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July 10, 2019

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

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

SUBJECT: Welded Carbon Steel Standard Pipes and Tubes from India:
Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period of review (POR) May 1, 2017 through April 30, 2018. The review covers 27 producers or exporters of the subject merchandise. Commerce preliminarily determines that the producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results of review.

II. BACKGROUND

On May 12, 1986, we published in the *Federal Register* an AD order on pipe and tube from India.¹ On May 1, 2018, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On July 12, 2018, based on timely requests, we initiated an administrative review of 27 companies, in accordance with 19 CFR 351.221(c)(1)(i).³ On July 16, 2018, we received a request to rescind the administrative review of Zenith Birla (India) Ltd., Zenith Birla Steels Private Ltd., and Zenith Dyeintermediates Ltd (collectively, Zenith).⁴

¹ See *Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 19047 (May 1, 2018).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018) (*Initiation Notice*).

⁴ See Zenith's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Request for Rescission of the Administrative Review," dated July 16, 2018.



On July 20, 2018, we determined that there is no basis to rescind the administrative review with respect to these three companies.⁵

On August 15, 2018, we selected two companies, Apl Apollo Tubes Limited (Apollo) and Garg Tube Export LLP (GTEL), for individual examination in this review.⁶ We sent an AD questionnaire to Apollo and GTEL on August 15, 2018.⁷ On September 17, 2018, GTEL and its affiliate, Garg Tube Limited (GTL) (collectively, Garg Tube) submitted a timely joint response to section A of Commerce's AD questionnaire,⁸ and requested that the two companies be considered a single entity.⁹ On October 15, 2018, Garg Tube responded to sections B and C of Commerce's AD questionnaire,¹⁰ and on October 18, 2018, Garg Tube responded to section D of Commerce's AD questionnaire.¹¹

On November 19, 2018, we rejected the allegations of market viability and particular market situation (PMS) pertaining to Garg Tube submitted by the domestic interested parties (*i.e.*, DIPs), Independence Tube Corporation and Southland Tube, Incorporated, on October 25, 2018.¹² On December 21, 2018, the DIPs resubmitted their PMS allegations.¹³ We issued a supplemental questionnaire to Garg Tube on November 30, 2018,¹⁴ and Garg Tube responded on February 19, 2019.¹⁵ We issued another supplemental questionnaire to Garg Tube on April 30, 2019,¹⁶ and Garg Tube responded on May 16, 2019.¹⁷

⁵ See Commerce's Letter to Zenith, dated July 20, 2018.

⁶ See Memorandum, "Certain Welded Carbon Steel Standard Pipes and Tubes from India – Selection of Respondents for Individual Examination," dated August 15, 2018 (Respondent Selection Memorandum).

⁷ See Commerce's Letters to Apollo and GTEL, each dated August 15, 2018.

⁸ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Export LLP ("GTEL") Response to Section A of the Original Antidumping Questionnaire," dated September 17, 2018 (AQR).

⁹ See Memorandum, "Welded Carbon Steel Standard Pipes and Tubes from India; AR 2017-2018 – Whether Collapsing of Affiliated Producers is Warranted," dated concurrently with this memorandum (Collapsing Evaluation Memo).

¹⁰ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Export LLP ("GTEL") & Garg Tube Limited ("GTL") Response to Section B&C of the Original Antidumping Questionnaire," dated October 15, 2018 (BCQR).

¹¹ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Export LLP ("GTEL") & Garg Tube Limited ("GTL") Response to Section D of the Original Antidumping Questionnaire," dated October 18, 2018 (DQR).

¹² See Commerce's Letter, dated November 19, 2018.

¹³ See DIPs' Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Particular Market Situation Allegation, Resubmitted Market Viability Allegation, and Supporting Information," dated December 21, 2018 (PMS Allegation).

¹⁴ See Commerce's Letter, dated November 30, 2018.

¹⁵ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Export LLP ("GTEL") & Garg Tube Limited ("GTL") Response to Section A-D Supplemental Questionnaire," dated February 19, 2019 (SQR).

¹⁶ See Commerce's Letter, dated April 30, 2019.

¹⁷ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Export LLP ("GTEL") & Garg Tube Limited ("GTL") Response to 2nd Supplemental Questionnaire," dated May 16, 2019 (2nd SQR).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.¹⁸ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review became March 12, 2019.

On July 2, 2019, the DIPs submitted comments for Commerce's consideration in the preliminary results.¹⁹

We extended the time limit for the preliminary results of review to July 10, 2019, pursuant to section 751(a)(3)(A) of the Act.²⁰

III. SCOPE OF THE ORDER

The merchandise covered by the *Order* is pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A-53, A-120, or A-135.

The AD *Order* on pipe and tube from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS).²¹ As a result of this transition, the scope language we used in the 1991 Federal Register notice is slightly different from the scope language of the original final determination and AD *Order*.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

¹⁸ See memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹⁹ See DIPs' Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Pre-Preliminary Results Comments," dated July 2, 2019.

²⁰ See Memorandum, "Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 5, 2019.

²¹ See, e.g., *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews*, 56 FR 26650, 26651 (June 10, 1991).

IV. APPLICATION OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested; (B) fails to provide such information within the deadlines established or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, apply “facts otherwise available” in reaching the applicable determination.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the TPEA,²² Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²³ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.²⁴

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁵

1. *Application of Facts Available*

In this review, we confirmed the delivery of our August 15, 2018, antidumping questionnaire to Apollo.²⁶ Apollo did not provide a response to our questionnaire, withholding information necessary to calculate a margin for its sales to the United States. Specifically, in this review,

²² See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA).

²³ See section 776(b)(1)(B) of the Act.

²⁴ See also 19 CFR 351.308(c).

²⁵ See section 776(d)(1)-(2) of the Act.

²⁶ See Memorandum, “Certain Welded Carbon Steel Standard Pipes and Tubes from India – Antidumping Duty Questionnaire for Apl Apollo Tubes Ltd.; Shipment Tracking and Delivery Status Details,” dated September 6, 2018.

Apollo submitted two untimely extension requests. The first request was submitted 19 days after the deadline for submission of the Section A response and three days past the deadline for the sections B-E response.²⁷ We denied Apollo its request for an extension in accordance with 19 CFR 351.302(c), because it was untimely filed and did not demonstrate the existence of an extraordinary circumstance explaining why an extension request could not be submitted in a timely manner.²⁸ The second extension request was submitted 38 days after the deadline for submission of section A and 22 days past the deadline for sections B-E.²⁹ We denied Apollo's second request for an extension because it was untimely filed and did not identify the existence of any extraordinary circumstances that prevented the timely submission of an extension request.³⁰ Accordingly, Commerce preliminarily finds that Apollo did not respond to our request for information, withheld information requested by Commerce, and significantly impeded this segment of a proceeding. Because Apollo failed to provide the requested information, section 782(e) of the Act is inapplicable. Accordingly, Commerce preliminarily determines that use of total facts available is warranted in determining the weighted-average dumping margin for Apollo, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.³¹

2. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.³² In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA), explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁴

Although we provided Apollo with notice informing it of the consequences of its failure to respond fully to our antidumping questionnaire, Apollo refrained from participating in this

²⁷ See Apollo's Letter, “Request for Extension of Time to File Factual Information,” dated September 24, 2018.

²⁸ See Commerce's Letter, dated September 27, 2018.

²⁹ See Apollo's Letter, “Request for Extension of Time to File Factual Information,” dated October 13, 2018.

³⁰ See Commerce's Letter, dated October 15, 2018.

³¹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

³² See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

³³ See SAA at 870; and, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

³⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (CAFC 2003) (*Nippon* 2003).

review and has failed to provide a response to our request for information. This failure to respond indicates that Apollo has determined not to cooperate with our requests for information or to participate in this administrative review.³⁵ Apollo's decision not to participate in this review has precluded Commerce from performing the necessary analysis of Apollo's questionnaire responses. Accordingly, Commerce has preliminarily determined that Apollo failed to cooperate to the best of its ability and, therefore, in selecting from the facts otherwise available with respect to Apollo, an adverse inference is warranted, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).³⁶

3. *Selection of the Adverse Facts Available Rate*

When Commerce applies adverse facts available (AFA) because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes Commerce to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.³⁷ In selecting a weighted-average dumping margin based on AFA, Commerce selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce the respondents to provide Commerce with complete and accurate information in a timely manner."³⁸ Under the new section 776(d) of the Act, Commerce may use a dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.³⁹ Accordingly, we have assigned to Apollo as AFA a rate of 87.39 percent, the highest rate calculated for any respondent in any segment of this proceeding, and used as an AFA rate in the 1997-98 administrative review of this *Order*.⁴⁰ This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴¹

When applying facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information rather than information obtained in the course of an administrative review, it must corroborate, to the extent practicable, information from

³⁵ See *Nippon 2003*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).

³⁶ See *Nippon 2003*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR at 42986 (July 12, 2000) (where Commerce applied total adverse facts available where the respondent failed to respond to the antidumping questionnaire).

³⁷ See also 19 CFR 351.308(c); and SAA at 868-870.

³⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³⁹ See section 776(d)(1)-(2) of the Act; and TPEA at section 502(3).

⁴⁰ See *Notice of Preliminary Results of the Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From India*, 64 FR 6046 (February 8, 1999), unchanged in *Certain Welded Carbon Steel Pipes and Tubes From India: Notice of Final Results of the Antidumping Duty Administrative Review*, 64 FR 23821 (May 4, 1999).

⁴¹ See *Nan Ya Plastics Corp. v. United States*, 810 F. 3d 1333, 1348 (CAFC 2016).

independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁴³ According to 776(c)(2) of the Act, where Commerce has applied a dumping margin in a separate segment of the same proceeding (*i.e.*, a previously calculated dumping margin or where it previously corroborated a rate for facts available), it need not corroborate (again) the rate to be used in the current segment for purposes of facts available.⁴⁴ Therefore, we have preliminarily determined for Apollo, based on total AFA, a weighted-average dumping margin of 87.39 percent.

V. AFFILIATION AND COLLAPSING

Section 771(33) of the Act, in pertinent parts, identifies persons that shall be considered “affiliated” or “affiliated persons,” as: (1) members of a family, including brothers and sisters (whether by whole or half-blood), spouses, ancestors, and lineal descendants, (2) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (3) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.⁴⁵ Section 771(33) of the Act further stipulates that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person,” and the SAA⁴⁶ notes that control may be found to exist within corporate groupings.⁴⁷ In determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.⁴⁸

We next examine whether any of the affiliated companies should be considered a single entity for purposes of this review. Generally, Commerce will collapse affiliated producers and treat them as a single entity if they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and Commerce concludes that there is a significant potential for the manipulation of price or production.⁴⁹ In identifying a significant potential for manipulation, Commerce may

⁴² See SAA at 870.

⁴³ *Id.*; see also 19 CFR 351.308(d).

⁴⁴ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017).

⁴⁵ See sections 771(33)(A), (E)-(G) of the Act.

⁴⁶ See, generally, SAA.

⁴⁷ See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

⁴⁸ See 19 CFR 351.102(b)(3).

⁴⁹ See 19 CFR 351.401(f)(1).

consider factors including the level of common ownership;⁵⁰ “{t}he extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm;⁵¹ and “{w}hether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.”⁵² Commerce considers these criteria in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.⁵³

As provided in more detail in the proprietary version of the Collapsing Evaluation Memo, we preliminarily determine that GTEL and GTL are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f).⁵⁴ These companies are affiliated with each other pursuant to section 771(33)(F) of the Act because they are under the common control of a certain family through the ownership of each of these companies by various family members.⁵⁵ The information on the record indicates that GTEL and GTL have similar production equipment/facilities and use an identical production process to manufacture merchandise subject to this review with a substantial overlap in specifications and sizes.⁵⁶ Thus, we find that no substantial retooling of either GTEL’s or GTL’s facility would be required to restructure manufacturing priorities. We have also determined that there is a significant potential for the manipulation of price or production between these companies, as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations between these companies.⁵⁷ Thus, we have preliminarily treated GTEL and GTL as a single entity, to which we refer hereinafter as Garg Tube.

VI. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION

In accordance with section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act), we selected Apollo and Garg Tube for individual examination as we did not have the resources to examine all companies for which a review was initiated.⁵⁸ 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 not selected for individual examination in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on

⁵⁰ See 19 CFR 351.401(f)(2)(i).

⁵¹ See 19 CFR 351.401(f)(2)(ii).

⁵² See 19 CFR 351.401(f)(2)(iii).

⁵³ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

⁵⁴ See Collapsing Evaluation Memo.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Respondent Selection Memorandum.

total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.⁵⁹

In these preliminary results, we determined a weighted-average dumping margin of 18.55 percent for Garg Tube, and determined a rate for Apollo based entirely on facts available. Accordingly, when only one weighted-average dumping margin for the individually investigated respondent is not zero, *de minimis* or based entirely on facts available, the rate for companies that we did not individually examine will be equal to that single weighted-average dumping margin.⁶⁰ Accordingly, for the preliminary results of this review, the rate for following the non-examined companies is 18.55 percent: Asian Contec Ltd., Bhandari Foils & Tubes Ltd., Bhushan Steel Ltd., Blue Moon Logistics Pvt. Ltd., CH Robinson Worldwide, Ess-Kay Engineers, Manushi Enterprise, Nishi Boring Corporation, Fiber Tech Composite Pvt. Ltd., GCL Private Limited, Goodluck India Ltd., GVN Fuels Ltd., Hydromatik, Jindal Quality Tubular Ltd., KLT Automatic & Tubular Products Ltd., Lloyds Line Pipes Ltd., MARINETrans India Private Ltd., Patton International Ltd., SAR Transport Systems Pvt. Ltd., Surya Global Steel Tubes Ltd., Surya Roshni Ltd., Welspun India Ltd., Zenith Birla (India) Ltd., Zenith Birla Steels Private Ltd., and Zenith Dyeintermediates Ltd.

VII. DISCUSSION OF THE METHODOLOGY

(1) 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 Garg Tube's sales of the subject merchandise from India to 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.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, Commerce

⁵⁹ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) and accompanying Preliminary Decision Memorandum (PDM) at 3 (citing *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 IDM at Comment 16).

⁶⁰ See, *e.g.*, *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13288 (March 6, 2012), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854, 40855 (July 11, 2012); *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009) and *Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 26957 (June 11, 2018) and accompanying PDM at 4, unchanged in *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64107 (December 13, 2018).

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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review to be analogous to the issue in a less-than-fair-value investigation.⁶¹

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.⁶² 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. 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 EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period 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 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 period of review 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,

⁶¹ 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 the accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

⁶² See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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. 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 proceeding.

B. Results of the Differential Pricing Analysis

For Garg Tube, based on the results of the differential pricing analysis, Commerce preliminarily finds that 72.79 percent of the value of U.S. sales pass the Cohen's *d* test,⁶³ 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 all U.S. sales. 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 Garg Tube.

(2) Product Comparisons

Commerce identified five criteria for matching U.S. sales of subject merchandise to NV (grade, nominal outside diameter, nominal wall thickness, surface finish, and end finish), which were included in the questionnaire issued to Garg Tube.⁶⁴

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by Garg Tube in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, we relied on the above referenced five criteria to make comparisons of U.S. sales of subject merchandise to the weighted-average comparison market prices (that were based on all sales which passed the cost-of-production (COP) test of the identical product) during the contemporaneous month. Where there were no sales of identical merchandise in the comparison market, we compared U.S. sale prices to comparison-market sale prices of the most-similar, foreign like product made in the ordinary course of trade based on the reported product characteristics and instructions provided in the AD questionnaire.

(3) Date of Sale

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁶⁵ Commerce has a long-standing practice of

⁶³ See Memorandum, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Analysis Memorandum for Garg Tube Export LLP and Garg Tube Limited; 2016-2017," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

⁶⁴ See Commerce's Letter, dated August 15, 2018.

⁶⁵ 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)).

finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁶⁶

For home market and U.S. market sales, Garg Tube reported the invoice date as the date of sale.⁶⁷ Garg Tube explained that changes in price or quantity are possible up to the date of the invoice (which is also the same as date of shipment from factory);⁶⁸ the company does not enter into short or long-term contracts or other fixed agreements for its home market and U.S. market sales - accordingly, the invoice is the first document in which the finalized price and quantity are memorialized in writing to the customer.⁶⁹ We preliminarily followed our long-standing practice of basing the date of sale for all of Garg Tube's home market and U.S. market sales on the invoice date.⁷⁰

(4) Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” We calculated EP for purposes of these preliminary results, in accordance with subsections 772(a) and (c) of the Act, because the subject merchandise was first sold in the country of manufacture (*i.e.*, India) to an unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on the price to an unaffiliated purchaser in the United States, taking into account the reported terms of sale. We made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: domestic inland freight, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, and U.S. duties.

Garg Tube reported that it paid Section 232 duties during the POR, and that it fully recovered all Section 232 duties that it paid from its unaffiliated U.S. customers.⁷¹ The DIPs argued that Commerce should deduct Section 232 duties from U.S. price, in accordance with Section 772(c)(2)(A) of the Act.⁷² In this review, Garg Tube reported that for its U.S. sales of subject

⁶⁶ 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) (*Shrimp from Thailand*), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*) and accompanying IDM at Comment 2.

⁶⁷ See AQR at 21-22; and BCQR at B-22, B-23 and C-19.

⁶⁸ See AQR at 21-22.

⁶⁹ See BCQR at B-22, B-23 and C-19.

⁷⁰ See, e.g., *Shrimp from Thailand* IDM at Comment 10; and *Steel Beams from Germany* IDM at Comment 2.

⁷¹ See SQR at 33, 36-37 and Exhibits Exhibit S1C-4 (c) Part 1 and Exhibit S1C-4 (c) Part 2; see also 2nd SQR at 9-11 and Exhibits S2-8, S2-9, S2-10 (a) and S2-10 (b).

⁷² See DIPs' Letter, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments on Adjustment for Section 232 Duties,” dated February 11, 2019 at Exhibit 1 (containing Commerce's memorandum, “Sales and Cost Analysis Memorandum for the Preliminary Normal Value Calculations for Interpipe under the Agreement

merchandise, it pays the Section 232 duties, and it issues supplementary invoices to its unaffiliated U.S. customers to be compensated for the Section 232 duties which it has paid; Garg Tube reported that its U.S. prices do not include Section 232 duties; and Garg Tube provided documentation in support of its assertions.⁷³ Based on these facts, we preliminarily determine that Garg Tube's reported prices to its unaffiliated U.S. customers do not include Section 232 duties. Accordingly, because Section 232 duties are not included in U.S. prices reported by Garg Tube, in accordance with Section 772(c)(2)(A) of the Act, we have preliminarily made no adjustment to EP with respect to Section 232 duties.⁷⁴

(5) Normal Value

A. Home Market Viability and Comparison Market

Section 773(a)(1) of the Act and 19 CFR 351.404(b)(2) state that normally a home market is viable if the aggregate quantity of home market sales of the foreign like product is equal to five percent or more of the aggregate quantity of U.S. sales of subject merchandise. Also, pursuant to section 773(a)(1)(B)(i) of the Act, Commerce may base NV on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, where that sale is made in usual commercial quantities and in the ordinary course of trade. Because the volume of Garg Tube's home market sales of the foreign like product exceeded five percent of its U.S. sales volume of the subject merchandise,⁷⁵ we preliminarily determine that Garg Tube's home market is viable for comparison purposes.

B. 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).⁷⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁷ 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.*, the 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

Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine for the January 1, 2018 through June 30, 2018 Period of Review," dated December 21, 2018).

⁷³ See SQR at 33, 36-37 and Exhibits Exhibit S1C-4 (c) Part 1 and Exhibit S1C-4 (c) Part 2; *see also* 2nd SQR at 9-11 and Exhibits S2-8, S2-9, S2-10 (a) and S2-10 (b).

⁷⁴ See July 10, 2019, memorandum to file (containing memorandum, "Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine," dated February 15, 2019, at Comment 1).

⁷⁵ See AQR at Exhibit A-1.

⁷⁶ See 19 CFR 351.412(c)(2).

⁷⁷ *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).

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 the 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.

During the POR, Garg Tube reported that it sold pipes and tube mill-direct to traders and end-users in the comparison market through one channel of distribution;⁷⁸ thus, we find that it constitutes a single LOT for all comparison market sales. Similarly, during the POR, Garg Tube reported that it sold made-to-order pipe and tube, mill-direct to distributors in the United States through one channel of distribution,⁷⁹ and thus, we find that it constitutes a single LOT for the reported EP sales. We preliminarily determine that the selling activities associated with the EP sales were the same as those associated with the comparison market sales. Specifically, in both channels of distribution, Garg Tube provides certain selling functions at similar levels of intensity.⁸⁰ As a result, we preliminarily determine that the LOT for the EP sales was the same as the LOT for home market sales.⁸¹ Therefore, for these preliminary results, we did not make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act and 19 CFR 351.412(e), because the single LOT in each market is the same.

C. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested cost of production (COP) and constructed value (CV) information from Garg Tube. We examined Garg Tube's cost data⁸² and determined that our quarterly cost methodology was not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Garg Tube in its questionnaire responses, with certain exceptions. Specifically, as explained below, (1) based on the existence of a particular market situation concerning the prices of hot-rolled coil, we increased Garg Tube's reported cost for hot-rolled coil as a component of COP in the self-produced pipe and tube, as well as the embedded cost for hot-rolled coil as a component of reported COP in ungalvanized and galvanized pipe and tube that Garg Tube sourced from unaffiliated suppliers, by specific adjustments applicable to a PMS that we find to exist in India

⁷⁸ See AQR at 14-20 and Exhibit A-7.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ For further discussion involving the use of business proprietary information, see Preliminary Analysis Memorandum.

⁸² See Garg Tube's DQR, SQR, and 2nd SQR.

concerning this input of production,⁸³ and (2) we relied on partial AFA to derive surrogate COPs pertaining to certain of Garg Tube's unaffiliated suppliers of pipe and tube, from which Garg Tube sourced merchandise for re-sale or further-processing and re-sale.⁸⁴

a. Partial Adverse Facts Available For Non-Cooperative Unaffiliated Suppliers' Costs

In situations where a respondent purchases the merchandise under consideration from an unaffiliated producer, if: (1) the producer knew or should have known that the merchandise is going to the United States, and (2) the sales of the merchandise can be identified as to the original manufacturer (*i.e.*, not commingled), then we may exclude the sales from the U.S. database. In this review, Garg Tube reported that its unaffiliated suppliers did not have knowledge of the ultimate destination of pipe and tube that they sold to Garg Tube.⁸⁵ As a result, Commerce finds that Garg Tube is the first party in the transaction chain with knowledge of the U.S. destination of the subject merchandise, and, thus, is treating sales of the foreign like product and subject merchandise produced by Garg Tube's unaffiliated suppliers as sales attributable to Garg Tube.

Although the sales are attributable to Garg Tube, the statute requires that we obtain COP information from Garg Tube's unaffiliated suppliers because they are the producers of the foreign like product and subject merchandise. Garg Tube sourced pipe and tube from a number of domestic producers of in-scope merchandise. Commerce requested that Garg Tube obtain the COP information from two unaffiliated suppliers,⁸⁶ and also subsequently issued direct requests to same suppliers to provide the information concerning the merchandise they sold to Garg Tube.⁸⁷ However, the suppliers in question refused to provide their COP information despite Garg Tube's repeated requests,⁸⁸ and also did not respond to our direct requests for this information. Thus, we find that the record is missing cost information for pipe and tube produced by these two unaffiliated suppliers and sold by Garg Tube during the POR.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an adverse inference to the interests of that party in selecting the facts otherwise available.

⁸³ See "Particular Market Situation" section of this memorandum; *see also* Preliminary Analysis Memorandum for further details.

⁸⁴ See Preliminary Analysis Memorandum for further details.

⁸⁵ See AQR at 35.

⁸⁶ We are withholding the identity of these entities as this information constitutes business proprietary information claimed by Garg Tube in this review.

⁸⁷ See Commerce's Letter to Garg Tube, dated November 30, 2018; and Commerce's Letters to two unaffiliated suppliers, both dated May 2, 2019.

⁸⁸ See SQR at 49-60.

We find that the unaffiliated suppliers in question are interested parties to this review, within the meaning of section 771(9)(A) of the Act because they are producers of pipe and tube, which is the merchandise subject to the *Order*. As an initial matter, we find that necessary information is missing from the record pursuant to section 776(a)(1) of the Act, namely, these unaffiliated suppliers' respective cost information. In addition, and given that these suppliers did not provide the cost information at issue, we find that each of them withheld information that was requested by Commerce, failed to provide such information within our deadline, and significantly impeded the review, pursuant to section 776(a)(2)(A)-(C) of the Act, respectively. Furthermore, we find that the suppliers in question, as interested parties to this review, failed to cooperate to the best of their ability in responding to Commerce's requests for information, given that they refused to provide the cost information on two separate occasions. Therefore, we find it appropriate to resort to partial facts available with adverse inferences regarding said suppliers' missing cost information, pursuant to section 776(b) of the Act.

Specifically, as partial adverse facts available, we calculated surrogate costs for two suppliers' pipe and tube, based on Garg Tube's acquisition costs for the supplier-produced pipe and tube plus amounts for Garg Tube's further processing expenses, general and administrative expenses, and financial expenses, adjusted based on Garg Tube's home market sale on which it realized the largest loss.⁸⁹ We find that this approach results in an appropriate rate for Garg Tube because it is precisely proportional to the missing cost information and, in this instance, relies upon data provided by Garg Tube with respect to cost of production as well as losses on home market sales of pipe and tube. We find that this approach yields an estimated COP for two unaffiliated suppliers in question and prevents the use of an acquisition price which may be below these suppliers' cost of production.⁹⁰ In addition to resulting in an appropriate rate, we find that our approach potentially induces the cooperation of Garg Tube's suppliers in future segments of this proceeding, if any, and induces Garg Tube in future segments to source from producers of subject merchandise that will cooperate in these proceedings by providing necessary information to Commerce.⁹¹ We recognize that the use of this information indirectly affects the overall dumping margin assigned to Garg Tube. However, we believe that our approach is consistent with our statutory and regulatory obligations to ensure an accurate result, while bearing in mind the need for inducement measures in situations where interested parties have failed to cooperate in these proceedings.

⁸⁹ Details of this adjustment are discussed further in the Preliminary Analysis Memorandum.

⁹⁰ See *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254, 1276-78 (CIT 2017) (upholding Commerce's determination to apply partial adverse facts available by relying on the highest consumption figures for the unreported inputs that were reported by other suppliers or by the respondent).

⁹¹ See *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1233, 1236 (CAFC 2014) (Commerce is not barred, under appropriate circumstances, "from drawing adverse inferences against a non-cooperating party that have collateral consequences for a cooperating party," or from relying on inducement or deterrence considerations in determining a dumping margin for a cooperating party "as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account.").

b. Partial Facts Available For Non-Examined Unaffiliated Suppliers' Costs

Commerce may use facts available pursuant to Section 776(a) of the Act when necessary information is missing from the record of the proceeding. For Garg Tube's suppliers of pipe and tube for which Commerce did not request cost information, such cost information is missing from the record of this review. Accordingly, as neutral facts available for these preliminary results, Commerce has used the reported acquisition costs for pipe and tube that Garg Tube sourced from the suppliers in question.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the adjusted weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the sales-below-cost test by subtracting from the gross unit price all applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model 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 of the COPs, 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.

The results of the sales-below-cost test for Garg Tube indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sale prices from our analysis and used the remaining above-cost sale prices to determine NV.

D. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP, we based NV on the starting price to unaffiliated customers in the home market. We adjusted the starting price, where appropriate, for movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in circumstances of sale (for imputed credit expenses, commissions, warranty expenses, and bank charges) in accordance with section 773(a)(6)(C)(iii)

of the Act and 19 CFR 351.410. We made adjustments for differences in packing expenses in accordance with sections 773(a)(6)(B)(i) of the Act. Lastly, when comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we 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, where warranted. We based this adjustment on the difference in the variable cost of manufacture for the foreign like product and the subject merchandise.⁹²

E. Calculation of Normal Value Based on Constructed Value

In accordance with 773(e) of the Act, we used CV as the basis for normal value for the U.S. sales for which we could not base NV on comparison market sale prices of identical or similar merchandise. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, U.S. packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, adjusted as discussed above, as well as selling general and administrative expenses, and U.S. packing costs. In accordance with 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based selling expenses and profit on the amounts Garg Tube incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade in the foreign market.

F. Particular Market Situation

On December 21, 2018, the DIPs alleged that Commerce should find that a cost-based particular market situation (PMS) existed during the period of review in India, which distorted the cost of production of pipe and tube. Further, the DIPs submitted factual information in support of this allegation.⁹³ On February 1, 2019, the DIPs submitted additional factual information that provides alternative means to quantify the alleged distortions in the prices of HRC in this review, *i.e.*, a regression analysis which quantifies the amount of this distortion.⁹⁴ On March 22, 2019, the DIPs provided a revised regression analysis.⁹⁵

The DIPs alleged that a series of factors affecting hot-rolled coil (HRC), the primary material input in the production of pipe and tube, render, individually or collectively, the costs of pipe and tube production in India as outside the ordinary course of trade.⁹⁶ The DIPs alleged that the existence of a cost-based PMS is supported by substantial evidence based on: (1) the significant global overcapacity in steel production; (2) the government of India's (GOI's) subsidization of HRC; and (3) GOI's imposition of antidumping and safeguard measures on imports of HRC (which Garg Tube does not pay on its imports of HRC) implemented by the GOI to address the price distortions caused by global steel overcapacity.⁹⁷ The DIPs argued that Commerce should

⁹² See 19 CFR 351.411(b).

⁹³ See PMS Allegation.

⁹⁴ See DIPs' Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Other Factual Information Submission - Alternative PMS Valuation Calculation," dated February 1, 2019.

⁹⁵ See DIPs' Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Revised PMS Valuation Methodology," dated March 22, 2019 (Regression Analysis).

⁹⁶ See, generally, PMS Allegation.

⁹⁷ *Id.*

make adjustments to the respondent's cost of production in order to remedy the alleged price distortions as it has done in recent administrative reviews of circular welded pipe (CWP) from Korea and Thailand.⁹⁸

The DIPs further allege that a cost-based PMS existed for the acquisition of Indian-produced MS pipe based on the distorted input costs for HRC as described above. Moreover, the DIPs allege that a cost-based PMS existed for Indian-produced MS pipe because of Commerce's finding of subsidies in its affirmative determination in *CWP from India CVD Final*.⁹⁹ The DIPs also claim that a cost-based PMS existed for imported MS pipe, including from China, because "Chinese imports, surging imports, and downward price pressure over the years"¹⁰⁰ has impacted import values of MS pipe just as it has impacted import values of HRC.

Lastly, the DIPs alleged that a price-based PMS existed during the POR which renders the home market prices of the foreign like product outside of the ordinary course of trade. These distortions are caused by distortions in the costs of HRC and MS pipe. As a result of these distorted home market prices of the foreign like product, the home market is not viable, and Commerce should similarly find that all third-country markets are not viable, and rely on constructed value as the basis for normal value.¹⁰¹

For these preliminary results, Commerce finds that a cost-based PMS existed in India during the POR concerning the cost of HRC, either as a component of the COP for pipe and tube that Garg Tube self-produced from HRC, or the cost of HRC embedded in the acquisition cost of the purchased MS and galvanized pipe that Garg Tube sourced from unaffiliated Indian suppliers.¹⁰² The PMS that we find to have existed in India concerning HRC results from the collective impact of the continued effects of the global steel overcapacity, GOI's subsidization of HRC, GOI's finding that imports are unfairly traded, and the non-payment of antidumping or safeguard duties on imports of HRC.¹⁰³ In this administrative review, we considered the components of the PMS Allegation as a whole, based on their cumulative effect on the input costs for HRC in the production of pipe and tube. Based on the totality of the conditions in the HRC market and the production of pipe and tube in India, Commerce preliminarily finds that PMS Allegation represent facets of a single PMS.

In addition to finding that a cost-based PMS existed in India during the POR with respect to the costs for HRC, Commerce has determined that there is sufficient evidence to quantify the impact

⁹⁸ *Id.* at 27, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review* 2015-2016, 83 FR 27541 (June 13, 2018) and accompanying IDM at 11-19 and *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review* 2016-2017, 83 FR 51927 (October 15, 2018) and accompanying IDM at 13.

⁹⁹ *Id.* at 54, citing *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64470 (October 22, 2012) (*CWP from India CVD Final*).

¹⁰⁰ *Id.* at 56.

¹⁰¹ See PMS Allegation at 61-64.

¹⁰² For a complete discussion, see memorandum, "2017-2018 Administrative Review of Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India: Decisions on Particular Market Situation Allegations," dated concurrently with this memorandum ("Decisions on Particular Market Situation Allegations").

¹⁰³ *Id.*

of this PMS. In quantifying the impact, Commerce has determined to make an upward adjustment to costs for HRC, irrespective of whether pipe and tube was self-produced by Garg Tube or sourced from unaffiliated Indian suppliers. Specifically, the cost for all HRC (domestic and imported), when a component of the COP for pipe and tube that Garg Tube self-produced from HRC, or the cost of HRC embedded in the acquisition cost of the purchased MS and galvanized pipe that Garg Tube sourced from unaffiliated Indian suppliers, will be increased by the adjustment factor derived in the Regression Analysis.¹⁰⁴ We preliminarily find that this rate appropriately quantifies the impact of the PMS concerning the distortion in cost of HRC that we find to have existed in India during the POR. Specifically, the Regression Analysis sufficiently quantifies the impact of the PMS on the material cost of HRC, and derives a corresponding adjustment factor that, when applied to the costs of HRC, accounts for the distortions induced by the observed PMS.¹⁰⁵

While we preliminarily find that a PMS existed in India affecting the material costs for HRC, we preliminarily find that an additional, stand-alone PMS concerning the cost of purchased, Indian-produced MS pipe itself does not exist.¹⁰⁶ We also do not find for these preliminary results that a PMS existed such that Garg Tube's home market sale prices of pipe and tube are distorted, *i.e.*, home market sale prices of pipe and tube are outside the ordinary course of trade, due to the distortions in the COP of pipe and tube that we find to have existed with respect to HRC.¹⁰⁷ Finally, we find that the sales of imported MS pipe or galvanized pipe into India are not subject to the *Order*.

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

¹⁰⁴ *Id.*

¹⁰⁵ Garg Tube has asserted that it has identified the lack of statistically significant coefficient estimates for the (derived) demand variable and fixed-effects parameter as potential issues with respect to the regression analysis model. Commerce did not have sufficient time to address these issues for purposes of these preliminary results, will consider these issues further for purposes of the final results of review, and invites comments from interested parties on these issues.

¹⁰⁶ *See* Decisions on Particular Market Situation Allegations.

¹⁰⁷ *Id.*

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

7/10/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance