



A-533-502  
Administrative Review  
POR: 5/1/18-4/30/19  
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July 20, 2020

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

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

**SUBJECT:** Certain Welded Carbon Steel Standard Pipes and Tubes from  
India: Decision Memorandum for Preliminary Results of  
Antidumping Duty Administrative Review; 2018-2019

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain welded carbon steel standard pipes and tubes (pipes and tubes) from India covering the period of review (POR) May 1, 2018 through April 30, 2019. The review covers one producer and exporter of the subject merchandise. Commerce preliminarily determines that the producer and exporter subject to this administrative review made sales of subject merchandise at less than normal value (NV). 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 pipes and tubes from India.<sup>1</sup> On May 1, 2019, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.<sup>2</sup> On July 15, 2019, based on timely requests, we initiated an administrative review of 29 companies, in accordance with 19 CFR 351.221(c)(1)(i).<sup>3</sup> On December 31, 2019, we rescinded this administrative review with respect to 28 companies.<sup>4</sup>

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 18479 (May 1, 2019).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739, 33741 (July 15, 2019).

<sup>4</sup> See *Welded Carbon Steel Standard Pipes and Tubes from India: Rescission of Antidumping Duty Administrative Review, in Part; 2018-2019*, 84 FR 72298 (December 31, 2019).



Garg Tube Export LLP (GTEL) remained in this administrative review as the sole respondent. We sent an AD questionnaire to GTEL on September 9, 2019.<sup>5</sup> On October 10, 2019, GTEL and its affiliate, Garg Tube Limited (GTL) (collectively, Garg Tube) submitted a timely section A response.<sup>6</sup> On November 12, 2019, Garg Tube submitted its sections B, C, and D response.<sup>7</sup> Garg Tube submitted its first supplemental response on January 23, 2020,<sup>8</sup> second supplemental response in two parts on June 9, 2020,<sup>9</sup> and June 16, 2020,<sup>10</sup> and third supplemental response on July 2, 2020.<sup>11</sup>

On October 28, 2019, the domestic interested party (DIP) submitted a home market viability allegation.<sup>12</sup> On December 2, 2019, the DIP submitted a particular market situation (PMS) allegation.<sup>13</sup> On December 20, 2019, we accepted the DIP's PMS Allegation and invited interested parties to "submit comments and other factual information that rebuts, clarifies, or corrects the factual information contained in" the DIP's PMS Allegation.<sup>14</sup> On January 13, 2020, Garg Tube submitted rebuttal comments and factual information.<sup>15</sup> In the DIP's PMS Allegation, we found certain deficiencies in the data for regression analysis. We issued a PMS deficiency questionnaire to the DIP concerning its regression analysis on May 19, 2020,<sup>16</sup> and the DIP responded to it on June 1, 2020.<sup>17</sup> We continued to find deficiencies in the data for regression analysis and we issued a second PMS deficiency questionnaire concerning the

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<sup>5</sup> See, e.g., Commerce's Original Questionnaire dated September 9, 2019 (Original Questionnaire).

<sup>6</sup> See Garg Tube's Section A Original Response dated October 10, 2019 (Section A Response). In the last administrative review, we examined the relationship between GTEL and GTL and determined that it is appropriate to collapse these two companies as one entity. See *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16, 2019), and accompanying Preliminary Decision Memorandum at 7-8, unchanged in *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*Pipes and Tubes India Final 2017-18*). Accordingly, GTEL and GTL comprise a single entity for purposes of this administrative review.

<sup>7</sup> See Garg Tube's Section B, C, and D Original Response dated November 12, 2019 (Section B Response, Section C Response, and Section D Response, respectively).

<sup>8</sup> See Garg Tube's First Supplemental Response dated January 23, 2020 (First Supplemental Response).

<sup>9</sup> See Garg Tube's Second Supplemental Response dated June 9, 2020.

<sup>10</sup> See Garg Tube's Second Supplemental Response dated June 16, 2020.

<sup>11</sup> See Garg Tube's Third Supplemental Response," dated July 2, 2020.

<sup>12</sup> See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Market Viability Allegation and Supporting Information," dated December 2, 2019. In this letter, the domestic interested parties identified themselves as Independence Tube Corporation, a Nucor company, and Southland Tube, Incorporated, a Nucor company (collectively, Nucor Pipe Mills). In its amended entry of appearance filed on January 17, 2020, these two companies reported that they have been consolidated into Nucor Tubular Products Inc. See Amended Entry of Appearance: A-533-502, Welded Carbon Steel Pipe & Tube from India, REV 05/01/2018 – 04/30/2019, dated January 17, 2020. For convenience, Independence Tube Corporation, Southland Tube, Incorporated, and Nucor Tubular Products Inc. are hereafter collectively referred to as Nucor or the DIP.

<sup>13</sup> See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Particular Market Situation Allegation and Supporting Information," dated December 2, 2019 (PMS Allegation).

<sup>14</sup> See Commerce's Letter dated December 20, 2019.

<sup>15</sup> See Garg Tube's Letter, "Comments and Other Factual Information Responding to Nucor's PMS Allegation," dated January 13, 2020 (Garg Tube's PMS Rebuttal).

<sup>16</sup> See Commerce's PMS Deficiency Questionnaire dated May 19, 2020 (First PMS Deficiency Questionnaire).

<sup>17</sup> See DIP's Letter, "Particular Market Situation Allegation Deficiency Questionnaire Response" dated June 1, 2020 (DIP's First PMS Deficiency Response)

regression analysis on July 14, 2020.<sup>18</sup> In response to the DIP's request, we extended the deadline for the second PMS deficiency response to July 30, 2020.<sup>19</sup>

Commerce extended the time limit for the preliminary results of this review to May 29, 2020, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930s, as amended (the Act).<sup>20</sup> Commerce subsequently tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the preliminary results of this administrative review to July 20, 2020.<sup>21</sup>

### 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).<sup>22</sup> 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.

### IV. 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

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<sup>18</sup> See Commerce's PMS Deficiency Questionnaire dated July 14, 2020 (Second PMS Deficiency Questionnaire).

<sup>19</sup> See Commerce's Letter dated July 16, 2020 (Extension to Second PMS Deficiency Response).

<sup>20</sup> See Memorandum, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 13, 2020.

<sup>21</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

<sup>22</sup> 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).

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 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.<sup>23</sup>

In numerous investigations and administrative reviews, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>24</sup> Commerce finds that the differential pricing analysis used in numerous investigations and administrative reviews 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 prices 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

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<sup>23</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1293 (Ct. Int’l Trade Dec. 1, 2014).

<sup>24</sup> See, *e.g.*, *Alloy and Certain Carbon Steel Threaded Rod from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 8821 (February 18, 2020); see also *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2715 (January 16, 2020).

purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. 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 66.01 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>25</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is a 25 percent relative change 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, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Garg Tube.

### (2) Product Comparisons

Commerce identified five physical product characteristics to define each product and 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.<sup>26</sup>

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 physical product characteristics to define the product control numbers, which are used to identify identical and/or similar products to make comparisons of U.S. sales prices of subject merchandise to the weighted-average comparison market prices during the most contemporaneous month. Where there were no contemporaneous sales of identical merchandise in the comparison market in the ordinary course of trade, 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 physical product characteristics.

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<sup>25</sup> See Memorandum, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Analysis Memorandum for Garg Tube Export LLP and Garg Tube Limited" dated concurrently with this memorandum (Preliminary Analysis Memorandum).

<sup>26</sup> See Original Questionnaire.

### (3) Date of Sale

Commerce regulations in 19 CFR 351.401(i) provide that in identifying the date of sale of the subject merchandise or foreign like product, we normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Commerce may use a date other than the date of invoice if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>27</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>28</sup>

For home market and U.S. market sales, Garg Tube reported the invoice date as the date of sale.<sup>29</sup> Garg Tube explained that, because 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)<sup>30</sup> and because the company does not enter into short or long-term contracts or other fixed agreements for its home market and U.S. market sales, the invoice is the first document in which the finalized price and quantity are memorialized in writing to the customer.<sup>31</sup> We preliminarily followed the regulatory preference and Commerce's 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.<sup>32</sup>

### (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 into the United States, and CEP was not otherwise warranted based on the facts on the 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, U.S. brokerage and handling, and U.S. duties.

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<sup>27</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

<sup>28</sup> 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.

<sup>29</sup> See Garg Tube's Section B Response at 22 and Garg Tube's Section C Response at 20.

<sup>30</sup> See Garg Tube's Section B Response at 23 and Garg Tube's Section C Response at 21.

<sup>31</sup> See Garg Tube's Section B Response at 22 and Garg Tube's Section C Response at 20.

<sup>32</sup> See, e.g., *Shrimp from Thailand* IDM at Comment 10; see also *Steel Beams from Germany* IDM at Comment 2.

## (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,<sup>33</sup> 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).<sup>34</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>35</sup> To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, 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 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.

Garg Tube reported that it sold pipes and tubes to traders and end-users in the comparison market through one channel of distribution;<sup>36</sup> therefore, we find that this single, home market distribution channel constitutes a single LOT for all comparison market sales. Garg Tube reported that it sold made-to-order pipe and tube to distributors in the United States through one channel of distribution;<sup>37</sup> therefore, we find that this single, U.S. market distribution channel constitutes a single LOT for the reported EP sales. We preliminarily determine that the selling

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<sup>33</sup> See Garg Tube's Section A Response at Exhibit A-1.

<sup>34</sup> See 19 CFR 351.412(c)(2).

<sup>35</sup> *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

<sup>36</sup> See Garg Tube's Section A Response at 19 and Exhibit A-7.

<sup>37</sup> *Id.* at 18 and Exhibit A-7.

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.<sup>38</sup> As a result, we preliminarily determine that the LOT for the EP sales was the same as the LOT for the home market sales.<sup>39</sup> 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.<sup>40</sup> We examined Garg Tube's cost data and determined that our quarterly cost methodology was not warranted; 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.

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

In situations where a respondent purchases subject merchandise 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. data because these U.S. sales are properly attributed to the producer and not the respondent. 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.<sup>41</sup> 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 comparison and U.S. market sales are attributable to Garg Tube, the statute requires that we obtain COP information for the subject merchandise and the foreign like product, which includes those produced from Garg Tube's unaffiliated suppliers, because they are the producers of the foreign like product and the subject merchandise under section 771(9)(A) of the Act. Garg Tube sourced pipes and tubes from a number of domestic producers of in-scope merchandise. Commerce requested that Garg Tube obtain the COP information from

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<sup>38</sup> *Id.* at 16-22 and Exhibit A-7.

<sup>39</sup> For further discussion involving the use of business proprietary information, *see* Preliminary Analysis Memorandum.

<sup>40</sup> *See, e.g.*, Commerce's Letters dated September 9, 2019.

<sup>41</sup> *See* Garg Tube's Section A Response at 38.

certain unaffiliated suppliers,<sup>42</sup> and also subsequently issued direct requests to the same suppliers to provide the information concerning the merchandise they sold to Garg Tube.<sup>43</sup> However, the suppliers in question refused to provide their COP information despite Garg Tube's repeated requests,<sup>44</sup> 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 certain 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 section 782(c)(1) and (e) 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.

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 by choice, 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.

In the last administrative review, as partial adverse facts available, we calculated surrogate costs for the uncooperative unaffiliated suppliers' pipes and tubes based on Garg Tube's acquisition costs for the supplier-produced pipes and tubes 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.<sup>45</sup> We applied this methodology to induce cooperation from unaffiliated suppliers of in-scope merchandise of which we requested

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<sup>42</sup> See Commerce's First Supplemental Questionnaire, dated December 19, 2019, at 12-13 for the names of these unaffiliated suppliers. The identities of these unaffiliated suppliers are Garg Tube's business proprietary information.

<sup>43</sup> See Commerce's Sections A and D Questionnaires dated May 5, 2020; *see also* Memorandum, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: FedEx Delivery Confirmations," dated July 6, 2020 (FedEx Memorandum).

<sup>44</sup> See Garg Tube's First Supplemental Response at 38-39 and Exhibits S1-D-5(a), (b), and (c); *see also* FedEx Memorandum.

<sup>45</sup> See *Pipes and Tubes India Final 2017-18 IDM* at Comment 2.

cost information. In this administrative review, even after we applied this methodology as partial adverse facts available in the prior review, unaffiliated suppliers continue to fail to cooperate with our request for information.

Therefore, in this administrative review, as partial adverse facts available, we have used the production cost data for the product control number with the highest calculated COP as partial AFA for the missing cost data for these unaffiliated suppliers' pipes and tubes. We find that this approach results in an appropriate rate for Garg Tube because it is applied to the missing cost information, it relies upon the cost data provided by Garg Tube, and it provides a stronger inducement for future cooperation from these unaffiliated suppliers. We find that this approach yields an estimated COP for these unaffiliated suppliers in question and prevents the use of an acquisition price which may not be reflective of these suppliers' COP of in-scope merchandise.<sup>46</sup>

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.<sup>47</sup> We recognize that the use of this information indirectly affects the overall dumping margin assigned to Garg Tube. However, we believe that our approach, on balance, is consistent with our statutory and regulatory obligations to ensure an appropriate result, while bearing in mind the need for inducement measures in situations where the same interested parties have continued to be uncooperative in these proceedings.

#### 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 not available on the record of the proceeding. For Garg Tube's unaffiliated suppliers of pipes and tubes 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 pipes and tubes 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

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<sup>46</sup> 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).

<sup>47</sup> See *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1233, 1236 (Fed. Cir. 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.").

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 771(15)(A) of the Act, we find that the sale prices have failed the sales-below-cost test as outside of the ordinary course of trade, and we have used the remaining comparison sale prices to determine NV.

#### D. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sale prices in the ordinary course of trade, 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. sale prices with a NV based on comparison market sale prices 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.<sup>48</sup>

#### E. Calculation of Normal Value Based on Constructed Value

In accordance with 773(e) of the Act, we used CV as the basis for NV 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.

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<sup>48</sup> See 19 CFR 351.411(b).

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 comparison market.

#### F. Particular Market Situation

On December 2, 2019, the DIP submitted a cost-based PMS allegation, new factual information to support its cost-based PMS allegation, as well as additional arguments supporting its earlier October 28, 2019 sales-based PMS allegations.<sup>49</sup> On December 20, 2019, Commerce accepted the DIP's cost-based PMS Allegation consistent with 19 CFR 351.301(c)(2)(v), and invited interested parties to submit comments and other factual information to rebut, clarify, or correct the factual information in the PMS Allegation.<sup>50</sup> On January 13, 2020, Garg Tube submitted its PMS rebuttal.<sup>51</sup> On May 19, 2019, we issued a questionnaire to the DIP in which we identified deficiencies in the regression analysis and requested for additional information.<sup>52</sup> In response to our request, the DIP revised its regression analysis on June 1, 2020.<sup>53</sup> We continued to find deficiencies in the DIP's revised regression analysis because the DIP did not provide the requested changes in its revised regression analyses. On July 14, 2020, we issued a second deficiency questionnaire to the DIP.<sup>54</sup> The response to this second deficiency questionnaire is due on July 30, 2020.<sup>55</sup>

Hot-rolled coil (HRC) is the primary material input in the production of pipes and tubes. The DIP alleges that a series of factors affecting HRC individually or collectively render the costs of pipes and tubes production in India as outside the ordinary course of trade.<sup>56</sup> The DIP argues 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 Indian government's subsidization of HRC; (3) the Indian government's imposition of antidumping and safeguard measures on imports of HRC implemented by the Indian government to address the price distortions caused by global steel overcapacity; and (4) Garg Tube's non-payment of such antidumping and safeguard duties for its imports of HRC.<sup>57</sup> The DIP requests that Commerce adjust Garg Tube's COP to remedy the alleged price distortions.

The DIP also alleges the existence of a cost-based PMS for the acquisition of Indian-produced mild steel pipe and galvanized pipe based on the distorted costs for HRC, as described above, used by other Indian producers of mild steel pipes and galvanized pipe. The DIP argues that a

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<sup>49</sup> See PMS Allegation.

<sup>50</sup> See Commerce's Letter dated December 20, 2019.

<sup>51</sup> See Garg Tube's PMS Rebuttal.

<sup>52</sup> See First PMS Deficiency Questionnaire.

<sup>53</sup> See DIP's First PMS Deficiency Response.

<sup>54</sup> See Second PMS Deficiency Questionnaire.

<sup>55</sup> See Extension to Second PMS Deficiency Response

<sup>56</sup> See, generally, PMS Allegation.

<sup>57</sup> *Id.*

cost-based PMS existed for Indian-produced mild steel pipe because of Commerce's finding of subsidies in its affirmative determination in *CWP from India CVD Final*.<sup>58</sup> Further, the DIP claims that a cost-based PMS existed for imported mild steel pipe, including from China, because "Chinese overcapacity, surging imports, and downward price pressure over the years"<sup>59</sup> have impacted import values of mild steel pipe just as it has impacted import values of HRC.

Lastly, the DIP alleges that a PMS during the POR rendered the home market prices of the foreign like product outside of the ordinary course of trade. The DIP argues that these distortions are caused by distortions in the costs of HRC and mild steel pipe. As a result of these distorted home market prices of the foreign like product, according to the DIP, the home market is not viable, and Commerce should similarly find that all third-country markets are not viable, and rely on CV as the basis for NV.<sup>60</sup>

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 as the cost of HRC embedded in the acquisition cost of the purchased mild steel and galvanized pipe that Garg Tube sourced from unaffiliated Indian suppliers.<sup>61</sup> The PMS that we find to have existed in India during the POR concerning HRC results from the collective impact of the continued effects of the global steel overcapacity, the Indian government's subsidization of HRC, and the Indian government's finding that imports are unfairly traded.<sup>62</sup> 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 pipes and tubes. Based on the totality of the conditions in the HRC market and the production of pipes and tubes in India, Commerce preliminarily finds that the DIP's cost-based PMS allegation represent facets of a single PMS.

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 mild steel pipe itself does not exist.<sup>63</sup> The DIP has provided no record information to demonstrate that the distortions in the HRC market have passed through to a distortion in the market prices of either mild steel pipe or galvanized pipe. We note that mild steel pipe and galvanized pipe both constitute foreign like products, and as such this cost-based PMS allegation, that the market prices of pipe and tube are distorted, is indistinguishable from the DIP's sales-based PMS allegation for the sale prices of the foreign like product.

We find that the sales of imported mild steel pipe or galvanized pipe into India are not subject to the *Order*. As noted above, both mild steel pipe and galvanized pipe are products covered by the

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<sup>58</sup> *Id.* at 78 (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*)).

<sup>59</sup> *Id.* at 80.

<sup>60</sup> See PMS Allegation at 84-88.

<sup>61</sup> For a complete discussion, see Memorandum, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results on Particular Market Situation Allegations," dated concurrently with this Preliminary Decision Memorandum.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

scope of this proceeding. As such, if these products are produced in a country other than India, then these products are not subject to the antidumping duty order on pipes and tubes from India. Therefore, this portion of the DIP's PMS allegation is irrelevant to this review.

We also preliminarily find that a PMS does not exist such that Garg Tube's home market sale prices of pipes and tubes 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.<sup>64</sup>

Although we preliminarily find that a PMS existed during the POR for the Indian prices of HRC, there is insufficient information on the record to quantify an adjustment to Garg Tube's reported COP data for the preliminarily found cost-based PMS for HRC in the Indian market during the POR. As noted above, Commerce has requested additional information in a second deficiency questionnaire concerning the DIP's proposed regression analyses, the response to which is due no later than July 30, 2020. Commerce will consider the DIP's response with the purpose to quantify a PMS adjustment for the final results of this review.

## V. 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>.

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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\_\_\_\_\_  
Agree

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\_\_\_\_\_  
Disagree

7/20/2020

X



Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>64</sup> *Id.*