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Investigation
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Finished Carbon Steel Flanges
from India

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that imports of finished carbon steel flanges (steel flanges) from India 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 preliminary estimated weighted-average dumping margins are shown in the “Preliminary Determinations” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On June 30, 2016, the Department received an antidumping duty (AD) petition covering imports of steel flanges from India, which was filed in proper form by Weldbend Corporation and Boltex Mfg. Co., L.P. (collectively, the petitioners).¹ The Department initiated an AD investigation based on the petition on July 20, 2016.²

In the *Initiation Notice*, the Department notified the public that in the event the Department determined that the number of companies subject to the specific investigation is large and it cannot individually examine each company based upon the Department’s resources, the

¹ See Letter from the petitioners to the Secretary of Commerce and the Secretary of the U.S. International Trade Commission entitled, “Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and India and Countervailing Duties on Imports from India,” dated June 30, 2016 (the Petition).

² See *Finished Carbon Steel Flanges from India, Italy, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 49619 (July 28, 2016) (*Initiation Notice*).

Department intended to select respondents based on United States Customs and Border Protection (CBP) data for United States imports of steel flanges from each respective country during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ On August 2, 2016, the Department released CBP import data to interested parties in the investigation covering steel flanges from India, and also requested comments regarding respondent selection.⁴ On August 12, 2016, the Department released revised CBP data to interested parties, and again invited interested parties to comment.⁵ We received timely respondent selection comments from the petitioners,⁶ Bebitz Flanges Works Pvt., Ltd. (Bebitz India), and Bebitz U.S.A., Inc. (Bebitz U.S.A.) (collectively, Bebitz).⁷ On August 18, 2016, we received rebuttal comments from the petitioners.⁸ On September 20, 2016, we selected Norma (India) Limited (Norma) and R.N. Gupta & Co., Ltd. (Gupta) as mandatory respondents.⁹

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of steel flanges to be reported in response to the Department's AD questionnaire.¹⁰ The Department placed proposed product characteristics on the record on August 29, 2016, and invited parties to comment on them.¹¹ The Department did not receive scope comments from any interested parties, but did receive comments from parties regarding product characteristics.¹² We received comments from the petitioners,¹³ Norma,¹⁴ Gupta,¹⁵ and ULMA.¹⁶

³ *Id.*, at 49623.

⁴ See Letter from Robert James to Interested Parties, dated August 2, 2016.

⁵ In its August 2, 2016, letter to interested parties, the Department included U.S. imports that entered under Harmonized Tariff Schedule (HTS) numbers 7307.91.5010, 7307.91.5030, 7307.91.5050, and 7307.91.5070. In the revised CBP data we included only U.S. imports that entered under HTS 7307.91.5010 and 7307.91.5050. See Letter from Robert James to Interested Parties, dated August 12, 2016.

⁶ See Letter from the petitioners to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: Comments on CBP Data," dated August 9, 2016.

⁷ See Letter from Bebitz to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: Comments on Respondent Selection," dated August 9, 2016.

⁸ See Letter from the petitioners to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: CBP Data - Rebuttal Comments," dated August 18, 2016.

⁹ See Memorandum from Fred Baker to Christian Marsh entitled, "Respondent Selection for the Antidumping Duty Investigation of Finished Carbon Steel Flanges from India," dated September 20, 2016.

¹⁰ See *Initiation Notice*, 81 FR at 49620.

¹¹ See Letter from Robert James to Interested Parties, dated August 29, 2016.

¹² See Letter from the petitioners to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India, Italy, and Spain; Comments on Product Characteristics," dated August 9, 2016; see also Letter from ULMA Forja, S.Coop (ULMA) to the Secretary of Commerce entitled, "ULMA Forja's Comments on Product Characteristics for Model-Matching; Finished Carbon Steel Flanges from India, Italy, and Spain," dated August 19, 2016.

¹³ See Letter from the petitioners to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India, Italy & Spain: Comments on the Department's Proposed Product Characteristics," dated September 16, 2016.

¹⁴ See Letter from Norma to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: Comments on Proposed List of Product Characteristics," dated September 16, 2016.

¹⁵ See Letter from Gupta to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: Comments on Proposed List of Product Characteristics," dated September 16, 2016.

¹⁶ See Letter from ULMA to the Secretary of Commerce entitled, "ULMA Piping's Comments on Product Characteristics for Model-Matching; Finished Carbon Steel Flanges from India, Italy, and Spain," dated September 16, 2016. ("ULMA Piping" is counsel's abbreviation for ULMA.)

On August 15, 2016, the United States International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of steel flanges from India, Italy, and Spain.¹⁷

On September 28, 2016, the Department issued the AD questionnaire to Norma¹⁸ and Gupta.¹⁹ On October 3, 2016, we provided additional guidance to respondents on the reporting of various fields, including quantity, weight, specification, and grade.²⁰

III. PERIOD OF INVESTIGATION

The POI is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2016.²¹

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is finished carbon steel flanges from India. For a full description of the scope of this investigation, *see* the accompanying preliminary determination *Federal Register* notice of this investigation at Appendix I.

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents Norma and Gupta have requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination, *i.e.*, no later than 135 days after the publication of the preliminary determination in the *Federal Register*, and that the Department extend the application of the provisional measures prescribed under section

¹⁷ See *Investigation Nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary)–Finished Carbon Steel Flanges from India, Italy, and Spain; Determinations*, 81 FR 55482 (August 19, 2016).

¹⁸ See Letter from Erin Kearney to Norma, dated September 28, 2016 (Norma questionnaire).

¹⁹ See Letter from Erin Kearney to Gupta, dated September 28, 2016 (Gupta questionnaire).

²⁰ See Memorandum from Steve Bezirgianian to the File entitled, “Guidance Regarding Various Fields and Spec/Grade Chart,” dated October 3, 2016.

²¹ See 19 CFR 351.204(b)(1).

733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.²²

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the *Federal Register* and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.²³

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁵ We did not receive comments from interested parties regarding the scope of the investigation as it appeared in the *Initiation Notice*. The scope published in the *Initiation Notice* contained several typographical errors, which have been corrected in Appendix I of the accompanying preliminary determination *Federal Register* notice of this investigation.

VII. AFFILIATION AND COLLAPSING OF AFFILIATES

We preliminarily determine that the following companies are affiliated, pursuant to section 771(33)(F) of the Act: Norma (India) Limited; USK Exports Private Limited; Uma Shanker Khandelwal & Co.; Bansidhar Chiranjilal; and a fifth company the name of which is business proprietary information.²⁶ We base this determination on the fact that these companies are all owned and controlled by a set of siblings.²⁷ These siblings constitute a family grouping, and this family grouping controls the five companies. In addition, pursuant to 19 CFR 351.401(f) and based on the evidence provided in Norma's questionnaire responses, we preliminarily determine that Norma (India) Limited; USK Exports Private Limited; Uma Shanker Khandelwal & Co.; and Bansidhar Chiranjilal should be collapsed and treated as a single entity in this investigation, *i.e.*, Norma Group.²⁸ This determination is based, in part, on our preliminary determination that these four steel flanges producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, pursuant

²² See Letter from Norma to the Secretary of Commerce entitled, "Request to Postpone the Final Determination," dated January 12, 2017; see also Letter from Gupta to the Secretary of Commerce entitled, "Request to Postpone the Final Determination," dated January 11, 2017.

²³ See 19 CFR 351.210(b)(2) and (e).

²⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

²⁵ See *Initiation Notice*, 81 FR at 49621.

²⁶ See Memorandum from Fred Baker to the File entitled, "Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from India: Preliminary Affiliation and Collapsing Memorandum for Norma (India) Limited," dated concurrently with this memorandum (Norma Affiliation Memorandum).

²⁷ See Letter from Norma to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: Norma (India) Limited ("Norma")'s Response to Section A of Original Antidumping Duty Questionnaire," dated October 26, 2016 (Norma Section A Response) at 8 and 15.

²⁸ We refer to the collective entity throughout the remainder of this document as Norma Group.

to 19 CFR 351.401(f)(1). Additionally, this finding is based on the preliminary determination that the common ownership, overlapping management and board of directors, and intertwined operations among Norma (India) Limited; USK Exports Private Limited; Uma Shanker Khandelwal & Co.; and Bansidhar Chiranjilal results in a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2).²⁹

However, the Department has preliminarily determined not to collapse the Norma Group with the fifth affiliate because, while there is common family ownership among the companies, specific information on the record indicates that there has been a complete separation between the Norma Group and the fifth affiliate that has resulted in there being no intertwined operations between the Norma Group and fifth affiliate. Therefore, we preliminarily find that a significant potential for manipulation does not exist.³⁰

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), to determine whether sales of steel flanges from India to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the “Export Price” and “Normal Value” sections of this memorandum below.

A) Determination of Comparison Method

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

In recent investigations, the Department has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³¹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this

²⁹ See Norma Section A Response at 8-10 and Exhibits A-4, A-5, A-7, and A-8.

³⁰ See Letter from Norma to the Secretary of Commerce entitled, “Finished Carbon Steel Flanges from India: Norma (India) Limited (“Norma”)’s Response to Section A 1st supplemental Antidumping Duty Questionnaire,” dated December 16, 2016, (Norma Supplemental Response) at 1 – 4 and Exhibit SA1-3 and 15-20; *see also* Norma Affiliation Memorandum.

³¹ 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).

investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings and on 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 a respondent's weighted-average dumping margin.

The differential pricing 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 differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average 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 code, *i.e.*, zip code or state, 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 product control number and all characteristics of the U.S. 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 differential pricing 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 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 and less than 66 percent of the value of total sales, then the results support consideration of 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 consideration 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 differential pricing 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 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 average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins 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 margins between the average-to-average 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 differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

For Norma Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 73.54 percent of the value of U.S. sales pass the Cohen's *d* test,³² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Norma Group.

³² See Memorandum from Fred Baker to the File entitled, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from India" dated concurrently with this memorandum (Norma Preliminary Analysis Memorandum).

For Gupta, based on the results of the differential pricing analysis, the Department preliminarily finds that 69.12 percent of the value of U.S. sales pass the Cohen's *d* test,³³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Gupta.

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in India 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. Because neither Norma Group nor Gupta had viable home markets with respect to their sales of the merchandise under consideration, we compared U.S. sales to sales made in third-country markets, where appropriate. Where there were no sales of identical merchandise in their third-country markets 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 foreign like products, based on the physical characteristics reported by the respondents, in the following order of importance: type, specification/grade, pressure rating, nominal outside diameter, reducer, spacer, spectacle, orifice, minimum specified yield strength, heat treatment, metallic coated, face, nominal wall thickness, and painted.

X. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department 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.³⁴ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.³⁵

³³ See Memorandum from Mark Flessner to the File entitled, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Finished Carbon Steel Flanges from India" dated concurrently with this memorandum (Gupta Preliminary Analysis Memorandum).

³⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final*

For both its comparison-market and U.S. sales, Norma Group reported the commercial invoice date as the date of sale. Norma Group explained that the commercial invoice date is the date on which the terms of sale are finalized, and submitted documentation supporting this assertion.³⁶ Based on this documentation, we preliminarily determine that the commercial invoice date is the most appropriate selection for the date of sale for sales in both the comparison and U.S. markets.

For its U.S. sales, Gupta reported commercial invoice date as date of sale.³⁷ For its comparison market sales, Gupta argues that the Department should consider the purchase order date to be the date of sale, since it claims that all terms of sale are established at that date. However, we preliminarily find that record evidence does not support this claim.³⁸ We preliminarily find that the record contains insufficient evidence that a date other than commercial invoice date best reflects the date on which Gupta establishes the material terms of sale in its comparison market. Therefore, we have preliminarily determined to use Gupta's commercial invoice date as the date of sale for both its U.S. and comparison-market sales.

XI. EXPORT PRICE

For sales reported by both Norma Group and Gupta, we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise warranted.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, to the starting price for freight recovered. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, inland freight, brokerage and handling, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. We added U.S. direct selling expenses, *i.e.*, credit expenses, bank charges, and warranty expenses to the normal value.

XII. NORMAL VALUE

A) 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 the subject merchandise, in accordance with sections 773(a)(1)(A)

Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

³⁶ See Norma's Section A response, at 26; *see also* Norma's December 16, 2016, supplemental section A response, at 1 and Exhibit SA1-1.

³⁷ See Letter from Gupta to the Secretary of Commerce entitled, "Finished Carbon Steel Flanges from India: R N Gupta & Company ("RNG")'s Response to Section A of Original Antidumping Duty Questionnaire," dated October 26, 2016 (Gupta Section A Response), at 20.

³⁸ See, *e.g.*, Gupta Section A Response at 25 and at Exhibits A-7(a) and A-7(b).

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.

We preliminarily determine that the aggregate volume of Norma Group's home market sales of the foreign like product was not greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.³⁹ Therefore, for Norma Group's margin analysis, we used third-country sales (*i.e.*, sales to Norma's largest third-country market) as the basis for NV, in accordance with section 773(a)(1)(B)(ii) of the Act.⁴⁰

We also preliminarily determine that the aggregate volume of Gupta's home market sales of the foreign like product was not greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.⁴¹ Therefore, for Gupta margin analysis, we used third-country sales (*i.e.*, sales to Gupta's largest third-country market) as the basis for NV, in accordance with section 773(a)(1)(B)(ii) of the Act.⁴²

B) Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent).⁴³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁴ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, *i.e.*, NV based on either home-market or third-country prices,⁴⁵ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁶

³⁹ See Norma Supplemental Response, at Revised Exhibit A-1.

⁴⁰ See Norma Preliminary Analysis Memo at 2.

⁴¹ See Gupta Section A Response, at 2 and Exhibit A-1.

⁴² See Gupta Preliminary Analysis Memo at 1.

⁴³ See 19 CFR 351.412(c)(2).

⁴⁴ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁴⁵ Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁶ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same level of trade as the EP or CEP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP or CEP sales at a different level of trade in the comparison market, where available data make it possible, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV level of trade is at a more advanced stage of distribution than the level of trade of the CEP and there is no basis for determining whether the difference in levels of trade between NV and CEP affects price comparability, *i.e.*, no level-of-trade adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁷

In this investigation, we obtained information from Norma Group and Gupta regarding the marketing stages involved in making their reported comparison markets and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.

Norma Group reported that it had only one channel of distribution⁴⁸ in its comparison and U.S. markets, and that it had the two customer categories of “distributor” and “trader” in its comparison and U.S. markets.⁴⁹ Furthermore, it reported that its selling activities were virtually identical for its comparison and U.S. markets for both customer categories and both markets.⁵⁰ Therefore, we preliminarily conclude that only one level of trade exists in Norma Group’s comparison and U.S. markets and, furthermore, that Norma Group provided virtually the same level of customer support on its U.S. EP sales as it did for its comparison market sales. Therefore, we preliminarily conclude that the starting price of its U.S. EP sales and its comparison-market sales represent the same stage in the marketing process. For this reason, we preliminarily find that a level of trade adjustment is not warranted for Norma Group.

Gupta likewise reported that it had only channel of distribution in its comparison and U.S. markets.⁵¹ Gupta reported that it had two customer categories of “distributor” and “trader” in the single U.S. channel of distribution.⁵² Gupta reported that it had only one customer category, that of distributor, in the comparison market. Gupta submitted a selling functions chart which showed 24 different selling functions; a slight difference in the level of activity existed in only one category, that of “provide warranty service.” Therefore, we preliminarily determine that only one level of trade exists in Gupta’s comparison and U.S. markets. Furthermore, we preliminarily determine that Gupta provided virtually the same level of customer support on its U.S. EP sales as it did for its comparison market sales. Consequently, we conclude that the starting price of Gupta’s U.S. EP sales and its comparison-market sales represent the same stage in the marketing process. For this reason, we preliminarily determine that a level of trade adjustment is not warranted for Gupta.

⁴⁷ See *OJ from Brazil at Comment 7*.

⁴⁸ See Norma’s Section A response, at 18 and 20; section C response at 23; section B response at 23.

⁴⁹ See Norma’s Section A response, at 18 and 20.

⁵⁰ *Id.*, at 22 and 23, and Exhibit A-9.

⁵¹ See Gupta Section A Response, at 19.

⁵² *Id.*

C) Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁵³ Accordingly, the Department requested this information from Norma Group and Gupta in this investigation. We examined their cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the COP data as Norma submitted them in its submission of December 23, 2016.⁵⁴

We relied on the COP data submitted by Gupta, except that we used a cost analysis and calculated imputed interest on an affiliated loan.⁵⁵

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 comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. In particular, in determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.

3. Results of the 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

⁵³ *Id.*, 80 FR at 46794-95.

⁵⁴ See Letter from Norma to Secretary of Commerce, Re: Finished Carbon Steel Flanges from India: Norma (India) Limited (“Norma”)’s Response to Section D of Original Antidumping Duty Questionnaire, dated December 23, 2016.

⁵⁵ See Memorandum from Gary Urso, International Trade Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Gupta,” dated concurrently with this memorandum.

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 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.

We found that, for certain products, more than 20 percent of Norma Group's and Gupta's comparison-market sales during the POI were 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, therefore, 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 Norma Group and Gupta, we calculated NV based on CIF prices to unaffiliated customers in the comparison market. We also made deductions, where appropriate, from the starting price for certain movement expenses, *i.e.*, inland freight and international freight, and for certain direct selling expenses, *i.e.*, credit expenses and bank charges, pursuant to section 773(a)(6)(B)(ii) of the Act. We then added U.S. direct selling expenses, *i.e.*, credit expenses and bank charges, and in accordance with section 773(a)(6)(A) and (B) of the Act, deducted comparison-market packing costs and added U.S. packing costs.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the 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 of the foreign-like product and that of the subject merchandise.

E) Price-to-Constructed Value Comparisons

Where we were unable to find a comparison-market match of identical or similar merchandise, we based NV on constructed value (CV) in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondents' material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. 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 dates of the U.S. sales as certified by the Federal Reserve Bank.

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

1/26/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance