



October 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: Decision Memorandum for Preliminary Results of
Antidumping Duty Administrative Review: Finished Carbon
Steel Flanges from India; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on finished carbon steel flanges (flanges) from India.¹ This review covers mandatory respondents Norma (India) Limited² and R.N. Gupta & Co. Ltd. (Gupta), and 32 non-selected companies. The period of review (POR) is February 8, 2017 through July 31, 2018. We preliminarily determine that Norma and Gupta made sales below normal value (NV) during the POR.

II. BACKGROUND

On August 7, 2018, Commerce published a notice of opportunity to request an administrative

¹ See *Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders*, 82 FR 40136 (August 24, 2017) (*Order*).

² In the preliminary determination of the less-than-fair-value investigation, we determined that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal were affiliated, and should be collapsed and treated as a single entity. See *Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82 FR 9719 (February 8, 2017) and accompanying Preliminary Decision Memorandum at 4-5; unchanged in *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017). In these preliminary results, Norma has presented evidence that the factual basis on which Commerce made its prior determination has not changed. See Norma's March 1, 2019 Supplemental Questionnaire Response (Norma March 1, 2019 SQR) at 12-20. Therefore, in this administrative review, Commerce continues to collapse these four entities, and treats them as a single entity that we refer to as "Norma" throughout these preliminary results.

review of the *Order*.³ Subsequently, Commerce received timely requests for an administrative review from Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners),⁴ Norma,⁵ Gupta,⁶ Jai Auto Pvt. Ltd. (Jai Auto),⁷ and Bebitz Flanges Works Private Limited (Bebitz).⁸ The petitioners requested an administrative review of 35 companies,⁹ whereas Norma, Gupta, Jai Auto and Bebitz requested an administrative review of themselves.¹⁰ On October 4, 2018, Commerce initiated an administrative review of the *Order* for the period February 8, 2017, through July 31, 2018, with respect to 37 companies.¹¹

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, in the event that it limits the number of respondents for individual examination, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data.¹² Accordingly, on October 17, 2018, Commerce released the CBP data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.¹³ We received no comments from any party. On November 9, 2018, we selected Gupta and Norma as mandatory respondents.¹⁴ On November 16, 2018, we issued the initial AD questionnaire to Gupta and Norma.¹⁵ Between December 14, 2018, and September 5, 2019, Gupta and Norma submitted timely responses to the AD questionnaire and supplemental questionnaires.¹⁶ Between July 3 and 15, 2019, Norma and the petitioners submitted comments on constructed value profit and selling expenses.¹⁷

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 38682, 38683 (August 7, 2018).

⁴ See Petitioners’ Letter, “Finished Carbon Steel Flanges from India: Request for Administrative Review,” dated August 31, 2018 (Petitioners’ Request for Review).

⁵ See Norma’s Letter “Finished Carbon Steel Flanges from India: Request for entry of appearance in the Anti-Dumping Duty Administrative Review for Norma (India) Limited, USK Export Private Limited, Umashanker Khandelwal and Co. and Bansidhar Chiranjilal,” dated August 28, 2018 (Norma’s Request for Review).

⁶ See Gupta’s Letter, “Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review,” dated August 30, 2018 (Gupta’s Request for Review).

⁷ See Jai Auto’s Letter, “Request for Anti-Dumping Duty Administrative Review of finished carbon steel flanges from India,” dated August 31, 2018; see also Jai Auto’s Letter, “Finished Carbon Steel Flanges from India: Requests for Administrative Review,” dated August 31, 2018 (Jay Auto’s Request for Review).

⁸ See Bebitz’s Letter, “Finished Carbon Steel Flanges from India: Requests for Administrative Review,” dated August 31, 2018 (Bebitz’s Request for Review).

⁹ See Petitioners’ Request for Review, at 2-3.

¹⁰ See Norma’s Request for Review; Gupta’s Request for Review; Jai Auto’s Request for Review; and Bebitz’s Request for Review.

¹¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

¹² *Id.*, 83 FR at 50077.

¹³ See Memorandum, “Carbon Steel Flanges from India: U.S. Customs and Border Protection Information for 2017-2018 Review Period,” dated October 17, 2018.

¹⁴ See Memorandum, “Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India: Respondent Selection,” dated November 9, 2018.

¹⁵ See Commerce’s Letters to Norma and Gupta, dated November 16, 2018.

¹⁶ See, e.g., Gupta’s Letter, “RN Gupta & Company Limited’s Response to Section A of Initial Antidumping Duty Questionnaire,” dated December 14, 2018 (Gupta December 14, 2018 AQR).

¹⁷ See Petitioners’ Letter, “Finished Carbon Steel Flanges from India: Constructed Value Profit and Selling Expenses Comments,” dated July 3, 2019; see also Norma’s Letter, “Finished Carbon Steel Flanges from India: Submission of Factual Information on Constructed Value Profit and Indirect Selling Expenses,” dated July 3, 2019;

Commerce exercised its discretion to toll all deadlines affected by the closure of the federal government from December 22, 2018 through the resumption of operations on January 29, 2019.¹⁸ This revised the deadline for the preliminary results of this review to June 12, 2019. On June 7, 2019 and September 6, 2019, Commerce postponed the deadline for the preliminary results of this review, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).¹⁹ The current deadline is October 10, 2019.

III. SCOPE OF THE *ORDER*

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this *Order*. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this *Order*.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.*, 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.*, flat face, full face, raised face, *etc.*), configuration (*e.g.*, weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term “carbon steel” under this scope is steel in which:

- (a) iron predominates, by weight, over each of the other contained elements:
- (b) the carbon content is 2 percent or less, by weight; and

Petitioners’ Letter, “Finished Carbon Steel Flanges from India: Constructed Value Profit and Selling Expenses Rebuttal Comments,” dated, July 15, 2019; and Norma’s Letter, “Finished Carbon Steel Flanges from India: Submission of Rebuttal Comments to Petitioner’s Submission of Factual Information on Constructed Value Profit and Indirect Selling Expenses,” dated July 15, 2019.

¹⁸ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations 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 Memoranda, “Finished Carbon Steel Flanges from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated June 7, 2019; and “Finished Carbon Steel Flanges from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 6, 2019.

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 0.87 percent of aluminum;
- (ii) 0.0105 percent of boron;
- (iii) 10.10 percent of chromium;
- (iv) 1.55 percent of columbium;
- (v) 3.10 percent of copper;
- (vi) 0.38 percent of lead;
- (vii) 3.04 percent of manganese;
- (viii) 2.05 percent of molybdenum;
- (ix) 20.15 percent of nickel;
- (x) 1.55 percent of niobium;
- (xi) 0.20 percent of nitrogen;
- (xii) 0.21 percent of phosphorus;
- (xiii) 3.10 percent of silicon;
- (xiv) 0.21 percent of sulfur;
- (xv) 1.05 percent of titanium;
- (xvi) 4.06 percent of tungsten;
- (xvii) 0.53 percent of vanadium; or
- (xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

IV. RATES FOR NON-EXAMINED COMPANIES

In addition to the mandatory respondents, this review covers 32 companies that were not selected for individual examination.²⁰

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual 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 a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we preliminarily calculated weighted-average dumping margins for Gupta and

²⁰ See *Initiation Notice*, 83 FR at 50078-79.

Norma that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined a margin of 1.71 percent, which is the simple average of Gupta's and Norma's calculated weighted-average dumping margins.²¹

V. COMPARISONS TO NORMAL VALUE

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 Gupta's and Norma's sales of subject merchandise from India to the United States were made at less than NV, Commerce compared the export price (EP) to the 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 weighted-average dumping margins 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 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 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.²²

In numerous proceedings, 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.²³ Commerce finds that the differential pricing analysis used in certain 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

²¹ See Memorandum, "Finished Carbon Steel Flanges from India: Calculation of Non-Examined Companies' Rate," dated concurrently with this memorandum.

²² 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 (IDM) at Comment 1; *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("The fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted).

²³ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 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 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 EPs (or CEPs) 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. 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 Gupta, based on the results of the differential pricing analysis, Commerce preliminarily finds that 71.72 percent of the value of U.S. sales pass the Cohen's *d* test,²⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 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 *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Gupta.

For Norma, based on the results of the differential pricing analysis, Commerce preliminarily finds that 47.11 percent of the value of U.S. sales pass the Cohen's *d* test,²⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time

²⁴ See Memorandum, "Finished Carbon Steel Flanges from India: Analysis Memo for R.N. Gupta & Co. Ltd.," dated concurrently with this memorandum (Gupta Analysis Memo).

²⁵ See Memorandum, "Finished Carbon Steel Flanges from India: Analysis Memo for Norma (India) Limited," dated concurrently with this memorandum (Norma Analysis Memo).

periods. Further, Commerce 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 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 *d* test. Thus, for these preliminary results, Commerce is 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 *d* test to calculate the weighted-average dumping margin for Norma.

Product Comparisons

For the purposes of determining an appropriate product comparison to the U.S. sale, in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this notice, above, that were in the ordinary course of trade. Because Gupta did not have a viable home market, we compared its U.S. sales to sales made in a third-country, where appropriate.²⁶ In making the product comparisons, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are type, grade, pressure rating, nominal outside diameter, reducer, spacer, spectacle, orifice, minimum specified yield strength, heat treatment, coating, face, nominal wall thickness and painting.

Pursuant to 19 CFR 351.414(f), we compared the U.S. sales of Gupta to its sales made in a third country within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. Where there were no sales of identical merchandise in the third country market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of flanges to sales of the most similar foreign like product in the ordinary course of trade.

Because Norma did not have a viable home market or third country market with respect to its sales of subject merchandise, we compared U.S. sales to NVs based on constructed value (CV).²⁷ As such, for Norma, no comparisons are made of EPs with NVs based on home market or third-country market sales where it would be necessary to identify identical or similar merchandise.

²⁶ See Gupta December 14, 2018 AQR at 3-4 and Exhibit A-1; see also Gupta's Letter, "R N Gupta & Company Limited's Response to Section A Supplemental of Initial Antidumping Duty Questionnaire," dated April 2, 2019 at Exhibit AS-1.

²⁷ See Norma March 1, 2019 SQR at 1-2 and Revised Exhibit A-1.

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 producer or exporter'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.²⁸ 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.²⁹ For its third country sales and U.S. sales, Gupta reported the invoice date as the date of sale.³⁰ For its U.S. sales, Norma reported the invoice date as the date of sale.³¹ For Gupta and Norma, the record of this review indicates that is the date when price and quantity terms are set.³² Therefore, we have preliminarily used invoice date as the date of sale for Gupta's and Norma's sales.

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)." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." As explained below, we based the U.S. price on EP for both Gupta and Norma.

Both Gupta and Norma reported that they only made EP sales during the POR.³³ In accordance with section 772(a) of the Act, we calculated the EP for those sales where 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. We based EP on packed prices to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments and countervailing duty subsidies, where appropriate. We made deductions for movement expenses in accordance with

²⁸ See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) and accompanying IDM at Comment 2.

³⁰ See Gupta's February 12, 2019 Section B Questionnaire Response (Gupta February 12, 2019 BQR) at B-31 and Gupta's February 12, 2019 Section C Questionnaire Response (Gupta February 12, 2019 CQR) at C-30.

³¹ See Norma's February 14, 2019 Section C Questionnaire Response (Norma February 14, 2019 CQR) at 29.

³² See Gupta February 12, 2019 BQR at B-31 and CQR at C-30; Norma February 14, 2019 CQR at 29.

³³ See Gupta February 12, 2019 CQR at C-27; Norma's February 14, 2019 CQR at 26.

section 772(c)(2)(A) of the Act, which included, where appropriate, inland freight, insurance, brokerage and handling, and warehousing expenses.

Normal Value

A. Home Market Viability and Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) 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.

Based on this comparison, we preliminarily determine that, pursuant to 19 CFR 351.404(b), Gupta and Norma did not have viable home markets during the POR, because the volume of their home market sales of the foreign like product were less than five percent of their aggregate volume of U.S. sales of the subject merchandise.³⁴ Because we find that the aggregate quantity of the foreign like product sold by Gupta in a third country market was greater than five percent of the aggregate volume of their respective U.S. sales, we used third-country sales as the basis for NV, in accordance with section 773(a)(1)(B)(ii) of the Act.³⁵ We also preliminarily find that the aggregate quantity of the foreign like product sold by Norma in any third country market was less than five percent of the aggregate volume of their respective U.S. sales, and therefore, Norma had no viable third-country market.³⁶ Accordingly, for Norma, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

B. Level of Trade (LOT)/CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales of the foreign like product at the same LOT as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁸ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we review 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.

³⁴ See Gupta December 14, 2018 AQR at 3-4 and Exhibit A-1; Norma's December 17, 2018 Section A Questionnaire Response at 3 and Exhibit A-1.

³⁵ See Gupta Analysis Memo.

³⁶ See Norma's March 1, 2019 SQR at 1-2 and Revised Exhibit A-1.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ See *id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administration Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*Orange Juice from Brazil*) and accompanying IDM at Comment 7.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁹

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP sale and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁰

Gupta reported that it had only channel of distribution in its comparison and U.S. markets.⁴¹ Gupta reported that it had two customer categories of “distributor” and “trader” in the single U.S. channel of distribution.⁴² Gupta reported that it had only one customer category, that of distributor, in the comparison market. Gupta submitted a selling functions chart which showed 24 different selling functions; a slight difference in the level of activity existed in only one category, that of “provide warranty service.”⁴³ Therefore, we preliminarily determine that only one level of trade exists in Gupta’s comparison and U.S. markets. Furthermore, we preliminarily determine that Gupta provided virtually the same level of customer support on its U.S. EP sales as it did for its comparison market sales. Consequently, we conclude that the starting price of Gupta’s U.S. EP sales and its comparison-market sales represent the same stage in the marketing process. For this reason, we preliminarily determine that a level of trade adjustment is not warranted for Gupta.

Norma did not claim any LOT adjustment and as it has no viable comparison market, we are unable to make any LOT comparison for Norma and, therefore, are unable to grant any LOT adjustment or CEP offset for these preliminary results.⁴⁴

Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from Gupta and Norma. We examined their cost data and determined that our quarterly cost methodology is not warranted; therefore, we are applying our standard methodology of using annual costs based on the reported data.

³⁹ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

⁴⁰ See *Orange Juice from Brazil* and accompanying IDM at Comment 7.

⁴¹ See Gupta December 14, 2018 AQR at 14 - 16.

⁴² *Id.*

⁴³ *Id.* at Exhibit A-5.

⁴⁴ See Norma February 14, 2019 CQR at 38.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the respondents' 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 (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

B. Test of Comparison Market Sales Prices

For Gupta, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the weighted-average COP to the third country sales prices of the foreign like product on a product-specific basis, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

It was not necessary to perform a comparison market sales price test for Norma because the company had no viable home market or third-country comparison market, and we used CV as the basis for NV.

C. Results of the COP Test

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

We preliminarily find that, for certain products, more than 20 percent of Gupta's home market sales during the POR were at prices less than the COP, they were made within an extended period of time, and such sales did not provide for the recovery of costs within a reasonable period of time.⁴⁵ We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

⁴⁵ *See* Gupta Analysis Memo.

As stated above, we did not perform the cost test for Norma because it had no viable home or third-country comparison market.

Calculation of NV Based on Comparison Market Prices

We based NV for Gupta on packed prices to unaffiliated customers in the third country. We adjusted, where appropriate, the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses such as inland freight and inland insurance, under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410, we made deductions for direct selling expenses (*i.e.*, imputed credit). We also added U.S. direct selling expenses, *i.e.*, credit expenses, bank charges, and warranty expenses to NV. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Normal Value Based on Constructed Value

As explained above, Norma had no viable home or third-country market. Thus, we used CV as the basis for calculating NV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the costs of materials and fabrication employed in producing the subject merchandise, plus amounts for G&A expenses, interest, profit, selling expenses, and U.S. packing costs. We calculated profit rates and indirect selling expenses using ratios derived from the financial statement of LAL Metal Forge Limited (LAL Metal).⁴⁶ We used this financial statement because, addition to being contemporaneous, it is the only legible financial statement on the record of an Indian producer of identical merchandise. Furthermore, LAL Metal appears to have a significant home market sales base.⁴⁷ We also added U.S. direct selling expenses, *i.e.*, credit expenses, bank charges, and warranty expenses to NV.⁴⁸

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 web site at <http://enforcement.trade.gov/exchange/index.html>.

⁴⁶ See Norma's Letter, "Finished Carbon Steel Flanges from India: Submission of Factual Information on Constructed Value Profit and Indirect Selling Expenses," dated July 3, 2019, at Exhibit CV-2(a) and (b).

⁴⁷ *Id.*, at Exhibit CV-2(c) at 8.

⁴⁸ For more information, see Norma Analysis Memo.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

10/10/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance