



A-533-867  
Administrative Review  
POR: 05/10/2016 – 10/31/2017  
**Public Document**  
E&C AD/CVD OIII: LRL/SB

**DATE:** December 3, 2018

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Welded Stainless  
Pressure Pipe from India: 2016-2017

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded stainless pressure pipe (WSPP) from India covering the period of review (POR) May 10, 2016, through October 31, 2017. The administrative review covers 22 producers/exporters of the subject merchandise. Commerce selected two respondents for individual examination, Bhandari Foils & Tubes, Ltd. (Bhandari) and Hindustan Inox, Ltd. (Hindustan Inox). We preliminarily determine that companies subject to this review made sales of the subject merchandise at prices below normal value (NV) during the POR.

## II. BACKGROUND

On November 17, 2016, we published in the *Federal Register* an AD order on WSPP from India.<sup>1</sup> In November 2017, Commerce received timely requests to conduct an administrative

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<sup>1</sup> See *Welded Stainless Pressure Pipe from India: Antidumping Duty and Countervailing Duty Orders*, 81 FR 81062 (November 17, 2016) (*Order*).

review from Bhandari,<sup>2</sup> Hindustan Inox,<sup>3</sup> and the petitioners.<sup>4</sup> Sunrise Stainless Pvt. Limited (Sunrise) and Sun Mark Stainless Pvt. Limited (Sun Mark) (Sunrise Group, collectively) submitted comments on the petitioners' request for review.<sup>5</sup> We requested clarification regarding the petitioners' request for administrative review of subject merchandise produced by Sunrise and Sun Mark which were not found to be selling merchandise at less than fair value during the investigation and were thus excluded from the *Order*.<sup>6</sup> The petitioners subsequently submitted a revised request for review omitting Sunrise and Sun Mark.<sup>7</sup> On January 11, 2018, we published a notice initiating an AD administrative review of WSPP from India covering 22 companies for the POR.<sup>8</sup>

In the *Initiation Notice*, we stated our intent to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review."<sup>9</sup> On January 17, 2018, we released entry data we obtained from CBP for comment by interested parties regarding our selection of respondents for the instant review.<sup>10</sup> On February 2, 2018, we selected Bhandari and Hindustan Inox for individual examination in this review.<sup>11</sup> On April 16, 2018, Bhandari withdrew its request for review<sup>12</sup> and Hindustan Inox withdrew its request for review.<sup>13</sup> However, because the petitioners requested reviews of both companies and did not withdraw

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<sup>2</sup> See Bhandari's letter, "Welded Stainless Pressure Pipe from India: Request for Administrative Review of Anti-Dumping Duty of Bhandari Foils & Tubes Ltd.," dated November 30, 2017.

<sup>3</sup> See Hindustan Inox's letter, "Welded Pressure Pipe from India," dated November 28, 2017.

<sup>4</sup> The petitioners are Bristol Metals LLC, Felker Brothers Corporation, and Primus Pipe & Tube Inc., domestic producers of WSPP. The petitioners requested Commerce to conduct administrative reviews of the sales of subject merchandise of twenty-four companies: Apex Tubes Private Ltd., Apurvi Industries, Arihant Tubes, Bhandari Foils & Tubes, Ltd., Divine Tubes Pvt. Ltd., Heavy Metal & Tubes, Hindustan Inox Ltd., J.S.S. Steelitalia Ltd., Linkwell Seamless Tubes Private Limited, Maxim Tubes Company Pvt. Ltd., MBM Tubes Pvt. Ltd., Mukat Tanks & Vessel Ltd., Neotiss Ltd., Prakash Steelage Ltd., Quality Stainless Pvt. Ltd., Raajratna Metal Industries Ltd., Ratnadeep Metal & Tubes Ltd., Ratnamani Metals & Tubes Ltd., Remi Edelstahl Tubulars, Shubhlaxmi Metals & Tubes Private Limited, SLS Tubes Pvt. Ltd., Steamline Industries Ltd., Sun Mark Stainless Pvt., Ltd., and Sunrise Stainless Pvt. Ltd.; see the petitioners' letter, "Welded Stainless Pressure Pipe from India: Request for Administrative Review," dated November 30, 2017.

<sup>5</sup> See Sunrise Group's letter, "Welded Stainless Pressure Pipe from India: Comment on Petitioner's Review Request," dated December 8, 2017.

<sup>6</sup> See Commerce's letter, "Clarification on the Petitioners' Request for Administrative Review of the Antidumping Duty Order on Welded Stainless Pressure Pipe from India," dated December 12, 2017. See also *Order* at 81 FR 81063.

<sup>7</sup> See petitioners' letter, "Welded Stainless Pressure Pipe from India: Revised Request for Administrative Review," dated December 13, 2017.

<sup>8</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329 (January 11, 2018) (*Initiation Notice*).

<sup>9</sup> See *Initiation Notice*, 83 FR at 1329.

<sup>10</sup> See Commerce's letter, "First Antidumping Duty Administrative Review of Welded Stainless Pressure Pipe from India: CBP Data for Respondent Selection," dated January 17, 2018.

<sup>11</sup> See memorandum, "First Antidumping Duty Administrative Review of Welded Stainless Pressure Pipe from India: Respondent Selection," dated February 2, 2018.

<sup>12</sup> See Bhandari's letter, "Welded Stainless Pressure Pipe from India: Withdrawal of Request for Administrative Review of Anti-Dumping Duty of Bhandari Foils & Tubes Limited," dated April 16, 2018.

<sup>13</sup> See Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Withdrawal of Request for Administrative Review of Anti-Dumping Duty of Hindustan Inox Limited," dated April 16, 2018.

their requests, we continued the administrative review with respect to both selected respondents' sales of subject merchandise during the POR.<sup>14</sup>

On February 20, 2018, Commerce issued the AD questionnaire to the mandatory respondents Bhandari and Hindustan Inox. Both respondents provided timely responses to the relevant sections of the initial AD questionnaire.<sup>15</sup> Between July 2018 and November 2018, we issued supplemental questionnaires to Bhandari and Hindustan Inox; both Bhandari<sup>16</sup> and Hindustan Inox<sup>17</sup> provided timely responses, as requested.

On July 25, 2018, we extended the preliminary results of this review to no later than December 3, 2018.<sup>18</sup>

### **III. SCOPE OF THE ORDER**

The merchandise covered by this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this scope, references to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

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<sup>14</sup> See memorandum, "First Antidumping Duty Administrative Review of Welded Stainless Pressure Pipe from India: Respondents' Requests to Rescind Review," dated April 17, 2018.

<sup>15</sup> See Bhandari's letter, "Welded Stainless Pressure Pipe from India: Response to Section A of the Original Antidumping Questionnaire," dated March 27, 2018 (Bhandari's AQR) and Bhandari's letter, "Welded Stainless Pressure Pipe from India: Bhandari Foils & Tubes Limited Response to Section BCD of Original Antidumping Duty Questionnaire," dated April 16, 2018 (Bhandari's BQR, Bhandari's CQR, and Bhandari's DQR). See Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Hindustan Inox Limited's Response to Section A of Original Antidumping Duty Questionnaire," dated March 28, 2018 (Hindustan Inox's AQR) and Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Hindustan Inox Limited's Response to Section BCD of Original Antidumping Duty Questionnaire," dated April 14, 2018 (Hindustan Inox's BQR, Hindustan Inox's CQR, and Hindustan Inox's DQR).

<sup>16</sup> See Bhandari's letter, "Welded Stainless Pressure Pipe from India: Bhandari Foils & Tubes Limited Response to Section A Supplemental Questionnaire," dated July 9, 2018 (Bhandari's SAQR); Bhandari's letter, "Welded Stainless Pressure Pipe from India: Bhandari Foils & Tubes Limited Response to Supplemental Questionnaire Section ABC," dated October 10, 2018 (Bhandari's 2<sup>nd</sup> SQR); and Bhandari's letter, "Welded Stainless Pressure Pipe from India: Bhandari Foils & Tubes Limited Response to Third Supplemental Questionnaire for the Section ABC Supplemental Response and Section D Response of the Questionnaire," dated November 26, 2018 (Bhandari's 3<sup>rd</sup> SQR).

<sup>17</sup> See Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Hindustan Inox Limited's Response to Section A Supplemental Antidumping Duty Questionnaire," dated July 9, 2018 (Hindustan Inox's SAQR); Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Response of 2nd Supplemental of Section ABC of Original Antidumping Duty Questionnaire," dated October 10, 2018 (Hindustan Inox's 2<sup>nd</sup> SQR); and Hindustan Inox's letter, "Welded Stainless Pressure Pipe from India: Hindustan Inox Limited's Response to Section D Supplemental Antidumping Duty Questionnaire," dated November 26, 2018 (Hindustan Inox's 3<sup>rd</sup> SQR).

<sup>18</sup> See the memorandum, "Welded Stainless Pressure Pipe from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2016-2017," dated July 25, 2018.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.

#### **IV. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION**

Apex Tubes Private Ltd., Apurvi Industries, Arihant Tubes, Divine Tubes Pvt. Ltd., Heavy Metal & Tubes, J.S.S. Steelitalia Ltd., Linkwell Seamless Tubes Private Limited, Maxim Tubes Company Pvt. Ltd., MBM Tubes Pvt. Ltd., Mukat Tanks & Vessel Ltd., Neotiss Ltd., Prakash Steelage Ltd., Quality Stainless Pvt. Ltd., Raajratna Metal Industries Ltd., Ratnadeep Metal & Tubes Ltd., Ratnamani Metals & Tubes Ltd., Remi Edelstahl Tubulars, Shubhlaxmi Metals & Tubes Private Limited, SLS Tubes Pvt. Ltd., and Steamline Industries Ltd., (1) were not selected as mandatory respondents; (2) were not the subject of a withdrawal of request for review; (3) did not request to participate as a voluntary respondent; and (4) did not submit a claim of no shipments. As a result, these entities remain as unexamined respondents.

The statute and the Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available (FA) in calculating an all others rate. Accordingly, Commerce's usual practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the annual review, excluding rates that are zero, *de minimis*, or based entirely on FA.<sup>19</sup>

In this review for these preliminary results, and consistent with our practice, we preliminarily calculated weighted-average dumping margins for Bhandari and Hindustan Inox that are above *de minimis* and not based entirely on FA. Therefore, we preliminarily assign to the 20 non-selected respondents listed above a margin of 3.89 percent (*i.e.*, weighted-average dumping

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<sup>19</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

margin using the ranged U.S. sales values which Bhandari and Hindustan Inox disclosed in the public version of their questionnaire responses) as the non-selected respondent rate for this review.<sup>20</sup>

## V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

### A. *Comparisons to Normal Value*

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

### B. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>21</sup>

In recent investigations, Commerce 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.<sup>22</sup> Commerce 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 administrative review.

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<sup>20</sup> See Memorandum, "Welded Stainless Pressure Pipe from India: Calculation of the All-Others Rate in the Preliminary Results of Antidumping Duty Administrative Review; 2016-2017," dated concurrently with this memorandum.

<sup>21</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1. See also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>22</sup> 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); see also *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), or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (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, 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 Commerce 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 account 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 under the "mixed method." If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the 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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the 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 these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.<sup>23</sup>

### C. *Results of the Differential Pricing Analysis*

#### Bhandari

For Bhandari, based on the results of the differential pricing analysis, Commerce preliminarily finds that 52.81 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>24</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's

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<sup>23</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>24</sup> See memorandum to the file, "Welded Stainless Pressure Pipe from India: Bhandari Foils & Tubes, Ltd. - Analysis Memorandum for the Preliminary Results of the Administrative Review, 2016-2017," dated concurrently with this memorandum (Bhandari's Preliminary Analysis Memorandum) at 2.

*d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Bhandari.

### Hindustan Inox

For Hindustan Inox, based on the results of the differential pricing analysis, the Department preliminarily finds that 85.68 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>25</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Hindustan Inox.<sup>26</sup>

## **VI. DATE OF SALE**

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

### Bhandari

Bhandari reported the excise invoice date as the date of sale for home-market (HM) sales<sup>27</sup> and the commercial invoice date as the date of sale for the U.S. sales.<sup>28</sup> Therefore, consistent with our practice, we used the excise invoice date as date of sale for HM sales and the commercial invoice date as the date of sale for the U.S. sales, as reported.

### Hindustan Inox

Hindustan Inox reported the tax invoice date, which is the same as the excise invoice date as date of sale for HM sales<sup>29</sup> and the commercial invoice date as the date of sale for the U.S. sales.<sup>30</sup>

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<sup>25</sup> See memorandum to the file, "Welded Stainless Pressure Pipe from India: Hindustan Inox Ltd. (Hindustan Inox) – Analysis Memorandum for the Preliminary Results of Administrative Review; 2016-2017," dated concurrently with this memorandum (Hindustan Inox's Preliminary Analysis Memorandum).

<sup>26</sup> See Hindustan Inox Ltd. Preliminary Analysis Memorandum.

<sup>27</sup> See Bhandari's BQR at page B-24 and Bhandari's AQR at Exhibit A-7(b).

<sup>28</sup> See Bhandari's CQR at page C-19 and Bhandari's SAQR at Revised Exhibit A-7(a).

<sup>29</sup> See Hindustan Inox's BQR at page B-23 and Bhandari's 2<sup>nd</sup> SQR at page S2-8.

<sup>30</sup> See Hindustan Inox's CQR at C-19.



Therefore, consistent with our practice, we used the excise invoice date as date of sale for HM sales and the commercial invoice date as the date of sale for the U.S. sales, as reported.

## **VII. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products that respondents produced and sold in India during the POR that fit the description in the “Scope of Order” section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by Bhandari and Hindustan Inox, in the following order of importance: grade, specification, hot or cold finished, nominal pipe size, wall thickness schedule, and end finish. For the respondents’ sales of WSPP in the United States, the reported control number identifies the characteristics of WSPP, as exported by Bhandari and Hindustan Inox.

## **VIII. EXPORT PRICE**

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the 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 section 772(c) of the Act. Both respondents reported having only EP sales during the POR.<sup>31</sup> In accordance with section 772(a) of the Act, we calculated EP for all of Bhandari’s and Hindustan Inox’s U.S. sales, because the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation. The CEP methodology was not otherwise warranted based on the facts of the record.

### **Bhandari**

We calculated EP for Bhandari based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight to the port of exportation, brokerage and handling in country of manufacture, brokerage and handling incurred in the United States, international freight, marine insurance, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.<sup>32</sup> In addition, pursuant to section 772(c)(1)(C) of the Act, we made an adjustment to the reported EP for countervailable export subsidies.<sup>33</sup>

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<sup>31</sup> See Bhandari’s CQR at page C-16, and Hindustan Inox’s CQR at page C-17.

<sup>32</sup> See Bhandari’s Preliminary Analysis Memorandum at Attachment 3 and Attachment 4.

<sup>33</sup> Bhandari was subject to the all-others rate in the investigation, which was adjusted by a 4.31 percent export subsidy rate from the companion CVD investigation. See *Welded Stainless Pressure Pipe from India: Final Determination of Sales at Less Than Fair Value*, 81 FR 66921, 66922 (September 29, 2016) (*Investigation Final*).

## Hindustan Inox

We calculated EP for Hindustan Inox based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from plant/warehouse to port of exportation, domestic brokerage and handling, brokerage and handling incurred in the United States, U.S. international freight, marine insurance, U.S. inland freight from warehouse to the unaffiliated customers., in accordance with section 772(c)(2)(A) of the Act.<sup>34</sup> In addition, pursuant to section 772(c)(1)(C) of the Act, we made an adjustment to the reported EP for countervailable export subsidies.<sup>35</sup>

## **IX. 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) 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.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared Bhandari's and Hindustan Inox's volume of home-market sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. We found that Bhandari's and Hindustan Inox's individual aggregate sales volume of foreign like product in the home market was greater than five percent of the respective company's sales of subject merchandise to the United States. Therefore, in accordance with section 773(a)(1)(C) of the Act, India constitutes a viable home market for Bhandari and Hindustan Inox. Accordingly, India was selected as the comparison market for purposes of analysis in this review.

### **B. Affiliated-Party Transactions and Arm's-Length Test**

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices. Commerce excludes home-market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may

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<sup>34</sup> See Hindustan Inox's Preliminary Analysis Memorandum at Attachment 4.

<sup>35</sup> Hindustan Inox was subject to the all-others rate in the investigation, which was adjusted by a 4.31 percent export subsidy rate from the companion CVD investigation. See *Investigation Final*.

calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."

During the POR, Bhandari made sales of WSPP in India to affiliated parties, as defined in section 771(33) of the Act.<sup>36</sup> Consequently, we tested these sales to ensure that Bhandari made such sales at arm's-length prices in accordance with 19 CFR 351.403(c). To test whether Bhandari made sales to affiliated parties at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling expenses and packing. Pursuant to 19 CFR 351.403(c) and in accordance with Commerce's practice, where the price to an affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we consider these sales to be outside the ordinary course of trade.<sup>37</sup>

During the POR, Hindustan Inox did not make sales of WSPP in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we did not perform an arm's-length test for Hindustan Inox, in accordance with 19 CFR 351.403(c), as part of our margin calculations.

### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>38</sup> Substantial differences in selling activities are necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>39</sup> To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. When we are unable to match U.S. sales to sales of foreign like product in the comparison market at the same LOT, we may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different LOTs in the market in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

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<sup>36</sup> See Bhandari's BQR at page B-3.

<sup>37</sup> See section 771(15) of the Act; 19 CFR 351.102(b)(35).

<sup>38</sup> See 19 CFR 351.412(c)(2).

<sup>39</sup> *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In this review, we obtained information from Bhandari and Hindustan Inox regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.<sup>40</sup>

### Bhandari

In the home market, Bhandari reported that it sold to affiliated and unaffiliated end-users and traders in its home market.<sup>41</sup> Bhandari reported that it had four channels of distribution in the home market: sales to end-user customers directly from factory (Channel 1); sales to trader customers from factory (Channel 2); stock transfers of subject merchandise to a sale depot where sales are made to end-user customers (Channel 3); and stock transfers of subject merchandise to sale depot where sales are made to trader customers (Channel 4).<sup>42</sup> Bhandari reported that it performed the following selling functions to home market customers: sales forecasting; engineering services; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel; technical assistance; pay commissions; provide warranty service; provide after-sales service; and provide freight and delivery.<sup>43</sup> Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>44</sup> Based on these selling function categories, we find that Bhandari performed the same selling functions at similar levels of intensity for all of its home market channels of distribution, and thus, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Bhandari stated that it made sales through one channel of distribution: sales from Bhandari to a U.S. distributor (Channel 1).<sup>45</sup> Bhandari reported that it performed the following selling functions to U.S. market customers: sales forecasting; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel; provide warranty service; and provide freight and delivery.<sup>46</sup>

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<sup>40</sup> See Bhandari's AQR at pages A-13 through A-20; Bhandari's AQR at Exhibit A-5; Bhandari's BQR at page B-35; Bhandari's CQR at page C-27; Bhandari's SAQR at pages 3 through 5; and Bhandari's SAQR at Revised Exhibit A-5. See also Hindustan Inox's AQR at pages A-13 through A-20; Hindustan Inox's BQR at page B-34; Hindustan Inox's CQR at page C-27; and Hindustan Inox's SAQR at Revised Exhibit A-5.

<sup>41</sup> See Bhandari's BQR at page B-22.

<sup>42</sup> *Id.* at page B-23.

<sup>43</sup> See Bhandari's AQR at page A-18, Exhibit A-5 of the BQR, and Revised Exhibit A-5 of the SAQR.

<sup>44</sup> See *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*); and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009). See also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comments 9 and 18 (*CRS from Korea*).

<sup>45</sup> See Bhandari's CQR at page C-18.

<sup>46</sup> See Bhandari's Revised Exhibit A-5 of the SAQR.

We compared the selling functions in the home market channels of distributions to the selling functions in the U.S. channels of distribution and found that the selling functions Bhandari performed for the home market customers are similar to the ones performed for U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that Bhandari's sales to the home market during the POI were made at the same LOT as Bhandari's EP sales to the U.S. market. Consequently, we matched all EP sales to home market sales at the same level of trade, and no LOT adjustment was warranted.

### Hindustan Inox

Hindustan Inox reported that had only one channel of distribution in the home market to two categories of customers: to unaffiliated end users and traders (Channel 1).<sup>47</sup> Hindustan Inox reported that it performed the following selling functions in the home market customers: sales forecasting, advertising, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, rebates, cash discounts, commissions, warranty service, guarantees, after-sales services, freight and delivery.<sup>48</sup> Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>49</sup> Based on these selling function categories, we find that Hindustan Inox performed the same selling functions at similar levels of intensity for all of its home market channels of distribution, and thus, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Hindustan Inox stated that it made sales through one channel of distribution to two categories of customers: sales from Hindustan Inox to U.S. distributors or traders (Channel 1).<sup>50</sup> Bhandari reported that it performed the following selling functions to U.S. market customers: sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, commissions, after-sales services, freight and delivery.<sup>51</sup>

We compared the selling functions in the home market channels of distributions to the selling functions in the U.S. channels of distribution and found that the selling functions Hindustan Inox performed for the home market customers are similar to the ones performed for U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that Hindustan Inox's sales to the home market during the POI were

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<sup>47</sup> See Hindustan Inox's AQR at page A-15 and Hindustan Inox's BQR at page B-21.

<sup>48</sup> See Hindustan Inox's AQR at page A-15 and Exhibit A-5, Hindustan Inox's SAQR at Revised Exhibit A-5.

<sup>49</sup> See *OJ from Brazil* and accompanying Issues and Decision Memorandum at Comment 7; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009). See also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comments 9 and 18 (*CRS from Korea*).

<sup>50</sup> See Hindustan Inox's AQR at page A-13, and Hindustan Inox's CQR at pages C-18 and C-19.

<sup>51</sup> See Hindustan Inox's AQR at Exhibit A-5, and Hindustan Inox's SAQR at Revised Exhibit A-5.

made at the same LOT as Hindustan Inox's EP sales to the U.S. market. Consequently, we matched all EP sales to home market sales at the same level of trade, and no LOT adjustment was warranted.

#### D. 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 Commerce to request constructed value (CV) and cost of production (COP) information from respondent companies in all AD proceedings.<sup>52</sup> Accordingly, Commerce requested this information from each of the respondents.

##### 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 (G&A) expenses and interest expenses.

We examined Bhandari and Hindustan Inox's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on Bhandari and Hindustan Inox's reported data.<sup>53</sup>

We relied on the COP data submitted by Bhandari and Hindustan Inox without any adjustments.<sup>54</sup>

##### 2. Test of Comparison Market Sales Prices

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

##### 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 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

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<sup>52</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015) (*Applicability Notice*).

<sup>53</sup> See Bhandari's Preliminary Analysis Memorandum, and Hindustan Inox's Preliminary Analysis Memorandum.

<sup>54</sup> *Id.*

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.

Where we find that more than 20 percent of a company’s home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of NV Based on Comparison-Market Prices

Bhandari

We based NV for Bhandari on comparison market prices where there were an appropriate number of sales at prices above the COP. We calculated NV based on delivered, ex-works, or ex-sales depot prices, as applicable, to unaffiliated and affiliated customers where the sale was made at arm’s length. We made deductions from the starting price for other discounts, discounting charges, and movement expenses, including inland freight from the plant to the distribution warehouse, inland freight from the plant or distribution warehouse to the unaffiliated customer in the third country, warehousing expenses, and inland insurance under section 773(a)(6)(B)(ii) of the Act. We offset these movement expenses with reported freight revenue, with the latter capped at no higher than the sum of the movement expenses in accordance with our normal practice.<sup>55</sup> We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (commissions, imputed credit expenses) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and commissions, and added U.S. direct selling expenses, *i.e.*, credit expenses, where appropriate.

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<sup>55</sup> See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 55567 (November 22, 2017), unchanged in *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 16296 (April 16, 2018); *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13228 (March 28, 2018).

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.<sup>56</sup>

#### Hindustan Inox

We based NV for Hindustan Inox on comparison market prices where there were an appropriate number of sales at prices above the COP. We calculated NV based on ex-works or delivered prices, as applicable, to unaffiliated. We made additions to starting price for recovered freight and recovered testing expenses. We made deductions from the starting price for billing adjustments, early payment discounts, and movement expenses (*i.e.*, inland freight from plant or warehouse to the home market customer, and, late delivery charges) under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and commissions, and added U.S. direct selling expenses, *i.e.*, credit expenses and commissions.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.<sup>57</sup>

### **X. 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. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

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<sup>56</sup> See 19 CFR 351.411(b).

<sup>57</sup> See 19 CFR 351.411(b).



## **XI. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.



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Agree



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Disagree

12/3/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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