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Administrative Review
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August 31, 2021

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

FROM: Dana Mermelstein
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of Administrative Review: Finished Carbon Steel Flanges from India; 2019-2020

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] The period of review (POR) is August 1, 2019, through July 31, 2020. The administrative review covers 41 producers/exporters of flanges from India. Commerce selected two respondents for individual examination: R.N. Gupta & Co. Ltd. (Gupta) and the Norma Group.[2] We preliminarily

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

[2] In prior segments of this proceeding, 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 (the Norma Group). *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); *see also Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 57848, 57849 (October 29, 2019), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2017– 2018*, 85 FR 21391 (April 17, 2020); and *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2018-2019, 85 FR 83051 (December 21, 2021), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2018-2019, 86 FR 33226 (June 24, 2021). In this review, Norma (India) Limited and its affiliated entities presented evidence that the factual basis on which Commerce made its prior determinations has not changed. *See* Norma Group's Letter, "Finished Carbon Steel Flanges from India: Response to Section A-D of Antidumping Duty Supplemental Questionnaire," dated August 11, 2021 (Norma Group August 11, 2021 SQR) at S1-2 – S1-8. Therefore, Commerce continues to collapse and treat these four companies as a single entity.

determine that Gupta and the Norma Group made sales at prices below normal value (NV) during the POR. We preliminarily used the weighted average of the margins calculated for Gupta and the Norma Group, using public data, as the basis for the margin assigned to firms that were not selected for individual examination. The details of this finding are explained in the "Discussion of the Methodology" section, below. The estimated weighted-average dumping margins are shown in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On August 4, 2020, we published a notice of opportunity to request an administrative review of the *Order*.[3] Subsequently, Commerce received timely requests for an administrative review from the petitioners,[4] Gupta, the Norma Group, Bebitz Flanges Works Private Limited (Bebitz), Munish Forge Private Limited (Munish), Balkrishna Steel Forge Pvt. Ltd. (Balkrishna), Aditya Forge Limited (Aditya Forge), and Jai Auto Pvt. Ltd. of India (Jai Auto).[5] On October 6, 2020, we initiated an administrative review of the *Order* for the period August 1, 2019 through July 31, 2020, with respect to 41 companies.[6]

In the "Respondent Selection" section of the *Initiation Notice*, Commerce stated that, in the event that we limit the number of respondents for individual examination, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data.[7] Accordingly, on October 16, 2020, Commerce released the CBP data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.[8] We received no comments from any party. On November 12, 2020, we selected

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[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 47167, 47168 (August 4, 2020).
[4] The petitioners are Weldbend Corporation and Boltex Manufacturing Co., L.P.
[5] *See* Petitioners' Letter, "Finished Carbon Steel Flanges from India: Request for Administrative Review," dated August 31, 2020; *see also* Gupta's Letter, "Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review," dated August 28, 2020; Norma Group's Letter, "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 27, 2020; Bebitz's Letter, "Finished Carbon Steel Flanges from India: Requests for Administrative Review," dated August 28, 2020; Munish's Letter, "Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review," dated August 27, 2020; Balkrishna's Letter, "Carbon Steel Flanges from India, Antidumping & Countervailing Duty," dated August 31, 2020; Jai Auto's Letter, "Request for Anti-Dumping Duty Administrative Review of Finished Carbon Steel Flanges from India," dated August 31, 2020; and Aditya Forge's Letter, "Request for Anti-Dumping Duty Administrative Review of Finished Carbon Steel Flanges from India," dated August 31, 2020.
[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 63081 (October 6, 2020) (*Initiation Notice*).
[7] *Id.*, 85 FR at 63082.
[8] *See* Memorandum, "Carbon Steel Flanges from India: U.S. Customs and Border Protection Information for 2019-2020 Review Period," dated October 16, 2020.

Gupta and the Norma Group as mandatory respondents.[9] On November 13, 2020, we issued the initial AD questionnaire to Gupta and the Norma Group.[10] Between December 3, 2020, and August 18, 2021, Gupta and the Norma Group submitted timely responses to the initial AD questionnaire and supplemental questionnaires.[11]

On July 21, 2021, Commerce invited interested parties to submit comments and rebuttal comments on valuing constructed value (CV) profit and selling expenses.[12] Between August 4 and 16, 2021, we received comments and rebuttal comments from the interested parties.[13]

On April 28, 2021, Commerce extended the deadline for the preliminary results of this review until August 31, 2021, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2).[14]

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

[9] *See* Memorandum, "Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India: Respondent Selection," dated November 12, 2020 (Respondent Selection Memorandum).
[10] *See* Commerce's Letters, Initial AD Questionnaire, dated November 13, 2020.
[11] *See, e.g.*, Gupta's Letter, "R N Gupta & Company Limited ('RNG')'s Response to Section A of Original Antidumping Duty Questionnaire," dated December 4, 2020 (Gupta December 4, 2020 AQR); Gupta's Letter, "R N Gupta & Company Limited ('RNG')'s Response to Section B, C and D of Original Antidumping Duty Questionnaire," dated January 7, 2021 (Gupta January 7, 2021 BQR); Gupta's Letter, "R N Gupta & Company Limited ('RNG')'s Response to Section B, C and D of Original Antidumping Duty Questionnaire," dated January 7, 2021 (Gupta January 7, 2021 CQR); Gupta's Letter, "R N Gupta & Company Limited ('RNG')'s Response to Section B, C and D of Original Antidumping Duty Questionnaire," dated January 7, 2021; Norma Group's Letter, "Finished Carbon Steel Flanges from India: Norma Group's Response to Section A of Original Antidumping Questionnaire," dated December 17, 2020 (Norma Group December 17, 2020 AQR); Norma Group's Letter, "Finished Carbon Steel Flanges from India: Submission of Sections C and D Response of Norma (India) Limited," dated December 31, 2020 (Norma Group December 31, 2020 CQR); Norma Group's Letter, "Finished Carbon Steel Flanges from India: Response to Section D of Antidumping Duty Original Questionnaire," dated January 11, 2021; Norma Group's Letter, "Finished Carbon Steel Flanges from India: Response to Section A-D of Antidumping Duty Supplemental Questionnaire," dated August 11, 2021; Gupta's Letter, "Response to Supplemental Questionnaire," dated July, 14, 2021; Gupta's Letter, "Response to Section A-D First Supplemental of Original Antidumping Duty Questionnaire," dated August 11, 2021; and Gupta's Letter, "Response to A-D Second Supplemental of Original Antidumping Duty Questionnaire," dated August 18, 2021.
[12] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India: Request for Constructed Value Profit and Selling Expense Comments and Information," dated July 21, 2021.
[13] *See* Petitioners' Letter, "Finished Carbon Steel Flanges from India: Constructed Value Profit and Selling Expenses Comments," dated August 4, 2021; *see also* Norma Group's Letter, "Finished Carbon Steel Flanges from India: Submission of CV Comments," dated August 4, 2021; Petitioners' Letter, "Finished Carbon Steel Flanges from India: Constructed Value Profit and Selling Expenses – Rebuttal Comments," dated August 16, 2021; and Norma Group's Letter, "Finished Carbon Steel Flanges from India: Submission of Rebuttal to CV Comments Submitted by Petitioners," dated August 16, 2021.
[14] *See* Memorandum, "Finished Carbon Steel Flanges from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated April 28, 2021.

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
(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

This review covers 36 companies that were not selected for individual examination.[15]

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 market economy proceedings, 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 or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we preliminarily calculated a weighted-average dumping margin of 0.77 percent for Gupta and a weighted-average dumping margin of 4.38 percent for the Norma Group. Consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle*,[16] and our practice, we have preliminarily determined that 2.25 percent, which is the weighted-average of Gupta's margin and the Norma Group's margin based on public data, will be assigned to the non-examined companies under section 735(c)(5)(B) of the Act.[17]

V. DISCUSSION OF THE METHODOLOGY

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

Comparisons to NV

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Gupta's and the Norma Group's sales of flanges 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 "NV" 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

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[15] *See Initiation Notice*, 85 FR at 63082; *see also* Respondent Selection Memorandum.
[16] *See Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).
[17] *See* Memorandum, "Preliminary Results of the Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India: Calculation of Margin for Respondents Not Selected for Individual Examination," dated August 31, 2021.

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.[18]

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.[19] Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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 considered 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

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[18] *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 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("{t}he 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).

[19] *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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 71.86 percent of the value of U.S. sales pass the Cohen's *d* test,[20] 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 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 calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Gupta.

For the Norma Group, based on the results of the differential pricing analysis, Commerce preliminarily finds that 71.60 percent of the value of U.S. sales pass the Cohen's *d* test,[21] 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 all U.S. sales. 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 the Norma Group.

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 comparison 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.[22] 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 Gupta's U.S. sales to its sales made in a third country within the contemporaneous window period, which extends from three months prior to

[20] *See* Memorandum, "Analysis for the Preliminary Results of Review of Finished Carbon Steel Flanges from India: R. N. Gupta & Co. Ltd.," dated concurrently with this memorandum at 2.
[21] *See* Memorandum, "Finished Carbon Steel Flanges from India: Analysis for the Preliminary Results of Review of Finished Carbon Steel Flanges from India: the Norma Group," dated concurrently with this memorandum (Norma Group Analysis Memorandum) at 5.
[22] *See* Gupta December 4, 2020 AQR at 4 and Exhibit A-1.

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 the Norma Group did not have a viable home market or third-country market with respect to its sales of subject merchandise,[23] we compared U.S. sales to NVs based on CV. As such, for the Norma Group, 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.

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.[24] 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.[25] For its third-country sales and U.S. sales, Gupta reported the invoice date as the date of sale.[26] For its U.S. sales, the Norma Group reported the invoice date as the date of sale.[27] For Gupta and the Norma Group, the record of this review indicates that the invoice dates are the dates when price and quantity terms are set.[28] Therefore, we have preliminarily used invoice date as the date of sale for Gupta and the Norma Group'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

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[23] *See* Norma Group December 17, 2020 AQR at 3 and Exhibit A-1.
[24] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).
[25] *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; and *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.
[26] *See* Gupta December 4, 2020 AQR at A-20-21; *see also* Gupta January 7, 2021 BQR at B-31; and Gupta January 7, 2021 CQR at C-31.
[27] *See* Norma Group December 31, 2020 CQR at C-28.
[28] *See* Gupta January 7, 2021 CQR at C-31; *see also* Norma Group August 11, 2021 SQR at S1-1 – S1-2 and Exhibit S2-1.

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 Group.

Gupta and the Norma Group each reported that they made only EP sales during the POR.[29] 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, where appropriate, for billing adjustments, freight revenue, and the export subsidy component of countervailing duties paid. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, inland freight, international freight, insurance, U.S. duties, and brokerage and handling 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 and 19 CFR 351.404. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404(b).

Based on this comparison, we preliminarily determine that, pursuant to 19 CFR 351.404(b), Gupta and the Norma Group 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.[30] Because we find that the aggregate quantity of the foreign like product that Gupta sold in a third-country market was greater than five percent of the aggregate volume of its 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.[31] We also preliminarily find that the aggregate quantity of the foreign like product that the Norma Group sold in any third-country market was less than five percent of the aggregate volume of its U.S. sales, and therefore, that Norma Group had no viable third-country market. Accordingly, for the Norma Group, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.[32]

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[29] *See* Gupta January 7, 2021 CQR at C-1; *see also* Norma Group December 31, 2020 CQR at C-2 and C-26.
[30] *See* Gupta December 4, 2020 AQR at 2 and Exhibit A-1; *see also* Norma Group December 17, AQR at 3 and Exhibit A-1.
[31] *See* Gupta Analysis Memorandum at Attachment 1; *see also* Gupta’s December 4, 2020 AQR at 2-4 and Exhibit A-1.
[32] *See* Norma Group Analysis Memorandum at 2.

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).[33] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[34] 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.

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.[35]

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 an 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 and 19 CFR 351.412(f).[36]

Gupta reported that it had a single channel of distribution in its comparison and U.S. markets[37] and reported that it had two customer categories (*i.e.*, "distributor" and "trader") in this single U.S. channel of distribution.[38] Gupta reported that it had two customer categories, that of distributor and trader, in the comparison market.[39] Gupta submitted a selling functions chart which showed 23 different selling functions; a slight difference in the level of activity existed in only one of the 23 functions.[40] Therefore, we preliminarily determine that only one LOT 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

[33] *See* 19 CFR 351.412(c)(2).
[34] *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.
[35] *See Micron Technology, Inc. v. United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).
[36] *See Orange Juice from Brazil* IDM at Comment 7.
[37] *See* Gupta December 4, 2020 AQR at 21 and 25.
[38] *Id.* at 21.
[39] *Id*. at 16.
[40] *Id*. at Exhibit A-5.

sales and its comparison-market sales represent the same stage in the marketing process. For this reason, we preliminarily determine that a LOT adjustment is not warranted for Gupta.

The Norma Group did not claim any LOT adjustment and, because it has no viable comparison market, we are unable to make any LOT comparison. Therefore, we are unable to grant any LOT adjustment for these preliminary results.[41]

Furthermore, because neither Gupta nor Norma Group made any CEP sales during the POR, we have not made a CEP offset in these preliminary results.

Cost of Production (COP) Analysis

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

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 the Norma Group 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

[41] *See* Norma Group December 31, 2020 CQR at 38.

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.

Our cost test for Gupta indicated that more than 20 percent of sales of certain third-country products were made at prices below the COP within an extended period of time and were made at prices which would not permit the recovery of all costs within a reasonable period of time.[42] Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis, and used the remaining above-cost sales to determine NV.

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

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 the starting price, where appropriate, 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, international freight, marine insurance, and brokerage and handling expenses 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 (*e.g.*, imputed credit, fumigation charges, bank charges). We also added U.S. direct selling expenses, *i.e.*, credit expenses, fumigation charges, 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.

NV Based on Constructed Value

As explained above, the Norma Group 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. In accordance with 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based selling expenses and profit for the Norma Group on the amounts Gupta 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. We also added U.S. direct selling expenses, *i.e.*, credit expenses, bank charges, and warranty expenses to NV.

[42] *See* Gupta Analysis Memorandum at Attachment 1.

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.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒ ☐

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Agree Disagree

8/31/2021

X James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations