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Admin. Review  
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October 16, 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:** Finished Carbon Steel Flanges from Spain: 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 finished carbon steel flanges (flanges) from Spain in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is June 1, 2018 through May 31, 2019. The administrative review covers eight companies, including the mandatory respondent, ULMA Forja, S.Coop (ULMA). We preliminarily determine that ULMA made sales of subject merchandise at prices below normal value (NV) during the POR.

## II. BACKGROUND

On June 14, 2017, Commerce published in the *Federal Register* an AD order on flanges from Spain.<sup>1</sup> On June 3, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order*.<sup>2</sup> On June 24, 2019, we received a timely request from Weldbend Corporation and Boltex Manufacturing Co., L.P. (the petitioners) for an administrative review of the following companies: (1) ULMA Forja, S.Coop; (2) Grupo Cunado; (3) Tubacero, S.L.; (4) Ateaciones De Metales Sinterizados S.A.; (5) Transglory S.A.; and (6) Central Y Almacenes.<sup>3</sup> On June 28, 2019, we received a timely request from the petitioners for administrative review of two additional companies, Friedrich Geldbach GmbH and

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<sup>1</sup> See *Finished Carbon Steel Flanges from Spain: Antidumping Duty Order*, 82 FR 27229 (June 14, 2017) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 25521 (June 3, 2019).

<sup>3</sup> See Petitioners' Letter, "Finished Carbon Steel Flanges from Spain: Request for Administrative Review," dated June 24, 2019.



Farina Group Spain.<sup>4</sup> Also on June 28, 2019, we received a timely request from ULMA for an administrative review of itself.<sup>5</sup> On July 29, 2019, Commerce initiated an administrative review of the *Order* on flanges from Spain for the period June 1, 2018 through May 31, 2019, for the eight companies for which requests for review had been received.<sup>6</sup> On September 9, 2019, Commerce published in the *Federal Register* a correction to the *Initiation Notice*, rectifying a misspelling of the name of a company subject to this review.<sup>7</sup>

In the *Initiation Notice*, Commerce stated that if it limited the number of respondents for individual examination in this administrative review, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review.<sup>8</sup> We queried CBP's Automated Commercial System for all entries of subject merchandise suspended pursuant to the *Order*, for the period June 1, 2018 through May 31, 2019, manufactured by the companies on which we initiated this administrative review. On September 26, 2019, we placed the proprietary results of the data query on the record of this administrative review.<sup>9</sup> We provided a period for interested parties to comment on the CBP data, and received timely comments from the petitioners on October 2, 2019.<sup>10</sup> On November 19, 2019, we selected ULMA as the sole mandatory respondent in this review.<sup>11</sup> On November 21, 2019, we issued the standard AD questionnaire (the questionnaire) to ULMA.<sup>12</sup>

On December 5, 2019, ULMA timely submitted its notification that its home market sales of subject merchandise aggregated less than five percent of its U.S. sales, by quantity.<sup>13</sup> Between December 19, 2019, and January 13, 2020, ULMA submitted its responses to sections A-D of the questionnaire.<sup>14</sup> Between January 16, 2020, and July 20, 2020, we issued supplemental

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<sup>4</sup> See Petitioners' Letter, "Finished Carbon Steel Flanges from Spain: Request for Administrative Review," dated June 28, 2019.

<sup>5</sup> See ULMA's Letter, "ULMA Forja, S. Coop's Request for Administrative Review: Finished Carbon Steel Flanges from Spain," dated June 28, 2019.

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 36572, 36575 (July 29, 2019) (*Initiation Notice*). Those companies were: (1) ULMA Forja, S.Coop; (2) Grupo Cunado; (3) Tubacero, S.L.; (4) Ateaciones De Metales Sinterizados S.A.; (5) Transglory S.A.; (6) Central Y Almacenes; (7) Friedrich Geldbach GmbH; and (8) Farina Group Spain.

<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019), at 47247.

<sup>8</sup> *Id.*, 84 FR at 36572.

<sup>9</sup> See Memorandum, "Finished Carbon Steel Flanges from Spain, 2018-2019: Placement on the Record of Results of Inquiry to U.S. Customs and Border Protection," dated September 26, 2019. The results of Commerce's data query are contained in Attachment 1 of that memorandum.

<sup>10</sup> See Petitioners' Letter, "Finished Carbon Steel Flanges from Spain: Comments - CBP Data Placed on the Record," dated October 2, 2019.

<sup>11</sup> See Memorandum, "Selection of Respondents for the 2018-2019 Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from Spain," dated November 19, 2019.

<sup>12</sup> See Commerce's Letter, "ULMA Antidumping Questionnaire," dated November 21, 2019.

<sup>13</sup> See ULMA's letter, "ULMA FORJA's Notice of Home Market Sales Less Than Five Percent of U.S. Sales of Subject Merchandise: Finished Carbon Steel Flanges from Spain POR 2," dated December 5, 2019.

<sup>14</sup> See ULMA's Letter, "ULMA FORJA S. COOP's Response to Section A Questionnaire, Finished Carbon Steel Flanges from Spain, POR 2," dated December 19, 2019 (Section A Response); *see also* ULMA's Letters, "ULMA FORJA S. COOP's Response to Section B Questionnaire -- Finished Carbon Steel Flanges from Spain, POR 2"; "ULMA FORJA S. COOP's Response to Section C Questionnaire -- Finished Carbon Steel Flanges from Spain, POR 2"; and "ULMA FORJA S. COOP's Response to Section D Questionnaire -- Finished Carbon Steel Flanges

questionnaires to ULMA.<sup>15</sup> Between January 29, 2020, and July 17, 2020, ULMA submitted its responses to our supplemental questionnaires.<sup>16</sup>

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>17</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>18</sup> On February 21, 2020, we extended the deadline for the preliminary results by 89 days.<sup>19</sup> On July 6, 2020, we extended the deadline for the preliminary results by an additional 31 days.<sup>20</sup> The deadline for the preliminary results of this administrative review is now October 19, 2020.

### III. SCOPE OF THE *ORDER*

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

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.*, 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.*, flat face, full face, raised face, *etc.*), configuration (*e.g.*, weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon

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from Spain, POR 2,” each dated January 13, 2020 (Section B Response; Section C Response; and Section D Response, respectively).

<sup>15</sup> See Commerce’s Letter, “Finished Carbon Steel Flanges from Spain: Initial Supplemental Section A Questions,” dated January 16, 2020; *see also* Commerce’s Letter, “Finished Carbon Steel Flanges from Spain: Supplemental Section A, B, C, and D Questions” dated April 17, 2020; and Commerce’s Letter, “Finished Carbon Steel Flanges from Spain: Second Supplemental Section A, B, C, and D Questions,” dated July 8, 2020.

<sup>16</sup> See ULMA’s Letter, “ULMA FORJA S. COOP’s response to Supplemental Section A of the Department’s Antidumping Questionnaire -- Finished Carbon Steel Flanges from Spain, POR 2,” dated January 29, 2020; *see also* ULMA’s Letter, “ULMA Forja, S. Coop’s Response to the Department’s 2<sup>nd</sup> Supplemental Questionnaire -- Finished Carbon Steel Flanges from Spain, POR 2,” dated May 20, 2020; and ULMA’s Letter, “ULMA Forja, S. Coop’s Response to the Department’s Second Supplemental Questionnaire on Section A-D Questions -- Finished Carbon Steel Flanges from Spain, POR 2,” dated July 17, 2020.

<sup>17</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>18</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>19</sup> See Memorandum, “Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2018-2019,” dated February 21, 2020.

<sup>20</sup> See Memorandum, “Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2018-2019,” dated July 6, 2020.

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. DISCUSSION OF THE METHODOLOGY**

### **Comparisons to Normal Value**

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether ULMA's sales of the subject merchandise from Spain to the United States were made at less than NV, Commerce compared the constructed export price (CEP) and export price (EP) to the NV as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this memorandum. As further explained below, we have preliminarily determined that ULMA made no CEP sales.

#### **A. Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NV to weighted-average EP (or CEP) (*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 (LTFV), Commerce examines whether to compare weighted-average normal values 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 LTFV investigations.<sup>21</sup>

In recent investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>22</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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

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

<sup>22</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value 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 ULMA, based on the results of the differential pricing analysis, we preliminarily find that 66.22 percent<sup>23</sup> of its EP sales confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Moreover, our analysis of the application of the A-to-T alternative method to respondent's EP sales yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. The weighted-average dumping margin using either alternative methodology is above the *de minimis* threshold. Accordingly, we preliminarily determine to use the A-to-T alternative method in making comparisons of EP and NV for this respondent.

## Product Comparisons

In accordance with section 771(16) of the Act, we compared U.S. sales to sales made in the comparison market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. For instances in which there was neither an identical nor similar comparison product, we compared

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<sup>23</sup> See Memorandum, "Finished Carbon Steel Flanges from Spain: Analysis of Data Submitted by ULMA Forja S.Coop. for Preliminary Results of Antidumping Duty Administrative Review; 2018-2019," dated concurrently with this memorandum (Analysis Memorandum) at 11.

the products sold in the United States to constructed value. In the order of importance, these physical characteristics are category, stage, state, and range of concentration of active ingredients.

### **Date of Sale**

Section 351.401(i) of Commerce's regulations states that we normally will use, as the date of sale, the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business. The regulation provides further that we may use a date other than invoice date if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. Consistent with our long-standing practice, where shipment date precedes invoice date, we find that shipment date better reflects the date on which the material terms of sale are established.<sup>24</sup> In both markets, ULMA records the invoice date as the date of sale, because material terms of sale (price, product and occasionally price) can, and do, change between the date the original purchase order is confirmed and the date the product is invoiced and shipped. However, while the invoice date is the date of sale according to ULMA's records, ULMA reported the earlier of invoice date or shipment date (the date the merchandise leaves the factory or warehouse) as the date of sale in its U.S. and CM databases. We have preliminarily used the date of sale as ULMA reported, in accordance with Commerce's standard practice.<sup>25</sup>

### **Export Price and Constructed 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)" of section 772 of the Act.

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 to an unaffiliated purchaser in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)" of section 772 of the Act.

#### *Direct ULMA Sales in U.S. Market*

The first channel of distribution reported by ULMA consisted of direct sales from ULMA to U.S. customers.<sup>26</sup> We preliminarily determine that these are EP sales. The second channel of distribution reported by ULMA involved back-to-back invoicing through ULMA Piping USA,

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<sup>24</sup> See *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), 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), and accompanying IDM at Comment 2.

<sup>25</sup> See Section A Response at 24; see also Section B Response at 29-30; and Section C Response at 28-29.

<sup>26</sup> See Section A Response at 19-20.



ULMA's U.S. affiliate. In this channel, ULMA invoiced the product to ULMA Piping USA on the date the merchandise left the factory; ULMA issued an invoice from ULMA Piping USA to the U.S. customer on the same date. ULMA was responsible for the documentation, invoicing, transportation, U.S. entry duties, antidumping duties, and all other expenses, and ULMA was the importer. The merchandise never entered into ULMA Piping USA's possession, inventory, or books.<sup>27</sup> Because ULMA negotiated all terms of sale with its customers before the subject flanges entered the United States, we preliminarily determine that these are EP sales.

Pursuant to section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. No other adjustments were claimed or applied.

## **Normal Value**

### **A. Home Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that the home market is not viable, 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.

We preliminarily determine that the aggregate volume of ULMA's home market sales of the foreign like product was not greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.<sup>28</sup> Therefore, for ULMA's margin analysis, we used third-country sales (*i.e.*, sales to Canada, its largest third-country market) as the basis for NV, in accordance with section 773(a)(1)(B)(ii) of the Act.<sup>29</sup>

### **B. Cost of Production**

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request cost information from respondent companies in all antidumping proceedings. Thus, we requested this information from ULMA, and it submitted timely responses. We examined ULMA's cost data and determined that our quarterly cost methodology was not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.<sup>30</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> See Section A Response at 4 and Exhibit A-1.

<sup>29</sup> *Id.*; see also Analysis Memorandum.

<sup>30</sup> We made certain adjustments to ULMA's COP data. See Analysis Memorandum.

## 1. Calculation of COP

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 ULMA in its questionnaire responses for the COP calculation.

## 2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, 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 were at prices less than the COP, we did not disregard 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 the respondent's comparison market sales of a given model were at prices less than the COP, we disregarded 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, the sales were made 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 tests for ULMA indicated that, for comparison market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.<sup>31</sup>

## C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>32</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

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<sup>31</sup> See Analysis Memorandum at 4.

<sup>32</sup> See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.<sup>33</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine 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.*, NV based on either home market or third-country prices),<sup>34</sup> 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.<sup>35</sup>

When we are unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, we may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales, to 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 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), we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>36</sup>

ULMA did not claim different levels of trade in the comparison market or U.S. market, coding all sales as at the same level of trade in its database reporting;<sup>37</sup> ULMA claimed neither a level of trade adjustment nor a CEP offset (as there were no CEP sales). We nevertheless examined the differences in selling functions reported in ULMA's responses. Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. ULMA reported that it utilized only one channel of distribution in the comparison market, direct sales to unaffiliated end users.<sup>38</sup> We therefore found that there is a single LOT in the comparison market.

ULMA reported two channels of distribution in the United States, as detailed above. Most or all of the selling activities related to sales in the United States are performed by ULMA. We found that, for both channels of distribution, the selling functions performed by ULMA are minimal. For these sales, the selling activities that ULMA performs are substantially similar to the selling activities ULMA performed in its comparison market LOT. ULMA reported activity in 24 selling functions for its sales in the comparison market and in the United States.<sup>39</sup> For none of these selling activities was there a higher level of intensity in the comparison market sufficient to

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<sup>33</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order, in Part*, 75 FR 50999, 51001 (August 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at Comment 7.

<sup>34</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>35</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>36</sup> See, e.g., *Orange Juice from Brazil*, and accompanying IDM at Comment 7.

<sup>37</sup> See Section B Response at 42; see also Section C Response at 40.

<sup>38</sup> See Section A Response at Exhibit A-11.

<sup>39</sup> *Id.*

determine that the comparison market LOT was substantially different from the EP LOT. Accordingly, we preliminarily determine that the comparison market sales were not made at a LOT that was at a more advanced stage of distribution than the EP LOT. On this basis, we preliminarily find that an LOT adjustment is not warranted.

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

We based NV on the starting prices of ULMA to unaffiliated third-country market customers. We made adjustments for differences in packing and for inland freight expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also 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. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.<sup>40</sup> See Analysis Memorandum for further details.

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

In accordance with 773(e) of the Act, we used CV as the basis for normal value for the U.S. sales for which we could not find comparison market sales of similar or identical merchandise. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, U.S packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, 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 ULMA 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.<sup>41</sup>

#### 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.<sup>42</sup>

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<sup>40</sup> See 19 CFR 351.411(b).

<sup>41</sup> See Analysis Memorandum.

<sup>42</sup> These exchange rates are available on the Enforcement and Compliance website at: <http://enforcement.trade.gov/exchange/index.html>.

**V. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results of review.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/16/2020

**X**



Signed by: JEFFREY KESSLER

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