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Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Stainless Steel Flanges
from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that stainless steel flanges from India are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On August 16, 2017, Commerce received an antidumping duty (AD) petition covering imports of stainless steel flanges from India,¹ which was filed in proper form by the Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (collectively, the petitioners). Commerce initiated this investigation on September 5, 2017.²

¹ See the petitioners’ submission, “Stainless Steel Flanges from the People’s Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated August 16, 2017.

² See *Stainless Steel Flanges from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 42649 (September 11, 2017) (*Initiation Notice*).



In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on August 31, 2017, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On September 14, 2017, we received comments on the CBP data and respondent selection from the petitioners.⁵ On October 3, 2017, Commerce limited the number of respondents selected for individual examination to the three largest publicly identifiable producers/exporters of the subject merchandise by volume, Bebitz Flanges Works Pvt. Ltd. (Bebitz), Chandan Steel Limited (Chandan), and Echjay Forgings Pvt. Ltd. (Echjay),⁶ and issued the AD questionnaire to them.⁷

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of stainless steel flanges to be reported in response to the original questionnaire.⁸ Commerce did not receive any timely scope comments. Between September 25, 2017, and October 5, 2017, the petitioners and other various interested parties in this and/or the companion AD investigation submitted timely comments to Commerce regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁹ Based on the comments received, Commerce issued a letter to interested parties that contained the product characteristics for this and the companion AD investigation.¹⁰ Subsequently, Chandan commented on physical characteristics in its questionnaire responses starting on October 31, 2017, which was after the deadline to file comments and rebuttal comments on physical characteristics.¹¹ As such, Chandan's comments on physical characteristics are untimely filed; and moreover, Chandan did not file such comments on the record of the companion AD investigations, pursuant to Commerce's regulations and as instructed in the *Initiation Notice*.¹² Accordingly, Commerce is

³ See *Initiation Notice* at 42652.

⁴ See Memorandum, "Stainless Steel Flanges from India Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated August 31, 2017 (Respondent Selection Data Memo).

⁵ See the petitioners' submission, "Stainless Steel Flanges from India – Petitioners' Comments on Respondent Selection," dated September 14, 2017.

⁶ See Memorandum, "Investigation of Stainless Steel Flanges from India: Respondent Selection," dated October 3, 2017 (Respondent Selection Memo).

⁷ See Commerce's letter, "Antidumping Questionnaire to Bebitz Flanges Works Pvt. Ltd.," dated October 3, 2017 (Bebitz's AD Questionnaire); Commerce's letter, "Antidumping Questionnaire to Chandan Steel Limited," dated October 3, 2017 (Chandan's AD Questionnaire); and Commerce's letter, "Antidumping Questionnaire to Echjay Forgings Pvt. Ltd.," dated October 3, 2017 (Echjay's AD Questionnaire).

⁸ See *Initiation Notice* at 42649-42650.

⁹ See the petitioners' submission, "Petitioners' Comments on Product Characteristics," dated September 25, 2017; Bebitz's submission, "Stainless Steel Flanges from India and India – Product Matching," dated October 5, 2017; and Echjay's submission, "Rebuttal Comments on Petitioners' Comments of Product Characteristics," dated October 5, 2017.

¹⁰ See Commerce's letter, "Product Characteristics for the Antidumping Investigations of Stainless Steel Flanges from India and People's Republic of China," dated October 11, 2017.

¹¹ See Chandan's submission, "Section A Questionnaire Response," dated October 31, 2017 (Chandan's Section A Response).

¹² See *Initiation Notice* at 42650.

not considering Chandan's untimely filed comments on physical characteristics for this preliminary determination.

On October 2, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by imports of stainless steel flanges from India.¹³

Between October 2017 and December 2017, Pradeep Metals Limited (Pradeep Metals) submitted responses to our original questionnaire and requested to be considered for voluntary respondent treatment in this investigation.¹⁴

From November 2017 through February 2018, we issued supplemental questionnaires to Bebitz, Chandan, and Echjay. We received responses to these supplemental questionnaires from November 2017 through March 2018. In addition, Bebitz filed untimely and incomplete supplemental questionnaire responses, which Commerce rejected.¹⁵

On December 18, 2017, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to 19 CFR 351.205(b)(2).¹⁶ Thereafter, pursuant to section 733(c)(1)(A) of the Act, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than March 14, 2018.¹⁷ Commerce also exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.¹⁸ Because the new deadline falls on a non-business day (*i.e.*, the weekend), pursuant to Commerce's practice, the deadline moves to the next business day. The revised deadline is March 19, 2018.

On December 27, 2017, the petitioners filed a timely allegation, pursuant to section 733(e) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.¹⁹ In this same month, Commerce requested shipment data

¹³ See *Stainless Steel Flanges from China and India; Determinations*, 82 FR 46831 (October 6, 2017).

¹⁴ See Pradeep Metal's submission, "Section A Response," dated October 31, 2017; and Pradeep Metal's submission, "Sections B-D Response," dated December 1, 2017.

¹⁵ See Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India: Rejection of Supplemental Section C Questionnaire Response," dated March 1, 2018 (Rejection of Bebitz's Supplemental Section C Response); see also Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India: Rejection of Supplemental Section D Questionnaires Responses," dated March 1, 2018 (Rejection of Bebitz's and Viraj's Supplemental Section D Responses).

¹⁶ See the petitioners' submission, "Stainless Steel Flanges from India: Petitioners' Request to Extend the Preliminary Determination," dated December 18, 2017.

¹⁷ See *Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 83 FR 1025 (January 9, 2018).

¹⁸ See Memorandum, from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

¹⁹ See the petitioners' submission, "Stainless Steel Flanges from India: Critical Circumstances Allegations," dated December 27, 2017 (Critical Circumstances Allegation).

from Bebitz, Chandan and Echjay with respect to the critical circumstances allegation.²⁰ Bebitz, Chandan and Echjay responded to Commerce’s request for shipment data.²¹

Additionally, in February 2018, and March 2018, the petitioners submitted comments that Commerce considered in making its preliminary determination.²²

On March 6, 2018, and March 7, 2018, Commerce issued memoranda regarding our meetings with Chandan and Pradeep Metals.²³ Additionally, on March 5, 2018, and March 6, 2018, Chandan and Pradeep submitted information requested by Commerce to be placed on the record.²⁴ Also, on March 8, 2018, the petitioners filed a response to Pradeep’s submission noting that Pradeep was requesting that a certain grade of stainless steel flanges be found outside the scope of the investigation and that this request is untimely because it was filed over four months after the deadline to submit scope comments.²⁵

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2016, through June 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was August 2017.²⁶

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce’s regulations,²⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁸ Pradeep

²⁰ See Commerce’s letter, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Request for Monthly Quantity and Value Shipment Data,” dated December 28, 2017.

²¹ See Bebitz’s submission, “Bebitz Response to Request for Quantity and Value Data,” dated January 15, 2018; Echjay’s submission, “Echjay’s Monthly Quantity and Value Data for Shipment,” dated January 15, 2018; and Chandan Steel’s submission, “Chandan Steel’s Monthly Quantity and Value Data for Shipments,” dated January 15, 2018.

²² See the petitioners’ submission, “Stainless Steel Flanges from India: Petitioners’ Pre-Preliminary Determination Comments Regarding Echjay,” dated February 21, 2018; the petitioners’ submission, “Stainless Steel Flanges from India: Petitioners’ Pre-Preliminary Determination Comments Regarding Chandan,” dated February 25, 2017; and the petitioners’ submission, “Stainless Steel Flanges from India: Petitioners’ Pre-Preliminary Determination Comments Regarding Bebitz,” dated March 5, 2018.

²³ See Memorandum, “Stainless Steel Flanges from India: *Ex Parte* Meeting with Chandan Steel Limited,” dated March 6, 2018; and Memorandum, “Stainless Steel Flanges from India: *Ex Parte* Meeting with Pradeep Metals Limited (Pradeep),” dated March 6, 2018.

²⁴ See Pradeep’s submission, “Stainless Steel Flanges from India: Submission of Factual Information Pursuant to Request from {Commerce},” dated March 5, 2018 (Pradeep March 5 Submission); and Chandan’s submission, “Stainless Steel Flanges from India (A-533-877), Chandan Steel Limited’s submission of Minutes of Meeting at {Commerce} dated March 1, 2018,” dated March 6, 2018 (Chandan’s March 1 Submission).

²⁵ See the petitioners’ submission, “Stainless Steel Flanges from India: Petitioners’ Response to Pradeep’s Submission of New Factual Information,” dated March 8, 2018 (the petitioners’ March 8 letter).

²⁶ See 19 CFR 351.204(b)(1).

²⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁸ See *Initiation Notice*, 82 FR at 19208.

Metals submitted factual information supporting its allegation that its specialized stainless steel flanges are different than standard flanges subject to the investigation, and the petitioners filed comments in opposition.²⁹ However, because Pradeep Metal's and the petitioners' submissions regarding Pradeep Metal's alleged specialized stainless steel flanges were filed over four months after the scope comment deadline of September 25, 2017. As explained in the *Initiation Notice*, parties wanting to provide additional factual information pertaining to the scope of the investigations after the scope comment deadline should contact Commerce and request permission to submit the additional factual information.³⁰ Because neither party followed this process, Commerce finds that these comments are untimely and will not consider them for this preliminary determination. As no interested parties submitted timely comments on the scope of this investigation, we made no changes to the scope language as it appeared in the *Initiation Notice*.

V. Selection of Voluntary Respondent

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. On June 29, 2015, the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act, was signed into law.³¹ When Commerce limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs Commerce to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to this investigation is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation. Under section 782(a)(2) of the Act, as amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of these investigations and reviews.

As noted above, because of the large number of exporters involved in this investigation, Commerce limited the number of respondents to be individually examined pursuant to section 777A(c)(2) of the Act and on October 3, 2017, Commerce determined that it was not practicable to examine more than three respondents.³² Therefore, in accordance with section 777A(c)(2)(B)

²⁹ See Pradeep March 5 Submission; and the petitioners' March 8 letter.

³⁰ See *Initiation Notice*, 82 FR at 19208.

³¹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA).

³² See Respondent Selection Memo.

of the Act, Commerce selected for individual examination the three exporters accounting for the largest volume of stainless steel flanges exported from India during the POI based on CBP data. Commerce also noted that, if it received timely voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.³³

As noted above, in October 2017, Commerce selected, for individual examination as mandatory respondents in this proceeding, the three largest exporters by volume of subject merchandise during the POI that can reasonably be examined, Bebitz, Chandan, and Echjay.³⁴ With regard to voluntary treatment, on October 31, 2017, Pradeep Metals requested voluntary respondent status.³⁵ However, Pradeep Metals did not submit timely responses (Sections B through D) to Commerce's questionnaire based on the deadlines established for Chandan and Echjay.³⁶ Pradeep Metals has therefore failed to provide such information by the date specified for the mandatory respondents, as required by section 782(a)(1)(A) of the Act. As a result, we find that Pradeep Metals is not eligible for individual examination as a voluntary respondent.

VI. AFFILIATION AND COLLAPSING

A. *Legal Standard*

Section 771(33) of the Tariff Act of 1930, as amended (the Act), provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Section 351.102(b)(3) of Commerce's regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act, and states the following:

In determining whether control over another person exists, within the meaning of section

³³ *Id.*

³⁴ See Respondent Selection Memo.

³⁵ See Pradeep Metal's submission, "Stainless Steel Flanges from India: Request to be Voluntary Respondent, dated October 31, 2017.

³⁶ See Pradeep Metal's Sections B-D Response; Chandan's submission, "Sections B-D Response," dated November 30, 2017 (Chandan's Sections B-D Response); and Echjay's submission, "Sections B-D Response," dated November 30, 2017 (Echjay's Sections B-D Response).

771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.³⁷

Section 771(33)(F) of the Act considers entities to be affiliated if they directly or indirectly control, are controlled by, or are under common control with, any person. For purposes of statutory construction, the term “person” can be construed in the singular or plural and can include a corporate entity or group.³⁸ Moreover, the statute does not require evidence of actual control; it is the ability to control that is dispositive.³⁹ A company may be in a position to exercise restraint or direction, for example, through “corporate . . . groupings”⁴⁰ Additionally, Commerce may consider control to arise from the potential to manipulate price and production.⁴¹

Section 351.401(f) of Commerce’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁴²

Commerce has long recognized that it is appropriate to treat certain groups of companies as a

³⁷ See 19 CFR 351.102(b)(3).

³⁸ See *Dongkuk Steel Mill Co., v. United States*, Court No. 04-000190, Slip Op. 05-75 (CIT June 22, 2005).

³⁹ See *Preamble*, 62 FR 27296, 27297-98.

⁴⁰ See SAA at 838; 19 CFR 351.102(b).

⁴¹ See *Certain Welded Carbon Standard Steel Pipe and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review*, 52 FR 47632, 47638 (September 10, 1997).

⁴² See 19 CFR 351.401(f).

single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.⁴³ While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis.⁴⁴ In a number of past cases, Commerce has treated exporting companies as a single entity,⁴⁵ as well as producers and exporters as a single entity.⁴⁶

Furthermore, the CIT has upheld Commerce's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.⁴⁷ For example, in *Hontex II*,⁴⁸ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.⁴⁹

B. Affiliation and Collapsing of Bebitz and Viraj into a Single Entity

Based on the information presented in Bebitz's questionnaire responses, Commerce preliminarily finds that Bebitz USA, Inc. (Bebitz USA), Flanschenwerk Bebitz GmbH (FBG), Viraj Profiles Limited (Viraj), and Viraj USA, Inc. (Viraj USA) are affiliated with Bebitz and Family Group A⁵⁰ identified in the questionnaire responses, pursuant to sections 771(33)(A) and (F) of the Act. The affiliation status with certain companies and Family Group A has been designated by Bebitz as business proprietary information. Therefore, Commerce has issued a separate business proprietary memorandum that contains a full discussion of our affiliation determinations.⁵¹

Based on information provided in Bebitz's questionnaire responses and in accordance with 19 CFR 351.401(f), Commerce also preliminarily finds that Bebitz, Bebitz USA, FBG, Viraj, and Viraj USA, should be treated as a single entity for purposes of this investigation (Bebitz/Viraj

⁴³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) and accompanying IDM at Comment 5.

⁴⁴ While 19 CFR 351.401(f) uses the term "producers," Commerce's practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)).

⁴⁵ *Id.*

⁴⁶ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

⁴⁷ See *Queen's Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997).

⁴⁸ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).

⁴⁹ *Id.*

⁵⁰ The identification of Family Group A is business proprietary information, for further disclosure, please see Memorandum to James C. Doyle, Office V, through Paul Walker, Program Manager, from Julia Hancock, Senior International Trade Compliance Analyst, "Antidumping Duty Investigation of Stainless Steel Flanges from India: Preliminary Determination of Affiliation/Single Entity Treatment of Bebitz/Viraj Single Entity," issued concurrently with this memorandum and herein incorporated by reference (Bebitz/Viraj Affiliation and Single Entity Memo).

⁵¹ See Bebitz/Viraj Affiliation and Single Entity Memo.

single entity). The relevant information for this determination has been designated by the Bebitz/Viraj single entity as business proprietary information. Therefore, Commerce issued the Bebitz/Viraj Affiliation and Single Entity Memo, a separate business proprietary memorandum that contains a full discussion of our affiliation and collapsing determination.⁵²

C. Affiliation and Collapsing of Echjay, Echjay Industries, Echjay Forgings and Spire into a Single Entity

Based on the information presented in Echjay's questionnaire responses, Commerce preliminarily finds that Echjay Industries Private Limited (Echjay Industries), Echjay Forging Industries Private Limited (Echjay Forgings) and Spire Industries Pvt. Limited (Spire) are affiliated with Echjay and Family Group B⁵³ identified in the questionnaire responses, pursuant to sections 771(33)(A) and (F) of the Act. The affiliation status with certain companies and Family Group B has been designated by Echjay as business proprietary information. Therefore, Commerce issued a separate business proprietary memorandum that contains a full discussion of our affiliation determinations.⁵⁴

Based on information provided in Echjay's questionnaire responses, Commerce also preliminarily finds that Echjay, Echjay Industries, Echjay Forgings and Spire, should be considered as a single entity for purposes of this investigation (Echjay single entity). The relevant information for this determination has been designated by the Echjay single entity as business proprietary information. Therefore, Commerce issued the Echjay Affiliation and Single Entity Affiliation Memo, a separate business proprietary memorandum that contains a full discussion of our affiliation and collapsing determination.⁵⁵

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A. Legal Standard

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not on the record, or if an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the

⁵² See Bebitz/Viraj Affiliation and Single Entity Affiliation Memo.

⁵³ The identification of Family Group B is business proprietary information, for further disclosure, please see Memorandum to James C. Doyle, Office V, through Paul Walker, Program manager, from Courtney Canales, International Trade Compliance Analyst, "Antidumping Duty Investigation of Stainless Steel Flanges from India: Preliminary Determination of Affiliation/Single Entity Treatment of Echjay Single Entity," issued concurrently with this memorandum and herein incorporated by reference (Echjay Affiliation and Single Entity Memo).

⁵⁴ See Echjay Affiliation and Single Entity Memo.

⁵⁵ *Id.*

information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁵⁶ In doing so, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁵⁷ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁵⁸ The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁵⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁶⁰ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁶¹

B. Application of Facts Available to the Bebitz/Viraj Single Entity with an Adverse Inference

1. Application of Facts Available

Record evidence demonstrates that the Bebitz/Viraj single entity failed to provide necessary

⁵⁶ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005) (*Stainless Steel Bar from India*); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁵⁷ See section 776(b)(1)(B).

⁵⁸ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁵⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

⁶⁰ See, e.g., *Nippon Steel*, 337 F.3d at 1382-83; *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

⁶¹ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013) and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

information in the form or the manner requested by Commerce. As explained in detail below, the Bebitz/Viraj single entity's U.S. sales, cost, and home market sales databases on the record contain numerous discrepancies, such as: (i) the U.S. sales databases for Bebitz, Bebitz USA, and FBG that were complete and timely filed on the record are inaccurate and unusable because of missing sales/movement expenses and incomplete reconciliations; (ii) incomplete cost reconciliations along with inaccurate cost databases from Bebitz and Viraj; and (iii) missing sales information from Viraj. As a result, Commerce has preliminarily determined that during this investigation, the Bebitz/Viraj single entity failed to provide: (1) complete, reliable U.S. sales databases and reconciliations from Bebitz, Bebitz USA and FBG;⁶² (2) complete, reliable cost databases and reconciliations from Bebitz and Viraj;⁶³ and (3) a complete sales reconciliation from Viraj and consistent responses regarding missing sales information from Viraj.⁶⁴ Commerce has provided a brief description of each of these items below and cited to relevant sections of the Bebitz/Viraj single entity's submissions.

i. Incomplete U.S. Sales Databases and Reconciliations from Bebitz, Bebitz USA and FBG

Commerce requested that Bebitz and all affiliates that produced and/or sold the subject merchandise either in the home market and/or the U.S. market, including FBG and Viraj, respond to the AD questionnaire.⁶⁵ Despite specific instructions and being granted multiple extensions, Bebitz and its affiliates failed to follow Commerce's instructions, from the onset of this investigation, in several key areas, in its original responses for U.S. sales, home market sales, and cost of production. Commerce identified to Bebitz and its affiliates that the original responses for U.S. sales, home market sales, and cost of production databases were either missing or severely deficient, and granted Bebitz and its affiliates an opportunity to remedy this deficient. However, the record still does not a complete, accurate, and reliable U.S. sales response from Bebitz and its affiliates, Bebitz USA and FBG, to calculate a margin for the preliminary determination.

Deficient Original Responses for U.S. Sales, Home Market Sales, and Cost of Production

Specifically, in Bebitz's original responses it reported Viraj as an affiliate that produced and/or sold subject merchandise in the home market; however, Bebitz did not provide home market and cost databases for Viraj along with reconciliations and supporting calculation worksheets for all production, selling, and movement expenses, pursuant to our original questionnaire

⁶² See Rejection of Bebitz's Supplemental Section C Response; and Bebitz's Section C Response, which includes sales reconciliations from both Bebitz and FBG that do not reconcile total value and volume from their financial statements to the consolidated U.S. sales database, and also missing or incorrectly calculated movement/selling expenses for Bebitz, Bebitz USA and FBG.

⁶³ See Rejection of Bebitz's and Viraj's Supplemental Section D Responses; and Bebitz's Section D Response and Viraj's Section D response, which include incomplete cost reconciliations that first only reconciled to the trial balance and, after a second request, only to the POI cost of sales and not to the extended costs reported in the cost database.

⁶⁴ See Viraj's Supplemental B Questionnaire Response, at Exhibit VB1-6; and Viraj's Supplemental Questionnaire Response, at 6-7 and Exhibit B-1. Additionally, see the Bebitz/Viraj Single Entity Affiliation Memo at Attachments 1 and 2. See also Respondent Selection Data Memo; Respondent Selection Memo.

⁶⁵ See Commerce's AD questionnaire to Bebitz at Appendix V.

instructions.⁶⁶ Additionally, Bebitz also did not provide complete home market and U.S. sales reconciliations, pursuant to our questionnaire instructions, and also did not provide a U.S. sales reconciliation for its German affiliate, FBG, that further processed the subject merchandise and then resold the product in the United States during the POI.⁶⁷ Further, Bebitz's original responses did not include a cost reconciliation for Bebitz, as requested in the original questionnaire.⁶⁸ Based on this, Commerce issued a supplemental questionnaire requesting complete databases and sales/cost reconciliations for Bebitz and all affiliates involved in the production and sale of the subject merchandise, which should have been provided in the original questionnaire response as instructed by Commerce.⁶⁹

After Bebitz and its affiliates (including Bebitz USA, FBG and Viraj), submitted revised reconciliations, and Viraj responded to all portions of the original questionnaire,⁷⁰ Commerce found that it still had to issue extensive supplemental questionnaires for home market sales, U.S. sales, and cost of production responses submitted by Bebitz and its affiliates because the responses were severely deficient for numerous calculation issues, such as missing movement and selling expenses, particularly for U.S. sales.⁷¹ Again, Commerce also had to request that Bebitz and its affiliates, such as Bebitz USA and FBG for U.S. sales, provide complete sales reconciliations⁷² for both home market and U.S. sales in each sales database on the record for each affiliate (*i.e.*, Bebitz, Bebitz USA, FBG and Viraj).⁷³ However, as detailed below after this, the record does not contain an accurate, reliable, and complete timely U.S. sales response on the record to calculate a margin for the preliminary determination.

Untimely, Incomplete U.S. Sales Response from Bebitz and its Affiliates, Bebitz USA and FBG

Although Bebitz and its affiliates, including Bebitz USA and FBG, received an extension⁷⁴ as detailed in Commerce's March 1, 2018 letter, Bebitz and its affiliates submitted an untimely, incomplete U.S. sales response to Commerce's U.S. sales supplemental questionnaire for

⁶⁶ See Bebitz and Viraj Supplemental Questionnaire, dated December 15, 2017, at 2-3.

⁶⁷ *Id.*

⁶⁸ See Bebitz's Original Questionnaire at D-1.

⁶⁹ See Bebitz and Viraj Supplemental Questionnaire at 2-5.

⁷⁰ See Bebitz and Viraj Supplemental Response, dated January 3, 2018. This was filed after multiple extensions, which include an extension filed less than two hours before the deadline to submit the final business proprietary version. See Memorandum, "Investigation of Stainless Steel Flanges from India; Second Extension for Supplemental Questionnaire from Bebitz/Viraj," dated February 4, 2018.

⁷¹ However, the issuance of supplemental questionnaires (including calculation issues, revised reconciliations, etc.) was delayed by two weeks because the databases Bebitz and its affiliates submitted were not in accordance with our formatting requirements, and thus, we could not perform a basic data integrity assessment to determine if the submitted and allegedly complete databases were useable. Accordingly, we first had to obtain databases following our formatting requirements.

⁷² A complete sales reconciliation is when the total sales revenue from the company's financial statement is tied through the accounting records to the total volume and value reported in the relevant sales database.

⁷³ *Id.*

⁷⁴ See Commerce Memorandum, entitled, "Investigation of Stainless Steel Flanges from India; Extension for Section C Supplemental Questionnaire from Bebitz/Viraj," dated February 9, 2018. Bebitz requested a two-week extension beyond the one-week time frame that Commerce gave Bebitz to respond based on the fully extended preliminary determination; however, due to the fully extended deadline, Commerce granted Bebitz a total of 11.5 days to respond.

calculation issues.⁷⁵ On February 9, 2018, Commerce granted Bebitz's first extension request for this supplemental questionnaire response and set a deadline of 12:00 p.m., February 16, 2018.⁷⁶ Subsequently, Bebitz twice requested that Commerce grant an additional extension of time to submit its U.S. sales supplemental questionnaire response, which Commerce denied.^{77, 78} Shortly before the deadline of 12:00 p.m. on February 16, 2018, Bebitz and its affiliates submitted portions of their supplemental questionnaire response but did not submit the complete narrative response, nor sales databases with calculation worksheets by the deadline nor did Bebitz notify Commerce that it experienced filing issues until after the deadline.⁷⁹ As such, pursuant to 19 CFR 351.302(d), Commerce rejected Bebitz and its affiliates' untimely supplemental response.⁸⁰

ii. Missing or Incomplete Cost Databases and Reconciliations from Bebitz and Viraj

It is Commerce's practice to require accurate and complete information pertaining to a respondent's cost of producing merchandise under consideration because such information: 1) provides the basis for determining whether comparison market sales were made in the ordinary course of trade and can be used to calculate normal value (*i.e.*, comparison market sales made at

⁷⁵ See Rejection of Bebitz's Supplemental Section C Response; Bebitz's Supplemental B Response, dated February 13, 2018; and Viraj's Supplemental B Response, dated February 22, 2018.

⁷⁶ See Memorandum, "Investigation of Stainless Steel Flanges from India; Extension for Section C Supplemental Questionnaire from Bebitz/Viraj," dated February 9, 2018. With this extension, Commerce granted Bebitz a total of 11.5 days to respond to the supplemental questionnaire and reminded Bebitz, including its affiliates, that because the preliminary determination was fully extended and Commerce may need to issue an additional questionnaire for further calculation issues, Commerce would most likely not grant additional extensions.

⁷⁷ See Memorandum, "Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj," dated February 15, 2018 (Commerce Denial of Second Extension for Bebitz's Supplemental Section C Questionnaire); and Memorandum, "Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj Reiteration," dated February 16, 2018. Although Bebitz and its affiliates, including Viraj, claim that they are either first-time respondents or, as in the case for Viraj, were respondents over twenty years ago, Commerce disagrees with this logic because Viraj participated as a respondent in our proceedings over the last ten years and Bebitz participated in other AD/CVD proceedings. See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) and accompanying PDM (where Bebitz requested to participate as a voluntary respondent); and *Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483 (October 18, 2017) and accompanying PDM (where Viraj participated as a respondent).

⁷⁸ See Memorandum, "Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj," dated February 15, 2018 (Commerce Denial of Second Extension for Bebitz's Supplemental Section C Questionnaire); and Memorandum, "Investigation of Stainless Steel Flanges from India; Denial of Second Extension Request for Section C Supplemental Questionnaire from Bebitz/Viraj Reiteration," dated February 16, 2018. Although Bebitz and its affiliates, including Viraj, claim that they are either first-time respondents or, as in the case for Viraj, were respondents over twenty years ago, Commerce disagrees because Viraj participated as a respondent in our proceedings over the last ten years and Bebitz participated in other AD/CVD proceedings. See, *e.g.*, *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) and accompanying PDM (where Bebitz requested to participate as a voluntary respondent); and *Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Certain Companies in the Antidumping Duty Order*, 82 FR 48483 (October 18, 2017) (*Stainless Steel Bar from India Preliminary Results CCR*) and accompanying PDM (where Viraj participated as a respondent).

⁷⁹ See Rejection of Bebitz's Supplemental Section C Response at 1-3.

⁸⁰ *Id.*

prices above COP) pursuant to section 773(b)(1) of the Act; 2) is used in the difference-in-merchandise analysis pursuant to section 773(a)(6)(C) of the Act; and 3) in certain instances (e.g., where there are no comparison market sales made at prices above the COP) is used as the basis for normal value itself.⁸¹ Commerce has previously explained that in the cases involving a sales-below-cost investigation, such as here, the failure to provide accurate cost information renders a company's response so incomplete as to be unusable.⁸² Additionally, the CIT has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {Commerce's} dumping analysis."^{83, 84}

Moreover, section 773(f)(1)(A) of the Act provides that, for the purposes of calculating COP and constructed value (CV), costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and *reasonably* reflect the costs associated with the production and sale of the merchandise.⁸⁵ Because of this statutory directive, it is critical that Commerce examine and fully understand the allocation methodologies used by the respondent to allocate costs to individual products in its normal course of business.⁸⁶ Also, the CIT has held that a respondent's failure to provide documentation to support the individual cost components of its TOTCOM prevented Commerce from ensuring that the reported costs capture all of the costs the respondent incurred in producing merchandise under consideration.⁸⁷

The cost portion of the AD questionnaire issued to Bebitz, requested a reconciliation of (a) CONNUM specific per-unit production costs to the total cost of manufacturing (COM)⁸⁸, and (b) the total COM to the cost of sale on the income statement the COPCV database. The questionnaire directs the respondent to multiply the CONNUM specific per-unit production costs by their respective production quantities, and to reconcile the total extended cost⁸⁹ from the database to the total COM for the POI in their books and records. In response to these specific requests for information, Bebitz simply provided a trial balance (*i.e.*, a list of the closing balances for the general ledger accounts at a certain date and the first step towards preparation of

⁸¹ See *Stainless Steel Bar from India* at Comment 1.

⁸² *Id.* at Comment 1.

⁸³ See *Mukand, Ltd. v. United States*, Court No. 11-00401, Slip Op. 13-41, 15 (CIT March 25, 2013).

⁸⁴ See *Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1355 (CIT 2009) (quoting *Myland Indus., Ltd. v. United States*, 31 CIT 1696, 1703 (2007)) (The CIT has recognized that Commerce "must ensure that {a respondent's} reported costs capture all the costs incurred by the respondent in producing the subject merchandise before it can appropriately use that respondent's cost allocation methodology." (internal quotations omitted). The CIT has also recognized that a respondent must provide the information and documentation necessary for Commerce to gain an understanding of a respondent's reporting methodology.).

⁸⁵ See section 773(f)(1)(A) (emphasis added).

⁸⁶ Commerce also requires that a respondent must demonstrate that the individual components reported in the cost database (e.g., direct materials (DIRMAT), direct labor (DIRLAB), *etc.*) of its total cost of manufacturing (TOTCOM) reconcile to its normal records at both the CONNUM-specific and product-specific levels. See *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 42395 (August 2, 2007) (*Stainless Steel Bar from Spain*) and accompanying IDM at Comment 2.

⁸⁷ See *Sidenor*, 664 F. Supp. 2d at 1356.

⁸⁸ We note that the original questionnaire includes a sample worksheet in the questionnaire. See Bebitz's original questionnaire at D-13.

⁸⁹ "Extended costs" refer to the summation of CONNUM-specific production quantity multiplied by the cost of manufacturing.

the financial statements) for the POI, and not a complete cost reconciliation following Commerce's original questionnaire instructions.⁹⁰ Put another way, Bebitz only provided the first part of a complete cost reconciliation, and thus, Bebitz's cost reconciliation did not meet our reporting requirements.

Based on this, Commerce requested a second time that Bebitz provide the cost reconciliation in a questionnaire focusing on threshold problems found in their initial questionnaire responses.⁹¹ After multiple extensions, Bebitz filed its response to our supplemental questionnaire, but again failed to provide a complete reconciliation.⁹² Importantly, we further note that none of the figures in the worksheet reconcile to the extended amount from the COPCV database.

Bebitz's supplemental questionnaire response also included the January 2018, questionnaire response, that also included the initial section D questionnaire response for Viraj, however, Viraj also failed to provide the requested cost reconciliation.⁹³ Instead, Viraj only pointed to a supplemental exhibit, which is not a reconciliation for the entire cost database, but rather is CONNUM cost buildup for a specific product.⁹⁴ Importantly, none of the figures in the exhibits included in the response tie to the extended amount from the COPCV database. We further note that Bebitz and Viraj revised their COPCV databases on January 19, 2018, and again on January 24, 2018, but provided no corresponding revised worksheets or reconciliations.

Due to these incomplete responses, Commerce issued additional cost supplemental questionnaires for Bebitz and Viraj.⁹⁵ These questionnaires represent the third request for the cost reconciliation to Bebitz and a second request to Viraj for a cost reconciliation. After being granted extensions of the deadlines for these questionnaires, neither company provided reconciliations in their respective supplemental questionnaire responses.⁹⁶ Additionally, because Bebitz and Viraj failed to provide complete responses to these questionnaires by the deadlines, their incomplete filings were subsequently rejected and removed from the record.⁹⁷ Amongst other reasons, Bebitz's and Viraj's supplemental cost responses were rejected as

⁹⁰ See Bebitz's AD Questionnaire at D-12 through D-13; Bebitz's Section B to D questionnaire response, dated December 1, 2017, at page 25 and Exhibit D-8.

⁹¹ See Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India," presenting deficiency questions on Sections A through D of Bebitz's questionnaire responses, dated December 15, 2017.

⁹² We note that in addressing the reconciliation question, Bebitz only submitted a worksheet titled "Reconciliation of the Cost of Sales for the FY 2016-17 with POI Cost of Sales." The document reconciles the fiscal year cost of sales to the POI cost of sales, however, it does not reconcile to the total POI COM extended costs reported on the COPCV database, as Commerce requested pursuant to our practice. See Bebitz's submission, "Stainless Steel Flanges from India," including Viraj's narrative responses and exhibits, dated January 3, 2018, at 5 and Exhibit S1-6. (Bebitz-Viraj January 3 response); see also Commerce's letter, Extension request granted December 29, 2017.

⁹³ See Bebitz-Viraj Supplemental Response at 79.

⁹⁴ *Id.* at Exhibit D-9.

⁹⁵ See Commerce's letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India," dated February 7, 2018, at 7 (question 22), and February 8, 2018, at 4 (question 10).

⁹⁶ See Rejection of Bebitz's and Viraj's Supplemental Section D Responses; Bebitz's Section D Response; and Viraj's Section D Response. Bebitz's and Viraj's supplemental Section D responses were rejected because the responses were missing requested calculation worksheets (missing exhibits), were not filed with complete databases and calculation worksheets, *etc.* Additionally, we issued extensive supplemental cost questionnaires because both Bebitz and Viraj's original responses were incomplete.

⁹⁷ *Id.*

incomplete and untimely because both companies failed to submit, by the deadline, the requested electronic versions (*e.g.*, Excel format) of exhibits (calculation worksheets), and the exhibits identified in the narrative response.⁹⁸

As noted above, the missing reconciliations are essential because they require a party to identify all the reporting differences, at an appropriate summarized level, between the CONNUM-specific per-unit production costs reported for use in the AD margin program and the costs recorded in the Company's normal books and records.⁹⁹ As such, the reconciliation is an important tool to confirm the completeness and accuracy of the reported costs that are used in the margin program to calculate difference-in-merchandise adjustments, to perform the sales-below-cost test, and to represent a product's constructed value. Without the reconciliations, we cannot rely on the reported per-unit costs of production, or accurately calculate a dumping margin. Accordingly, Commerce cannot determine whether Bebitz's and Viraj's timely submitted cost databases are accurate and reliable for calculating a margin for the preliminary determination.¹⁰⁰

iii. Missing Sales Data and Incomplete Sales Reconciliation for Total Sales from Viraj

As explained above, Bebitz's affiliate, Viraj, a producer and seller of subject merchandise, initially refused to provide individual sales databases and reconciliations, and individual cost responses along with reconciliations in response to the original questionnaire.¹⁰¹ In requesting again that Bebitz's affiliate, Viraj, provide complete responses, including sales databases and complete sales reconciliations based on total sales, to all sections of Commerce's AD questionnaire, Commerce identified that there was information on the record showing that Viraj had U.S. sales of subject merchandise.¹⁰²

Incomplete Sales Reconciliation for Total Sales of Subject and Non-subject Merchandise to Home Market, U.S. Market, and Third-Country Markets

However, in response, Viraj stated that it did not have sales of subject merchandise to the United States during the POI because of the issuance of the section 337 exclusion order by the U.S. International Trade Commission (ITC) that prohibited Viraj from selling merchandise into the United States for sixteen years starting in May 2016.¹⁰³ As such, Viraj stated that there was no need to submit a U.S. sales response, including U.S. sales database along with complete U.S.

⁹⁸ *Id.*

⁹⁹ The reconciliation makes transparent the separation of costs between merchandise under consideration and merchandise not under consideration, clarifies the removal of costs from COM, such as packing expenses, that are reported elsewhere in the response, and identifies whether adjustment items have been properly removed from or included in the reported costs.

¹⁰⁰ Bebitz's and Viraj's supplemental Section D responses were rejected because the responses were missing requested calculation worksheets (missing exhibits), were not filed with complete databases and calculation worksheets, *etc.* Additionally, we issued extensive supplemental cost questionnaires because both Bebitz and Viraj's original responses were incomplete. *See* Rejection of Bebitz's and Viraj's Supplemental Section D Responses; Bebitz's Section D Response; and Viraj's Section D Response.

¹⁰¹ *See* Bebitz's original questionnaire at Appendix V; and Bebitz and Viraj Supplemental Questionnaire, at 2-3.

¹⁰² *See* Bebitz and Viraj Supplemental Questionnaire at 3.

¹⁰³ *See* Viraj's Supplemental Questionnaire Response, dated January 3, 2018, at 7.

sales reconciliation.¹⁰⁴ Additionally, Viraj did provide a home market sales response in the same submission but did not provide a complete home market sales reconciliation, as requested by Commerce.¹⁰⁵ Instead, Viraj only provided a sales reconciliation for home market sales starting at the domestic sales account instead of total sales (*i.e.*, total sales revenue for all sales, including home market, U.S. market, and third-country markets) in either the general ledger or financial statement.¹⁰⁶

Based on this, Commerce again requested that Viraj submit a complete sales reconciliation starting at total sales revenue from its financial statements and reconcile total sales through to the total sales reported in Viraj's home market sales database.^{107,108} However, Viraj did not follow our instructions to reconcile total sales revenue from its financial statements (FY 2016-2017, 1st quarter 2016, and 2nd quarter 2017) and provide a monthly breakout by U.S. sales, domestic sales, and third-country sales of subject/non-subject merchandise.¹⁰⁹ As such, we do not have complete information from Viraj regarding its total sales of subject merchandise from its financial statements reconciling these sales by each market, such as U.S. sales, based on the fiscal period and then through to the sales data on the record. In addition, Viraj's claim that it stopped exporting subject merchandise to the United States¹¹⁰ is problematic because Viraj never addressed the fact that there is other record evidence that Viraj did have sales of subject merchandise during the POI.¹¹¹ Accordingly, because Viraj twice submitted an incomplete total sales reconciliation that did not follow our instructions and the fact that Viraj's claim that it had no U.S. sales during the POI is called into question by other record evidence, Commerce finds Viraj's sales response is incomplete and unreliable.

Missing Sales Data from Viraj's Other Corporate Entity Names

Further, Commerce also requested, whether Viraj sold subject merchandise to the United States under other former corporate entity names, such as Viraj Forgings, Ltd. (Viraj Forgings), during the POI.^{112, 113} However, Viraj stated that none of the identified companies were in existence

¹⁰⁴ *Id.* at 6-7.

¹⁰⁵ See Bebitz's original questionnaire at B-6.

¹⁰⁶ See Viraj's Supplemental Questionnaire Response, at Exhibit B-1.

¹⁰⁷ This was FY 2016-2017 (March 2016-April 2017), 1st quarter of 2016, and 2nd quarter 2017.

¹⁰⁸ See Supplemental Section B Questionnaire to Viraj, dated February 7, 2018, at 6-7 (question 3a). Commerce requested that Viraj provide a complete sales reconciliation from total sales revenue in its financial statements for all these periods and break-out monthly sales by volume/value for U.S. sales, home market sales, and third-country sales since Viraj's fiscal period is March-April and the POI is July 1, 2016, through June 30, 2017. Additionally, Commerce requested this information to reconcile from Viraj's financial statement that Viraj did not have any U.S. sales of subject merchandise, as Viraj claimed in its previous responses but did not demonstrate in its previous sales reconciliation.

¹⁰⁹ See Supplemental Section B Questionnaire to Viraj at 6-7 (question 3a).

¹¹⁰ See Viraj's Supplemental B Questionnaire Response, at Exhibit VB1-6; and Viraj's Supplemental Questionnaire Response, at 6-7 and Exhibit B-1.

¹¹¹ Because this information is business proprietary, for further discussion, see the Bebitz/Viraj Single Entity Affiliation Memo at Attachment 1. See also Respondent Selection Data Memo; Respondent Selection Memo.

¹¹² See Supplemental Section A Questionnaire to Viraj, dated February 13, 2018, at 4-5 (question 1).

¹¹³ In Commerce's *Stainless Steel Bar from India Preliminary Results CCR*, we found that Viraj Alloys, Ltd. (Viraj Alloys), Viraj Forgings, and Viraj ImpoExpo, Ltd. (Viraj ImpoExpo), are collectively now known as Viraj Profiles Limited (*i.e.*, Bebitz's affiliate in this investigation). See *Stainless Steel Bar from India Preliminary Results CCR*

during the POI, Viraj Forgings is the forgings division of Viraj, and that our questions regarding whether these companies made sales of subject merchandise to the United States was not relevant to these companies.¹¹⁴ Although Viraj stated that Commerce’s request for complete sales and cost responses from these companies, such as Viraj Forgings, was not applicable, we disagree. Specifically, there is record evidence that contradicts Viraj’s claim that Viraj and its former corporate entity names did not have sales of subject merchandise to the United States throughout the POI, and accordingly Commerce needed to have Viraj clarify the factual record.¹¹⁵ As such, Commerce finds that Viraj did not provide all necessary information, which includes complete sales reconciliations from its financial statements for sales of subject and non-subject merchandise during the POI, and the record lacks a complete U.S. sales response from Viraj.

iv. Conclusion

Accordingly, in light of the above deficiencies, we preliminarily determine, in accordance with sections 776(a)(1) and (2), that because necessary information regarding the Bebitz/Viraj single entity’s U.S. sales, costs, and home market sales is not on the record, and because the Bebitz/Viraj single entity withheld requested information and failed to provide necessary information by the deadlines and in the form or manner requested by Commerce, the application of facts available is warranted.¹¹⁶

2. *Use of Adverse Facts Available to the Bebitz/Viraj Single Entity*

Despite Commerce’s detailed and specific questionnaires and instructions, as well as being afforded additional response time, the Bebitz/Viraj single entity failed to report accurate, complete responses, and in a timely manner, regarding: 1) its reported U.S. sales databases for Bebitz, Bebitz USA and FBG; 2) its reported cost databases along with complete cost reconciliations for Bebitz and Viraj; and 3) complete sales information from Viraj. The Bebitz/Viraj single entity also failed to follow our regulatory procedures to when submitting its response to our requests for information. Therefore, pursuant to section 776(b) of the Act, Commerce preliminarily finds that the Bebitz/Viraj single entity failed to cooperate by not acting to the best of its ability to comply with Commerce’s requests for information, as noted above, and that the application of total adverse facts available (AFA) is warranted.

C. *Application of Facts Available to the Echjay Single Entity with Adverse Inference*

1. *Application of Facts Available*

Pursuant to sections 776(a)(2)(A)-(C) of the Act, Commerce preliminarily finds that the application of facts available is warranted to the Echjay single entity because Echjay Industries failed to provide necessary information, *i.e.*, its home market and cost databases along with sales

PDM at 2 (footnote 3).

¹¹⁴ See Viraj’s Supplemental Section A Questionnaire Response, dated February 21, 2018, at 3-4.

¹¹⁵ Because this information is business proprietary, for further discussion, *see* the Bebitz/Viraj Single Entity Affiliation Memo at Attachment 2. *See also* Respondent Selection Data Memo; Respondent Selection Memo.

¹¹⁶ For further discussion due to the business proprietary information, *see* Bebitz/Viraj Affiliation Memorandum and Respondent Selection Data Memo.

and cost reconciliations. Echjay Forgings, Echjay Industries, and Spire also failed to provide requested accurate production and corporation information by the deadlines and in the form and manner requested by Commerce, and otherwise impeded this proceeding.

Commerce stated in the AD questionnaire that responses should be provided from the respondent, including any affiliates involved with production or sales of the products under investigation during the POI. The AD questionnaire was issued in October 2017, and contained a request for a full reconciliation of sales and complete sales databases with a corresponding narrative¹¹⁷ Echjay's response included information indicating that Echjay is affiliated with Echjay Forgings, Echjay Industries, and Spire; accordingly, as discussed above, Commerce is preliminarily finding these companies to be affiliated and is treating as the Echjay single entity. According to Echjay, Echjay Industries may be considered an affiliate because of a familial relationship, and that Echjay Industries may have exported stainless steel flanges to the United States during the POI, but if such exportation occurred, Echjay Industries did so independent of Echjay.¹¹⁸ Echjay further claimed that it was not required to provide such information for this investigation because Echjay and Echjay Industries were independent competitors.¹¹⁹ Additionally, Echjay noted that in a past AD administrative review of the prior order on stainless steel flanges from India, Commerce did not collapse Echjay and Echjay Industries, because they have no shared managers, employees, facilities or borrowings between them. They stated that there has been no change since that review.¹²⁰ Commerce subsequently issued a supplemental questionnaire, requesting that Echjay submit the information for Echjay Industries, including full responses to sections B-D of the original questionnaire in the event that we collapsed, because the record evidence indicated that Echjay may be affiliated with Echjay Industries.¹²¹ However, both Echjay and Echjay Industries stated that the questionnaire was not applicable to Echjay Industries, and neither company provided the requested information. Thus, Echjay, along with Echjay Industries, failed to provide the request sales and cost databases for Echjay Industries that are needed for purposes of calculating a margin for this preliminary determination.

With respect to Spire, Echjay stated that Spire produced stainless steel flanges only in the past, so Echjay did not provide any of the corporate, accounting, production, and sales information requested about Spire.¹²² When asked to confirm that Spire had no production or sales of stainless steel flanges during the POI,¹²³ Echjay provided only a letter from Spire stating that

¹¹⁷ See Commerce's letter to Echjay, dated October 3, 2017 (Echjay's Questionnaire) at Appendix V.

¹¹⁸ See Echjay Forgings Private Limited's Response to Section A of Original Antidumping Duty Questionnaire, dated October 31, 2017 (Echjay's Section A Response) at 8.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 8-9.

¹²¹ See Letter to Echjay Forgings Private Limited, Section A Supplemental Questionnaire, dated November 27, 2017 (Echjay's Section A Supplemental Questionnaire) at 7. See also the Echjay Entity Affiliation Memorandum at Attachment 2 for further discussion due to the business proprietary information and Respondent Selection Data Memorandum.

¹²² See Echjay's Section A Response at 8-9; and Echjay's Questionnaire at G-10 (General Instructions section where Echjay and all affiliates that produced and/or sold stainless steel flanges in the foreign comparison market and the U.S. market were requested to provide a single narrative response along with sales/cost databases, reconciliations, and calculation worksheets for both the respondent and all affiliates together).

¹²³ See Letter to Echjay Forgings Private Limited, Section A Supplemental Questionnaire, dated November 27, 2017 (Echjay's Section A Supplemental Questionnaire) at 7.

Spire's production facility is not operational, thus failing to provide full product specifications.¹²⁴ Also, Echjay claimed that Spire is in the process of updating its website to reflect the current status of the company, but did not provide supporting documentation for its claim.¹²⁵ However, Commerce finds that there is publicly available record evidence that contradicts Echjay's and Spire's contention that Spire does not produce and sell stainless steel flanges.¹²⁶ Additionally, Echjay did not provide the requested information and simply stated that the requested information was not applicable to Echjay Industries, Echjay Forgings, or Spire.¹²⁷

Commerce preliminarily finds that the Echjay single entity failed to provide complete, accurate, and reliable information. Echjay bears the burden of creating an accurate and complete record during the course of this investigation.¹²⁸ However, Echjay failed to meet this burden despite the opportunities provided by Commerce to do so.¹²⁹ The record lacks complete home market and cost databases along with corresponding sales reconciliations from Echjay Industries, as well as production and corporation information from Echjay Industries, Echjay Forgings, and Spire. In keeping with section 782(d) of the Act Commerce provided the Echjay single entity, with an opportunity remedy its deficient submissions; however, it failed to remedy its significant deficiencies, as articulated above.¹³⁰

As such, Commerce finds that the Echjay single entity failed to provide all necessary information, which includes complete sales/cost databases along with reconciliations from all affiliates involved in the production/sale of subject merchandise during the POI, and complete production/sales/corporation information from all affiliates. We also find that the Echjay single entity withheld information that had been requested in the AD questionnaire and supplemental questionnaires for the preliminary determination, failed to provide requested information by the established deadlines, and significantly impeded the proceeding. Accordingly, Commerce does not have complete, accurate, and reliable home market sales, U.S. sales, and cost information from the Echjay single entity to calculate a margin in the preliminary determination.

Therefore, Commerce preliminarily finds that application of facts otherwise available, pursuant to sections 776(a)(1) and (2)(A)-(C), is warranted because the Echjay single entity withheld requested information, failed to provide necessary information by the deadlines and in the form and manner requested, and otherwise impeded this proceeding, as detailed above.

¹²⁴ See Echjay's Supplemental Section A Response at Exhibit AS-7B.

¹²⁵ *Id.* at 30.

¹²⁶ See Echjay Entity Affiliation Memorandum at Attachment X (recent downloads of Spire's webpage stating that Spire produces stainless steel flanges and similar merchandise).

¹²⁷ See Echjay's Section A Supplemental Response at 12-15.

¹²⁸ See, e.g., *Pipe from the UAE Preliminary Determination*, 77 FR at 32544, quoting *Essar Steel Ltd. v. United States*, 2012 U.S. App. LEXIS 8621 at *22 (Fed. Cir. April 27, 2012) (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

¹²⁹ See Echjay's Questionnaire and Echjay's Section A Supplemental Questionnaire.

¹³⁰ *Id.*

2. *Use of Adverse Facts Available to the Echjay Single Entity*

As discussed in detail above, despite Commerce's detailed and specific questionnaires to provide information, the Echjay single entity refused to provide complete and accurate responses to requests for information, stating that Commerce's questionnaire was not applicable to the Echjay affiliates.¹³¹ The Echjay single entity failed to provide information regarding: (1) an accurate, reliable sales/cost reconciliation regarding its reported sales of subject merchandise to the United States during the POI from Echjay Industries along with requisite sales/cost databases; and (2) full corporate/affiliation information, and full product specifications from Echjay Forgings, Echjay Industries, and Spire. Accordingly, Commerce finds pursuant to section 776(b) of the Act that the Echjay single entity failed to cooperate to the best of its ability to comply with Commerce's requests for information. Therefore, we preliminarily find that application of total adverse facts available to the Echjay single entity is warranted for this preliminary determination.

D. *Use of Facts Available To Chandan With An Adverse Inference*

1. *Application of Facts Available*

In the AD questionnaire we requested that Chandan report its home market and U.S. packing costs.¹³² Chandan's initial response contained only worksheets and no supporting documentation, and so we requested complete supporting documentation, such as calculation worksheets with source documentation for each component of the packing calculation, for Chandan's packing cost calculation.¹³³ Chandan provided the packing cost worksheet from its prior response and stated that it was providing supporting documentation in an exhibit but did not in fact provide the exhibit.¹³⁴ Thus, we find that necessary information is not on the record, that Chandan withheld requested information, and did not provide requested information by the established deadlines. Accordingly, in accordance with sections 776(a)(1) and 776(b)(2)(A)-(B) of the Act, we find that the use of facts available is appropriate.

2. *Application of Partial Adverse Facts Available to Chandan*

The record demonstrates that Chandan failed to provide complete and accurate reporting of its home market and U.S. packing costs, even after Commerce twice requested this information. As a result, in accordance with section 776(b) of the Act, we find that Chandan failed to cooperate to the best of its ability, and thus that the application of partial adverse facts available is warranted.¹³⁵

¹³¹ See Echjay's Section A Supplemental Response at 12-15.

¹³² See Chandan's AD Questionnaire, at B-25 to B-26 and C-29.

¹³³ See Commerce's Supplemental Questionnaire to Chandan, dated January 2, 2018, at 7.

¹³⁴ See Chandan's Sections B-D Questionnaire Response, dated November 30, 2017, at Exhibit B-17; and Chandan's Supplemental A-C Questionnaire Response, dated January 25, 2018, at Exhibit B-17 and Exhibit B-35.

¹³⁵ For an explanation of how Commerce has applied partial adverse facts available with respect to Chandan's home market and U.S. packing costs, see the "Calculation of NV Based on Comparison-Market Prices" section below.

E. *Selection and Corroboration of AFA Rate for both Bebitz/Viraj Single Entity and Echjay Single Entity*

When Commerce applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize Commerce to base the AFA rate on information derived from the petition, a final determination, a previous administrative review, or any other information placed on the record.¹³⁶ In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹³⁷ Commerce's practice, in less-than-fair-value investigations, is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.¹³⁸

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as information in the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹³⁹

The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.¹⁴⁰ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.¹⁴¹ Further, under the TPEA, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.¹⁴²

With respect to the investigation covering stainless steel flanges from India, the highest dumping margin calculated for merchandise under consideration from India in the petition is 145.25

¹³⁶ See also 19 CFR 351.308(c); SAA, at 868-870.

¹³⁷ See SAA, at 870.

¹³⁸ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014) and accompanying IDM at Comment 3.

¹³⁹ See SAA, at 870.

¹⁴⁰ *Id.*; see also 19 CFR 351.308(d).

¹⁴¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁴² See sections 776(d)(3)(A) and (B) of the Act.

percent.¹⁴³ We determine that the highest petition dumping margin of 145.25 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.¹⁴⁴ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the petition to derive estimated dumping margins. Specifically, we examined information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates elements of the EP and NV calculations used in the petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the petition to be reliable.¹⁴⁵ Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the petition, we preliminarily consider the EP and NV calculations from the petition, and thus the dumping margins in the petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by it belonging to the same industry.¹⁴⁶

To corroborate the 145.25 percent AFA rate we selected, we compared the petition rate to the transaction-specific dumping margins for the mandatory respondent, Chandan. We found product-specific margins at the petition rate¹⁴⁷ and, therefore is relevant and has probative value. As we have found that the 145.25 percent rate is both reliable and relevant, we determine that it has probative value, and thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to the Bebitz/Viraj single entity and the Echjay single entity.

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Chandan's sales of subject merchandise from India to the United States were made at LTFV, Commerce compared the export price (EP) or constructed export (CEP), as appropriate, to the normal value (NV), as described in the "Export Price/Constructed Export Price," and "Normal Value" sections of this memorandum.

¹⁴³ See *Initiation Notice*, 82 FR at 42652; see also *Initiation Checklist: Stainless Steel Flanges from India*, dated September 5, 2017 (Initiation Checklist).

¹⁴⁴ See *Initiation Checklist* at 9.

¹⁴⁵ *Id.*

¹⁴⁶ See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

¹⁴⁷ See *Chandan Preliminary Analysis Memo* at Attachment 2.

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 LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

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.¹⁴⁸ 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 investigation. 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 this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods 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 POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a purchaser, region, or

¹⁴⁸ 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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.¹⁴⁹

B) Results of the Differential Pricing Analysis

For Chandan, based on the results of the differential pricing analysis, Commerce preliminarily finds that 80.33 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁵⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Chandan.

IX. 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 exporter or producer'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.¹⁵¹ 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.¹⁵²

Regarding its comparison market sales, Chandan reported the date of the invoice as the date of sale, and it demonstrated that the material terms of sale do not change after issuance of the commercial invoice. For its U.S. sales, Chandan also reported that the material terms of sale do not change after the issuance of the commercial invoice. Accordingly, we used the invoice date as the date of sale for comparison market sales and U.S. sales for the purposes of this preliminary determination.

¹⁴⁹ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

¹⁵⁰ See Memorandum, "Calculations Performed for Chandan Steel Limited for the Preliminary Determination in the Antidumping Duty Investigation of Stainless Steel Flanges from India," dated concurrently with this memorandum (Chandan Analysis Memo).

¹⁵¹ 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)).

¹⁵² 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; *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.

X. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by respondents in India during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

We compared U.S. sales to sales of foreign like product made in the appropriate comparison market. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or to constructed value (CV), as appropriate.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by the respondents in the following order of importance: type, grade of finished flange, pressure rating, nominal outside diameter, face, and finished stage. For the respondents’ sales of stainless steel flanges in the United States, the reported control number (CONNUM) identifies the characteristics of the stainless steel flanges, as exported by Chandan.

XI. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

EP

In accordance with section 772(a) of the Act, we calculated EP for certain of Chandan’s U.S. sales because the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the facts of the record. We made adjustments for billing adjustments, credit expenses, bank charges, other direct selling expenses, inventory carrying costs incurred in the country of manufacture, and indirect selling expenses incurred in the country of manufacture. Commerce made deductions for movement expenses, *i.e.*, inland freight to the port of exportation, insurance, international freight, and brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

Chandan claimed an adjustment for duty drawback (DDB) based upon the duty drawback schedules in effect on exports of stainless steel flanges.¹⁵³ Commerce applies a two-pronged test to determine whether to grant a respondent a DDB adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, Commerce grants a respondent a DDB adjustment if it finds that: (1) import duties and rebates are directly linked to, and are dependent upon, one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product.¹⁵⁴

¹⁵³ See Chandan’s November 30, 2017 Section C Questionnaire Response.

¹⁵⁴ See *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

However, Chandan did not provide information on its DDB programs that was sufficient enough to demonstrate whether their import duties and corresponding rebates were linked to, and dependent upon, one another (*i.e.*, no license or government document linking the duties paid by Chandan and the rebates that relieve Chandan from the duties paid). Chandan also did not demonstrate that there were sufficient imports of the imported material to account for the amount of import duty refunded or exempted for the export of the manufactured product. Therefore, because Chandan failed to provide sufficient evidence to pass Commerce's two-pronged test, we have not increased U.S. price by the amount of drawback claimed by Chandan.

CEP

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this investigation, Chandan classified some of its sales to the United States as CEP sales. Chandan reported that it sold the merchandise under consideration through its affiliated U.S. importer to the unaffiliated U.S. customer. Further, Commerce concluded that EP, as defined by section 772(a) of the Act, was not otherwise warranted. Commerce calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. Commerce made adjustments to the prices for billing adjustments. Commerce adjusted these prices for movement expenses, including foreign inland freight, insurance, brokerage and handling incurred in the country of manufacture, U.S. brokerage and handling, international freight, U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, Commerce also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (credit expenses, bank charges, and other direct selling expenses) and indirect selling expenses (inventory carrying costs and indirect selling expenses). In accordance with section 772(f) of the Act, Commerce calculated the CEP profit rate using the expenses incurred by Chandan and its U.S. importer/affiliate, related to their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.¹⁵⁵

XII. 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 no viable home market exists, we may, if appropriate,

¹⁵⁵ See Chandan Preliminary Analysis Memo.

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.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Chandan was less than five percent of the aggregate volume of its U.S. sales of subject merchandise. Therefore, we used third-country market sales as the basis for NV for Chandan, in accordance with section 773(a)(1)(C) of the Act.

B) *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 U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁵⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁵⁷ 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 and 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,¹⁵⁸ 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.¹⁵⁹

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce 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 a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP 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 will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁶⁰

¹⁵⁶ See 19 CFR 351.412(c)(2).

¹⁵⁷ *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 (August 18, 2010) and accompanying IDM at Comment 7 (*OJ from Brazil*).

¹⁵⁸ 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 (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹⁵⁹ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹⁶⁰ See, *e.g.*, *OJ from Brazil* at Comment 7.

In this investigation, we obtained information from Chandan regarding the marketing stages involved in making reported comparison market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Chandan indicated its comparison market sales were through one channel: sales to unaffiliated distributors.¹⁶¹ Chandan reported that its U.S. sales were made through two different channels of distribution: sales to unaffiliated distributors and sales to unaffiliated distributors through an affiliate.¹⁶² Chandan stated that it has only one class of customers in the comparison market and U.S. market that purchase through all channels,¹⁶³ and Chandan did not request a level of trade adjustment. Based on Chandan's descriptions of selling functions that indicated little variation across channels and markets, therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no adjustment under 19 CFR 351.412(e) is warranted.

C) *Cost of Production Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request CV and COP information from respondent companies in all AD proceedings.¹⁶⁴ Accordingly, Commerce requested this information from respondents in this investigation. We examined Chandan's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data for Chandan.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated 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.

We relied on the COP data submitted by Chandan except as follows:

1. We adjusted the reported cost of manufacturing of the CONNUMs with identified steel grades to include the cost of the CONNUMs for which the grades were not identified.¹⁶⁵
2. We adjusted Chandan's G&A expenses to include the "non-cost items" and to include the change in inventory in the denominator of the G&A expense ratio.¹⁶⁶
3. We adjusted Chandan's financial expense ratio to disallow interest income offset to the financial expenses.¹⁶⁷

¹⁶¹ See Chandan's Section B Questionnaire Response, dated November 30, 2017 (Chandan SBQR) at 32.

¹⁶² See Chandan's Section C Questionnaire Response, dated November 30, 2017 (Chandan SCQR) at 32.

¹⁶³ See Chandan's Section A Questionnaire Response, dated October 31, 2017 (Chandan SAQR) at 21.

¹⁶⁴ See *Applicability Notice*.

¹⁶⁵ See Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Chandan Steel Limited," dated concurrently with this memorandum (Chandan Prelim Cost Calculation Memo).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

We found that, for certain products, more than 20 percent of Chandan's comparison market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) Calculation of NV Based on Comparison-Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Chandan, we based NV on comparison market prices. We calculated NV based on delivered prices to unaffiliated customers. We also made deductions from the starting price for inland freight where appropriate under section 773(a)(6)(B)(ii) of the Act.

As discussed above, we have preliminarily determined to apply partial adverse facts available to Chandan's home market and U.S. packing costs. As partial adverse facts available, we are not deducting home market packing costs from Chandan's home market price and applying the highest reporting packing cost to all of Chandan's U.S. sales for the preliminary determination, in accordance with section 773(a)(6)(A) and (B) of the act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct

selling expenses incurred for comparison market sales, (*i.e.*, credit expenses and bank charges) and added U.S. direct selling expenses (*i.e.*, credit expenses and bank charges).

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.¹⁶⁸

XIII. CRITICAL CIRCUMSTANCES

On December 27, 2017, the petitioners alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).¹⁶⁹ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), Commerce defines “relatively short period” generally as the period starting on the date the proceeding begins *i.e.*, the date the petition is filed and ending at least three months later. This section of the regulations further provides that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.

¹⁶⁸ See 19 CFR 351.411(b).

¹⁶⁹ See Critical Circumstances Allegation.

B) Critical Circumstances Allegation

The petitioners allege that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition.¹⁷⁰ Thus, the petitioners assert that the dumping margins alleged in the petition, which were from 78.49 percent to 145.25 percent, exceed the 15 percent threshold used by Commerce to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.¹⁷¹ The petitioners argue that importers of stainless steel flanges from India have been on notice that dumped imports are likely to cause injury since the ITC's October 6, 2017 preliminary affirmative injury finding. Further, the petitioners allege that there is a pattern of dumping similar merchandise in the United States by companies that are subject to this investigation. Specifically, the petitioners allege that Indian stainless steel flange producers are, or have been, subject to AD orders covering carbon steel flanges and stainless steel flanges.¹⁷²

The petitioners argue that regarding section 733(e)(1)(B) of the Act, which examines whether there have been "massive imports of the subject merchandise over a relatively short period," Commerce should compare imports of stainless steel flange for the three-month period from May 2017 through July 2017 (base period) to imports of such merchandise during the three-month period from August 2017 through October 2017 (comparison period).¹⁷³ The petitioners allege that import statistics released by Commerce's and ITC DataWeb indicate that shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (25.33 percent) between the base period and the comparison period, and as a result, exceeded the threshold for "massive" imports of stainless steel flanges, as provided under 19 CFR 351.206(h) and (i).

C) Analysis

Commerce's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioners' critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.

In determining whether a history of dumping and material injury exists, Commerce generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise. The petitioners allege that there is a pattern of dumping similar merchandise in the United States by companies that are subject to this investigation, and Commerce previously issued an AD order on stainless steel flanges from India, based on nearly identical HTS categories subject to this investigation.¹⁷⁴ Therefore, we find there is a history of dumping of subject merchandise of subject merchandise exported from India.

¹⁷⁰ *Id.* at 3-4.

¹⁷¹ *Id.* at 5.

¹⁷² *Id.* at 5-7.

¹⁷³ *Id.* at 9-10.

¹⁷⁴ *See Forged Stainless Steel Flanges from India and Taiwan; Expedited Five-year (Sunset) Reviews of Antidumping Duty Orders; Final Results*, 70 FR 67137 (November 4, 2005).

To determine whether importers knew or should have known that exporters were selling at less than fair value, we next examine whether the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.¹⁷⁵ For purposes of this investigation, Commerce preliminarily determines that the knowledge standard is met for Chandan because its preliminary margins exceed 15 percent for CEP sales.¹⁷⁶

As discussed above, because the other mandatory respondents in this investigation, the Bebitz/Viraj single entity and the Echjay single entity, were uncooperative, we are assigning, as AFA, a rate of 145.25 percent. Because the preliminary dumping margin exceeds the threshold sufficient to impute knowledge of dumping, this margin provides a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV by the Bebitz/Viraj single entity and the Echjay single entity to the importers.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, Commerce normally will look to the preliminary injury determination of the ITC.¹⁷⁷ If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.¹⁷⁸ Therefore, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of stainless steel flanges from India,¹⁷⁹ Commerce determines that importers knew or should have known that there was likely to be material injury by reason of sales of stainless steel flanges at LTFV for all mandatory respondents and the companies subject to the “all-others” rate.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we examined whether imports from Chandan were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is Commerce’s practice to base its critical circumstances analysis on all available data, using base and comparison periods

¹⁷⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

¹⁷⁶ See “Preliminary Determination” section of the accompanying *Federal Register* notice; and Chandan Preliminary Analysis Memo.

¹⁷⁷ See, e.g., *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010).

¹⁷⁸ See, e.g., *Steel Wire Rod Prelim*, 67 FR at 6225, unchanged in *Steel Wire Rod Final*; and *Magnesium Metal Prelim*, 70 FR at 5607, unchanged in *Magnesium Metal Final*.

¹⁷⁹ See *Stainless Steel Flanges from China and India; Determination*, 82 FR 46831 (October 6, 2017).

of no less than three months.¹⁸⁰ Commerce typically determines whether or not to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period based on whether the event that gave rise to the belief (*i.e.*, the filing of the Petition) occurred in the first half of the month (included in the comparison period) or the second half of the month (included in the base period).¹⁸¹ Moreover, it is Commerce’s practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.¹⁸² Therefore, we chose to compare the base period of June 2017 through August 2017 to the comparison period of September 2017 through November 2017 to determine whether or not imports of subject merchandise were massive. Consistent with 19 CFR 351.206(i), we preliminarily find, based on Chandan’s reported shipments of merchandise under consideration during the comparison period, that imports increased by more than 15 percent over its respective imports in the base period.¹⁸³ Therefore, we preliminarily find there to be massive imports for Chandan, pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).¹⁸⁴

Concerning the Bebitz/Viraj single entity and the Echjay single entity, as noted above, we preliminarily determined to apply total AFA with regard to the entities, as described under section 776(b) of the Act. Thus, for purposes of the massive imports analysis, because we lack the necessary reliable shipment data from the Bebitz/Viraj single entity and the Echjay single entity (*see* our analysis above, applying total AFA to each entity), we determine that, pursuant to section 776(b) of the Act, both the Bebitz/Viraj single entity and the Echjay single entity shipped stainless steel flanges in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).

For the companies subject to the “all others” rate, the rate for all other producers and exporters is the rate for Chandan, which exceeds the threshold to impute knowledge to the customers or importers that the subject merchandise was being sold at LTFV.¹⁸⁵ Therefore, we attempted to analyze, in accordance with 19 CFR 351.206(i), monthly shipment data for the period June through August 2017, using shipment data from Global Trade Atlas, adjusted to remove shipments reported by

¹⁸⁰ See *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People’s Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 3.

¹⁸¹ See, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312.

¹⁸² See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004).

¹⁸³ See Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Critical Circumstances Analysis,” dated concurrently with this memorandum (Critical Circumstances Memo).

¹⁸⁴ For Commerce’s analysis, which involves business proprietary information, *see* Critical Circumstances Memo.

¹⁸⁵ Because the rate of the Bebitz/Viraj single entity and the Echjay single entity was an AFA rate, their AFA rates were not included in the determination of the “all others” rate.

Chandan.¹⁸⁶ However, we find the resulting data unusable for purposes of our “massive quantities” analysis.¹⁸⁷ Therefore, we based our analysis for “all other” producers/exporters of stainless steel flanges in India on Chandan’s data.¹⁸⁸ As a result, we determine that there was a massive increase in shipments from these remaining companies, as defined by 19 CFR 351.206(h).¹⁸⁹

In light of the above, in accordance with section 733(e)(1) of the Act, we preliminarily find that critical circumstances exist for Chandan, the Bebitz/Viraj single entity, the Echjay single entity, and “all other” producers/exporters of stainless steel flanges from India. We will make a final determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

XIV. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

¹⁸⁶ See, e.g., *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

¹⁸⁷ See Critical Circumstances Memo.

¹⁸⁸ See *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39900 (June 20, 2016) and accompanying PDM at 6, unchanged in *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949 (January 10, 2017).

¹⁸⁹ See Critical Circumstances Memo.

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

3/19/2018

X

Gary Taverman

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance