measures,” dated December 18, 2013.

we are granting the requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. Suspension of liquidation will be extended accordingly. The Department is further extending the application of the provisional measures from a four-month period to a six-month period.

Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials

(“ASTM”) A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

Scope Comments

As discussed in the preamble to the regulations, we set aside a period for interested parties to raise issues regarding product coverage.¹⁰ The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*.¹¹ We did not receive any comments.

Respondent Selection

On July 22, 2013, we released a memorandum to interested parties in which we stated that the Department intended to select mandatory respondents based on U.S. import data obtained from U.S. Customs and Border Protection (“CBP”).¹² On July 31, 2013, the Department received comments from Petitioners on the CBP Data Release Memorandum.¹³ On August 20, 2013, we selected Mangal and Babu Exports (“Babu”) as mandatory respondents.¹⁴ The Department issued an initial AD questionnaire to Mangal and Babu on September 6, 2013.¹⁵

We received responses to our questionnaire from Mangal on October 21, 2013, and November 19, 2013.¹⁶ We did not receive a response from Babu. We sent supplemental questionnaires to Mangal on December 4, 2013, December 17, 2013, December 31, 2013, and January 13, 2014.¹⁷

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹¹ See *Initiation Notice*, 78 FR at 44527.

¹² See Memorandum to the File, “Antidumping Duty Investigation on Steel Threaded Rod From India RE: Release of Customs and Border Protection (“CBP”) Data,” dated July 22, 2013 (“CBP Data Release Memorandum”).

¹³ See Letter from Petitioners, “Antidumping Investigation of Steel Threaded Rod from India – Petitioners’ Comments on Respondent Selection,” dated July 31, 2013.

¹⁴ See Memorandum to Gary Taverman, “Selection of Respondents for the Antidumping Investigation of Steel Threaded Rod from India,” dated August 20, 2013.

¹⁵ See Letter from Eugene Degnan to Babu Exports regarding, “Request for Information,” dated September 6, 2013, and Letter from Eugene Degnan to Mangal regarding, “Request for Information,” dated September 6, 2013 (collectively, “Questionnaire”).

¹⁶ See Letter from Mangal, “Steel Threaded Rod from India: Section A Response,” dated October 21, 2013 (“Section A Response”); Letter from Mangal, “Steel Threaded Rod from India: Section C&D Response,” dated November 19, 2013 (“Section C Response”).

¹⁷ See Letter from Department, “Steel Threaded Rod from India: Supplemental Questionnaire Concerning Mangal Steel Enterprises Limited’s Section A Response,” dated December 4, 2013; Letter from the Department, “Antidumping Duty Investigation of Steel Threaded Rod from India,” dated December 17, 2013; Letter from the Department, “Steel Threaded Rod from India: Supplemental Questionnaire Concerning Mangal Steel Enterprises Limited’s Section C Questionnaire Response,” dated December 31, 2013; and Letter from the Department, “Steel Threaded Rod from India: Second Supplemental Questionnaire Concerning Mangal Steel Enterprises Limited’s Section C Questionnaire Response,” dated January 13, 2014.

Responses to the supplemental questionnaires were received from Mangal on January 3, 2014, January 13, 2014, January 17, 2014, January 22, 2014, and January 23, 2014.¹⁸

Application of Facts Available

Sections 776(a)(2)(A)-(D) of the Act provide that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Babu

Babu filed neither an appearance in this proceeding nor a response to the Department's AD Questionnaire, and there was no subsequent communication from Babu in the proceeding.¹⁹ As such, we preliminarily find that Babu did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding.²⁰ Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Babu's margin.

Adverse Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.²¹ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) ("SAA"), explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²² Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the

¹⁸ See Letter from Mangal, "Steel Threaded Rod from India: Supplemental Section A Response," dated January 3, 2014 ("Supplemental A Response"); Letter from Mangal, "Steel Threaded Rod from India: Supplemental Section D Response," dated January 13, 2014; Letter from Mangal, "Steel Threaded Rod from India: Section C 1st Supplemental Response," dated January 17, 2014 ("1st Section C Supplemental Response"); Letter from Mangal, "Steel Threaded Rod from India: Section C 2nd Supplemental Response Submission," dated January 22, 2014 ("2nd Supplemental C Response"); and Letter from Mangal, "Steel Threaded Rod from India: CEP Database Submission," dated January 23, 2014.

¹⁹ See Memorandum to the File "Questionnaire Delivery Confirmation, Babu Exports," dated February 6, 2014.

²⁰ See sections 776(a)(2)(A), (B), and (C) of the Act.

²¹ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002); see also 19 CFR 351.308.

²² See SAA at 870; and, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

Department may make an adverse inference.²³ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

Babu's failure to respond to the Department's questionnaire indicates that Babu determined not to cooperate with our requests for information, or to participate in this investigation. Babu's decision not to participate in this investigation precluded the Department from performing the necessary analysis and verification of Babu's questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Babu failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act and 19 CFR 351.308(c). Based on the above, the Department preliminarily determines that Babu failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.²⁴

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²⁵ In selecting a rate based on adverse facts available ("AFA"), the Department 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.²⁶ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.²⁷ In this investigation, the highest petition dumping margin is 119.87 percent.²⁸

Corroboration of Information

The rates in the Petition range from 17.93 to 119.87 percent.²⁹ We selected the Petition rate of 119.87 percent as AFA. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available.³⁰ 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."³¹

²³ See *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

²⁴ 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, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

²⁵ See also 19 CFR 351.308(c).

²⁶ See SAA at 870.

²⁷ See *Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).

²⁸ See *Initiation Notice*, 78 FR at 44529.

²⁹ *Id.*

³⁰ See also 19 CFR 351.308(d).

³¹ See SAA at 870.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.³² The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.³³ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.³⁴

We determined that the Petition margin of 119.87 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.³⁵

We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (“EP”) and normal value (“NV”) calculations used in the Petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive an estimated margin.³⁶

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioners’ EP and NV calculations to be reliable. Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial

³² *Id.*

³³ *Id.*

³⁴ See *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).

³⁵ See “Antidumping Duty Investigation Initiation Checklist: Steel Threaded Rod from India,” dated July 17, 2013 (“Initiation Checklist”).

³⁶ *Id.*

behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.³⁷ No information has been placed on the record to indicate that the rates in the Petition are unreflective of commercial practices of the steel threaded rod industry and, as such, we find them relevant to Babu.

Accordingly, by using information that was determined to be reliable in the pre-initiation stage of this investigation, we preliminarily determine that the 119.87 percent margin is relevant to the uncooperative respondent in this investigation. For all these reasons, we preliminarily determine this margin to be corroborated to the extent practicable within the meaning of section 776(c) of the Act.³⁸

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act.

The “all others” rate in this investigation is based on the weighted-average dumping margin calculated for Mangal, the only company for which the Department calculated a rate not entirely determined under section 776 of the Act.

Critical Circumstances

On January 10, 2014, Petitioners filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.³⁹

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act, provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for

³⁷ See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999).

³⁸ See section 776(c) of the Act and 19 CFR 351.308 (d); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

³⁹ See Letter from Petitioners, “Antidumping Investigation of Steel Threaded Rod from India: Petitioners’ Allegation of Critical Circumstances,” dated January 10, 2014 (“Petitioners’ Critical Circumstances Allegation”).

whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In their allegation, Petitioners contend that the Department may rely on the margins alleged in the Petition and corroborated in the Department's *Initiation Notice* to decide whether importers knew or should know that dumping was occurring.⁴⁰ The estimated margins in the *Initiation Notice* for India range from 17.93 to 119.87 percent.⁴¹ Therefore, Petitioners maintain that the information on the record of this investigation shows that importers of threaded rod from India had constructive knowledge of dumping.⁴²

Petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.⁴³ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), Petitioners submitted import statistics for the "like product" covered by the scope of this investigation for the period between February 2013 and November 2013, as evidence of massive imports of threaded rod from India during a relatively short period.⁴⁴

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.⁴⁵ Petitioner did not address this criterion. Therefore, we considered the criterion in section 773(e)(1)(A)(ii) of the Act.

⁴⁰ See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002).

⁴¹ See *Initiation Notice*, 78 FR at 44529.

⁴² See Petitioners' Critical Circumstances Allegation, at 2-3.

⁴³ See *ITC Preliminary*.

⁴⁴ See Petitioners' Critical Circumstances Allegation, at Attachment 1.

⁴⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-31972 (June 5, 2008) ("Carbon Steel Pipe Final Determination"); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052 (January 14, 2009) ("SDGE Final Determination").

Section 733(e)(1)(A)(ii): Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales

The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for constructed export price (“CEP”) sales sufficient to impute importer knowledge of sales at LTFV.⁴⁶ Regarding Mangal, we calculated a combined margin for EP and CEP sales of 8.63 percent. With regard to Babu, the mandatory respondent in this investigation that has been uncooperative, we are assigning, as AFA, a rate of 119.87 percent, the highest margin in the Petition and corroborated in the *Initiation Notice*. Furthermore, it is our practice to conduct our knowledge analysis for all other non-individually-reviewed entities based on the weighted-average dumping margin calculated for cooperative investigated companies and, as stated above, the “all others” rate in this investigation is based on the weighted-average dumping margin calculated for Mangal. Therefore, because the EP and CEP combined margin for Mangal is below the 25 and 15 percent thresholds for EP and CEP sales, respectively, we find the knowledge criterion unmet by Mangal and all other non-individually reviewed entities. Because the AFA rate for Babu is in excess of the aforementioned baselines, we find the knowledge criterion has been met for Babu.

In determining whether an importer knew or should know that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.⁴⁷ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.⁴⁸ Here, the ITC found that “there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Thailand and India of certain steel threaded rod, provided for primarily in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States ...”⁴⁹ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge. Next, we must thus address the second criterion of whether imports were massive in the comparison period when compared to the base period.

⁴⁶ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (“*Steel Wire Rod Preliminary Determination*”), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790, 55792; *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606, 5607 (February 3, 2005) (“*Magnesium Metal Preliminary Determination*”), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People’s Republic of China*, 70 FR 9037, 9038.

⁴⁷ See, e.g., *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010) (“*Potassium Phosphate Salts Prelim*”), unchanged in *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377, 30378-30379. (“*Potassium Phosphate Salts Final*”)

⁴⁸ See, e.g., *Steel Wire Rod Preliminary Determination*, 67 FR at 6225; *Magnesium Metal Preliminary Determination*, 70 FR at 5607.

⁴⁹ See *ITC Preliminary*, 78 FR at 66382.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ ...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

In its January 10, 2014 allegation, Petitioners maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when the Petition for an AD investigation was filed on June 27, 2013.⁵⁰ As such, Petitioners chose a five-month base period commencing with the month of February 2013, and a five-month comparison period concluding with the month of November 2013. Petitioners included in their submission U.S. import data collected from the ITC’s Dataweb.⁵¹ Based on this data, Petitioners claimed that imports of steel threaded rod from India increased by over 28 percent during the comparison period over the base period. Thus, Petitioners conclude that there were massive imports during a relatively short period.⁵²

We used the five-month base period of February through June 2013 and the five-month comparison period of July through November 2013, as provided by Petitioners.⁵³ The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month.⁵⁴ Moreover, it is the Department’s practice to base the critical circumstances analysis on *all*

⁵⁰ See *Initiation Notice*, 78 FR at 44526.

⁵¹ See Petitioners’ Critical Circumstances Allegation, at Attachment 1.

⁵² *Id.*, at 5.

⁵³ See Memorandum to Melissa G. Skinner, “Antidumping Duty Investigation of Steel Threaded Rod from India: Critical Circumstances Data and Calculations for the Preliminary Determination,” dated concurrently with this notice (“Critical Circumstances Memorandum”).

⁵⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31311-31312 (May 25, 2012).

available data, using base and comparison periods of no less than three months.⁵⁵ Based on these practices, and because Petitioners made available data covering five-month base and comparison periods, we chose to examine the base period, February 2013 through June 2013, and the corresponding comparison period, July 2013 through November 2013, in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department's practice that the comparison period is at least three months.

It is the Department's practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.⁵⁶ On January 14, 2014, the Department sent a letter to Mangal requesting its monthly shipment data for the base and comparison periods.⁵⁷ Mangal submitted the requested data on January 22, 2014.⁵⁸ When we compared Mangal's import data during the comparison period with that of the base period, we found that Mangal's imports did not increase by at least 15 percent, and, thus, we do not consider them to be massive, pursuant to 19 CFR 351.206(h).⁵⁹

With regard to Babu, as noted above, Babu did not respond to any of our requests for information.⁶⁰ Therefore, consistent with the Department's practice, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted.⁶¹ Accordingly, we preliminarily find that there were massive imports of merchandise from the Babu.

With regard to all other non-individually reviewed entities, it is the Department's practice to conduct its massive imports analysis based on the experience of individually-investigated companies.⁶² However, where the mandatory respondents receive AFA, we do not impute those adverse inferences of massive imports to the non-individually examined companies receiving the "all others" rate.⁶³ Therefore, we based our analysis on Mangal's experience, and preliminarily find there to be no massive imports for all non-individually reviewed companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

⁵⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916, 76917 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594, 20596 (April 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 3.

⁵⁶ See, e.g., *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR 2052-53.

⁵⁷ See Letter from Department, "Antidumping Duty Investigation of Steel Threaded Rod from India: Request for Monthly Shipment Information," dated January 14, 2014.

⁵⁸ See Letter from Mangal, "Steel Threaded Rod from India: Monthly Shipment Data Submission," dated January 22, 2014.

⁵⁹ See Critical Circumstances Memorandum, at Attachment I.

⁶⁰ See the "Application of Facts Available" and "Adverse Facts Available" sections of this memorandum.

⁶¹ See *SDGE Final Determination*, 74 FR at 2052-2053.

⁶² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997); see also, e.g., *Potassium Phosphate Salts Prelim*, 75 FR at 24576-24577; unchanged in *Potassium Phosphate Salts Final*, 75 FR at 30379.

⁶³ *Id.*

In summary, we find that there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to steel threaded rod from India purchased from Babu, but not from Mangal or all other non-individually reviewed companies. Further, we do not find that there have been massive imports of steel threaded rod from India over a relatively short period from Mangal or the “all others” rate companies, but do find that there have been massive imports from Babu. Given the analysis above and in the Critical Circumstances Memorandum, we preliminarily determine that critical circumstances do not exist with respect to imports of steel threaded rod produced by Mangal and the companies covered by the “all others” rate, and preliminarily determine that critical circumstances do exist with respect to imports of steel threaded rod produced by Babu.

DISCUSSION OF THE METHODOLOGY

Affiliation and Collapsing

Members of one branch of the Garodia family own the majority of shares of Mangal and members of another branch of the Garodia family own 100 percent of Corona.⁶⁴ In addition, Garodia family members are on the board of directors of each company in a management capacity, and Mangal and Corona produce and/or export merchandise under consideration.⁶⁵ Therefore, based on record evidence, the Department preliminarily finds that Mangal and Corona are affiliated pursuant to sections 771(33)(A) and (F) of the Act based on ownership by family members of both companies.⁶⁶

However, there is no information on the record indicating that there exists a significant potential for manipulation of price or production, such that Mangal and Corona should be treated as a single entity in accordance with 19 CFR 351.401(f).⁶⁷ The record demonstrates that Mangal and Corona share no individual owners, board members, or managers; and there is no evidence that the companies share sales information, facilities or employees, are mutually involved in production and pricing decisions, or have commercial transactions or business dealings between one another.⁶⁸ Indeed, Mangal has provided information to the record affirmatively documenting the lack of relationship between the two companies.⁶⁹ As such, we preliminarily find that Mangal and Corona should not be treated as a single entity in accordance with 19 CFR 351.401(f). However, we will continue to evaluate the relationship between Mangal and Corona with respect to affiliation and potential collapsing for purposes of our analysis in the final determination.

Furthermore, as discussed immediately below, based on an analysis of the principle/agent relationship between Mangal and a U.S. trader/reseller of Mangal-produced subject merchandise,

⁶⁴ See Supplemental A Response, at 12 and Exhibit S1-4(a).

⁶⁵ *Id.*, at Exhibits S1-4(a) S1-4(b), Corona’s Annual Returns, and Exhibit S1-4(g), “100% Shareholding of Mangal Steel;” see also Section A Response, at Exhibits A-4(a), “Top Ten Shareholders of Mangal,” and A-4(c), “List of Directors of Mangal having Directorship in its Other Affiliates.”

⁶⁶ Mangal acknowledged this affiliation based on the Department’s definition of the term pursuant to section 771(33), in its Supplemental A Response, at 16, item 16.

⁶⁷ See Memorandum to the File, “Affiliation and Collapsing, Mangal Steel Enterprises Limited and Corona Steel Industries Private Limited,” dated concurrently with this memorandum (“Affiliation and Collapsing Memo”).

⁶⁸ See Supplemental A Response, at 16 - 17.

⁶⁹ See Letter from Mangal, “Steel Threaded Rod from India: Letter Regarding Corona,” dated January 28, 2014.

we preliminarily find Mangal and NASCO,⁷⁰ the U.S. trader/reseller, to be affiliated pursuant to section 771(33)(G) of the Act.

Sales via a Principal/Agent Relationship and Constructed Export Price

In its section C questionnaire response, Mangal reported all of its sales of subject merchandise as EP sales.⁷¹ Indeed, a certain portion of Mangal's sales which did not involve the trader/reseller discussed below, NASCO, were negotiated with and sold directly by Mangal to an unaffiliated U.S. customer, and we treated these sales as EP transactions, accordingly. However, Petitioners argue that for a certain subset of Mangal's sales, NASCO,⁷² which is located in the United States, acted as Mangal's agent for sales of subject merchandise and that the sales made through NASCO should be treated as CEP sales.⁷³ Accordingly, the Department requested that Mangal submit all written agreements/contracts in effect during the POI between Mangal and NASCO.⁷⁴ Mangal responded that there was only one agreement between Mangal and NASCO, which provided for a volume based trade discount.⁷⁵

In the absence of an agency contract, "the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test."⁷⁶ The Department's examination of allegations of an agency relationship has focused on a range of criteria, including (but not limited to) the following: (1) the foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; (5) whether the agent/reseller further processes or otherwise adds value to the merchandise; (6) the means of marketing a product by the

⁷⁰ The fact that NASCO is Mangal's trader/reseller was initially bracketed by Mangal and identified as proprietary information. However, Mangal and Petitioners subsequently disclosed this information publicly on the record. *See, e.g.*, Letter from Mangal, "Steel Threaded Rod from India: Supplemental Section A Response," dated January 3, 2014, at 8 (stating: "or requiring Mangal to only sell threaded rod in the United States through NASCO."); *see also* Letter from Petitioners, "Antidumping Investigation of Steel Threaded Rod from India — Petitioners' Deficiency Comments on Response of Mangal Steel to Section A of Antidumping Duty Questionnaire," dated October 30, 2013, at 4 (stating: "In researching shipments of subject merchandise from Mangal Steel, Petitioners found that Mangal Steel had a significant number of shipments to a consignee called North American Steel Connection (NASCO)..." and "Based on a general internet search regarding North American Steel Connection, Petitioners found that NASCO was a joint venture partner in another company..."). Once a party discloses its information that was formerly given proprietary treatment publicly, the Department no longer will treat that information as proprietary on the administrative record.

⁷¹ *See* Section C Response, at 1.

⁷² The name of this trader/reseller is bracketed as business proprietary information.

⁷³ *See* Letters from Petitioners, "Antidumping Investigation of Steel Threaded Rod from India — Petitioners' Deficiency Comments on Response of Mangal Steel to Section A of Antidumping Duty Questionnaire," dated October 30, 2013, and "Antidumping Investigation of Steel Threaded Rod from India — Petitioners' Deficiency Comments on Response of Mangal Steel to Sections C and D of Antidumping Duty Questionnaire," dated December 3, 2013.

⁷⁴ *See* Letter from Department, "Steel Threaded Rod from India: Supplemental Questionnaire Concerning Mangal Steel Enterprises Limited's Section A Response," dated December 4, 2013.

⁷⁵ *See* Supplemental A Response.

⁷⁶ *See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24400-24403 (May 5, 1997) ("EPGT Final Determination").

producer to the U.S. customer in the pre-sale period; and (7) whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions.⁷⁷

As there was no agency contract in the instant proceeding, we examined the above factors as an analytical framework to determine the nature of the principal-agent relationship, or lack thereof, between Mangal and NASCO with respect to the three sales scenarios described below:

- 1) Sales in which NASCO negotiated with the ultimate customer on behalf of Mangal and all invoicing and payment passed through NASCO and counted toward NASCO's volume based trade discount;
- 2) Sales in which Mangal negotiated terms directly with the ultimate customer, but all invoicing and payment passed through NASCO and counted toward NASCO's volume based trade discount; and
- 3) Sales directly to NASCO that entered NASCO's inventory.

First, we considered the sales made by Mangal through NASCO regardless of whether Mangal or NASCO negotiated the terms of sales with the end customer (*i.e.*, scenarios 1 and 2). Then we considered the sales made by Mangal to NASCO which entered NASCO's inventory (*i.e.*, scenario 3).

Sales Made Through NASCO

A. The Foreign Producer's Role in Negotiating Price and Other Terms of Sale

As stated above, Mangal reported that it made sales to NASCO where it negotiated the terms of sale directly with NASCO's customer and through NASCO where NASCO's sales representative negotiated the terms of sale with the end customer, based on price offers from Mangal. In the former instance, NASCO had no role in negotiating the price or other terms of sale. In the latter instance, NASCO was free to negotiate the price but required to obtain Mangal's approval for price offers to the end customer if such offers were lower than the prices offered by Mangal to NASCO.⁷⁸

B. The Extent of The Foreign Producer's Interaction with the U.S. Customer

For all sales made through NASCO, regardless of whether Mangal or NASCO negotiated the terms of sale, Mangal issued an invoice to NASCO and NASCO issued an invoice, for the same value as the end customer's purchase order, to the end customer. NASCO's customer then made payment to NASCO who made payment to Mangal. Mangal subsequently compensated NASCO

⁷⁷ See *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum, at Comment 23.

⁷⁸ See 2nd Supplemental C Response, at 2.

a specified percentage of total sales value based on the annual sales volume. For all sales, NASCO was listed as the vendor on all purchase orders.⁷⁹

Furthermore, NASCO's customers know that Mangal is the manufacturer of the subject merchandise because Mangal reported that NASCO introduced its customers to Mangal.⁸⁰ For sales where Mangal negotiated the terms of sale through NASCO, Mangal reported that it has no contact with the end customer, but communicated with the end customer only through NASCO or its sales representatives.⁸¹

C. Whether the Agent/Reseller Maintains Inventory

Sales made by Mangal through NASCO, whether or not Mangal or NASCO negotiated the terms of sale with the end customer, did not enter NASCO's inventory.⁸²

D. Whether the Agent/Reseller Takes Title to the Merchandise and Bears the Risk of Loss

Mangal reported that NASCO takes title at the U.S. port to all subject merchandise purchased from Mangal, and that the risk of loss and responsibility for returns is then on NASCO's account. Also, Mangal states that the risk of realizing payment from the end customer is on NASCO's account.⁸³

E. Whether the Agent/Reseller Further Processes or Otherwise Adds Value to the Merchandise

Mangal reported that it made no sales that were further manufactured in the United States.⁸⁴

F. The Means of Marketing a Product by the Producer to the U.S. Customer in the Pre-Sale Period

Mangal reported that for sales where Mangal negotiated the terms of sale through NASCO, it marketed subject merchandise by sending periodic price offers to the/trader reseller or its sales representatives. NASCO then entered the market to solicit business. Mangal states that if NASCO sold its merchandise at the prices offered by Mangal, Mangal would immediately accept the orders. However, if customers counteroffered a price lower than Mangal's offered price, NASCO relayed the customer's offer price to Mangal and then Mangal instructed NASCO whether to accept or decline the order.⁸⁵

⁷⁹ See Section A Response, at 19.

⁸⁰ See Supplemental A Response, at 3.

⁸¹ See 2nd Supplemental C Response, at 2.

⁸² See Section A Response, at 19.

⁸³ *Id.*, at 19; 2nd Supplemental C Response, at 1.

⁸⁴ See Section A Response, at 29.

⁸⁵ See 2nd Supplemental C Response, at 2.

G. Whether the Identity of the Producer on Sales Documentation Inferred an Agency Relationship During the Sales Transactions

The identity of the producer found on the sales documentation does not infer an agency relationship. However, the record demonstrates that NASCO was paid a set percentage based on the annual sales volume of all merchandise produced by Mangal and sold to the end customers by NASCO, regardless of whether Mangal or NASCO negotiated the terms of sale with the end customer.⁸⁶

Given the totality of the evidence and circumstances described above, we find that a principal/agent relationship existed between NASCO and Mangal during the POI for sales made to the end customer through NASCO. The record indicates that Mangal maintained ultimate control over the terms of sale for sales it negotiated directly with NASCO's end customers and for sales where the trader reseller negotiated the sale with the end customer. Mangal was only able to negotiate and execute sales directly to certain end customers because NASCO introduced Mangal to the customers and Mangal compensated the trader reseller for such sales. All offers for sale by NASCO were based on Mangal's written price offers and any decrease in the prices offered by NASCO required Mangal's approval. Moreover, NASCO's end customers knew Mangal was the manufacturer of the subject merchandise and NASCO invoiced its end customer the same amount that Mangal invoiced it for the same transaction. Furthermore, NASCO was paid a set percentage based on the annual sales volume of all merchandise produced by Mangal and sold to the end customers by NASCO, regardless of whether Mangal or NASCO negotiated the terms of sale with the end customer.

Accordingly, though NASCO took title to the merchandise and bore the risk of loss and NASCO's affiliate maintained an inventory of subject merchandise, the totality of the circumstances indicates that a principal/agent relationship existed between Mangal and the U.S. trader/reseller.⁸⁷ Thus, for purposes of our analysis, NASCO and Mangal are affiliated in accordance with section 771(33)(G) of the Act. We will therefore treat Mangal's sales through NASCO as CEP sales.

Sales Made by Mangal to NASCO which Entered NASCO's Inventory

Subject and non-subject merchandise produced by Mangal entered the inventory of an affiliate of NASCO. Mangal states that for the sales that entered inventory, Mangal is neither involved in the sales negotiations with NASCO/affiliate's end customers nor does Mangal control the prices at which NASCO/affiliate sells its inventory. In addition, Mangal claims that NASCO/affiliate is not required to get Mangal's approval of prices at which NASCO/affiliate sells its inventory. Further, Mangal claims that NASCO/affiliate has full title to its inventory and Mangal is paid for the inventory as per the agreed payment terms, irrespective of whether or not trader/reseller/affiliate sells the inventory.⁸⁸

⁸⁶ See Supplemental A Response, at Exhibit S1-1(a).

⁸⁷ See *EPGT Final Determination*, 62 at 24400-24403 (May 5, 1997); *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum, at Comment 23.

⁸⁸ See 2nd Supplemental C Response, at 3.

Regardless of the aforementioned fact pattern, these direct sales by Mangal to NASCO do not represent the first sale to an unaffiliated party and, thus, should be treated as CEP transactions pursuant to section 772(b) of the Act. However, because the record does not currently contain information necessary to calculate the CEP (*e.g.*, the downstream price information for sales to the first unaffiliated customer), we determine that these sales should be treated as EP sales as facts otherwise available, pursuant to section 776(a) of the Act, for the preliminary determination. However, we intend to collect the information necessary to value these sales as CEP for the final determination.

Date of Sale

The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.⁸⁹ In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” However, the Department’s practice is to use shipment date as the date of sale when shipment date precedes invoice date.⁹⁰ Mangal has reported the shipment date as its date of sale because Mangal reports that the subject merchandise is always shipped prior to the invoice date.⁹¹ Therefore, in accordance with our practice, the Department has preliminarily determined to use shipment date as the date of sale.

Fair Value Comparisons

To determine whether sales of steel threaded rod from India to the United States were made at LTFV, we compared the EP, or CEP where appropriate, to the NV, as described in the “Export Price,” “Constructed Export Price,” and “Normal Value” sections of this memo, below. In accordance with section 777A(d)(1)(B) of the Act, we compared transaction-specific EPs and CEPs to POI weighted-average NVs for Mangal.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In AD proceedings, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, pursuant

⁸⁹ See, *e.g.*, *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) (“*Cold-Rolled Turkey*”), and accompanying Issues and Decision Memorandum, at Comment 1.

⁹⁰ 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) (“*Frozen Shrimp Final Results*”) and accompanying Issues and Decision Memorandum, at Comment 11.

⁹¹ See Section C Response, at 13; see also 1st Section C Supplemental Response, at 5 – 6.

to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has applied a “differential pricing” (“DP”) analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation.⁹² The Department finds that the DP analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. 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 zip code 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large threshold (*i.e.*, 0.8).

⁹² See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum, at Comment 3; and *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum, at Comment 3.

Next, the “ratio test” assesses the extent of the significance of the 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 application of the average-to-transaction method to all sales as an alternative to the average-to-average 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 but less than 66 percent of the value of total sales, then the results support the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. 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 the application of an alternative to the average-to-average 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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 average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average 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 average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that over 66 percent of Mangal’s U.S. sales pass the Cohen’s *d* test, which confirms the existence of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because there is a meaningful difference (*i.e.*, more than 25 percent) between the margin calculated using the average-to-average method and the margin calculated using the alternative average-to-transaction method, as applied to all U.S. sales. Accordingly, the Department has determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Mangal.

Product Comparisons

In making product comparisons, we matched foreign like products based on the physical characteristics established by the Department and reported by Mangal in the following order of importance: length of threading, surface treatment, diameter, length of entire steel threaded rod, type of steel, and pitch.⁹³ The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. As the Department has noted “... selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess,” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.”⁹⁴

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 used the EP methodology for sales in which Mangal negotiated sales terms and invoiced the ultimate U.S. customer directly because, for such sales, the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record.

For such EP U.S. sales, Mangal reported that the merchandise under consideration was produced by Mangal, who then sold the merchandise under consideration to the unaffiliated U.S. customers. We based the starting price on the prices to unaffiliated purchasers in the United States. Since the shipment date preceded the invoice date for all of Mangal’s sales, we used the shipment date as the date of sale, in accordance with our practice.⁹⁵ We made adjustments for credit expenses, certain direct selling expenses, and billing adjustments, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. For further discussion, *see* the Preliminary Calculation Memorandum, dated concurrently with this memorandum.⁹⁶

⁹³ See the Questionnaire, at Section C.

⁹⁴ See *Cold-Rolled Turkey*, and accompanying Issues and Decision Memorandum, at Model Match Comment I.

⁹⁵ See, e.g., *Frozen Shrimp Final Results*, and accompanying Issues and Decision Memorandum at Comment

11.

⁹⁶ See Memorandum to the file, “Preliminary Determination Analysis Memorandum for Mangal Steel Enterprises Limited,” dated February 10, 2014 (“Preliminary Calculation Memorandum”).

Constructed Export Price

In accordance with section 772(b) of the Act, we based U.S. price on the CEP for Mangal sales in the following scenarios: (a) Mangal negotiated the sales terms with the ultimate customer through its reselling agent and Mangal invoiced the reselling agent; and (b) Mangal negotiated the sales terms directly with the ultimate U.S. customer and Mangal invoiced the reselling agent. In the aforementioned two scenarios, we used CEP because the subject merchandise was sold in the United States by a U.S. re-seller and EP was not otherwise indicated.⁹⁷

We calculated CEP based on the delivered price to the ultimate unaffiliated U.S. purchasers in the United States. Where appropriate, we made deductions for international freight expenses (including foreign inland freight expenses, foreign brokerage and handling expenses, inland insurance expenses, and U.S. inland freight expenses), and U.S. brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). We also made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.⁹⁸

Normal Value

After testing comparison-market viability, we calculated normal value as stated in the “Calculation of Normal Value Based on Constructed Value” section of this memorandum.

A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating normal value, we compared the respondent’s volumes of home-market and third-country sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. The aggregate volume of Mangal’s sales of foreign like product in the home market was not greater than five percent of its sales of subject merchandise to the United States. Therefore, Mangal’s sales in the home market are not viable as a comparison market. Similarly, Mangal’s sales of foreign like product to third-country markets were not greater than five percent of its

⁹⁷ See “Export Price” section, above.

⁹⁸ See Preliminary Calculation Memorandum.

sales of subject merchandise to the United States. Therefore, none of these markets are viable as a comparison market.

B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value (“CV”) based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, interest expenses, U.S packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, general and administrative expenses, interest expenses, and U.S. packing costs. Based on the review of record evidence, Mangal did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

Because the Department has determined for purposes of this preliminary determination that Mangal does not have a viable comparison market, we could not determine selling expenses and profit under section 773(e)(2)(A) of the Act. Therefore, we relied on section 773(e)(2)(B) of the Act to determine these amounts.

The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act for determining selling expenses and profit. See Statement of Administrative Action Accompanying the URAA, H.R. Rep. No. 103-316, Vol. 1, at 840 (1994). Alternative (iii) of section 773(e)(2)(B) of the Act specifies that selling and profit may be calculated based on any other reasonable method as long as the amount allowed for profit is not greater than the amount normally realized by exporters or producers “in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise” (*i.e.*, the “profit cap”).

Because Mangal did not produce and sell in the home market any other merchandise in the same general category as steel threaded rod and because no other producers/exporters are being individually examined in this investigation, we calculated Mangal’s selling expenses and profit under section 773(e)(2)(B)(iii) of the Act. We used the selling expenses and profit from the publicly available financial statements for the fiscal year most contemporaneous with the POI of a company in India, Udehra Fasteners Limited (“Udehra”). Udehra’s financial statements were the only financial statements on the administrative record which separated out its selling expenses and allowed for the calculation of both CV selling expenses and profit. In addition to producing subject merchandise, Udehra also produces products in the same general category of merchandise as steel threaded rod. For a more detailed discussion *see* Memorandum to Neal Halper from Ernest Gziryan, “Constructed Value Calculation Adjustments for the Preliminary Determination,” dated concurrently with this notice (“Preliminary Cost Memorandum”) and Preliminary Calculation Memorandum.

As explained above, Mangal does not produce and sell in the home market other merchandise in the same general category of products as the subject merchandise. Thus, a profit cap cannot be calculated as there is no information regarding profit that is normally realized in connection with the sale of merchandise in the same general category for consumption in the home market. *See* Preliminary Cost Memorandum. Therefore, because there is no information available on the

profit cap on the record, as facts available, we are applying option (iii), without quantifying a profit cap.

Currency Conversion

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

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Mangal, its selling agent, and the affiliate of its selling agent, upon which we will rely in making our final determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel threaded rod, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)