




A-533-857
Investigation
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DATE: February 14, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Oil Country Tubular
Goods from India

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that oil country tubular goods (OCTG) from India are being 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 margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 2, 2013, the Department received an antidumping duty (AD) petition concerning imports of OCTG from India filed in proper form by petitioners.¹ On July 29, 2013, the Department published a notice of initiation for the LTFV investigation of OCTG from India.² At that time, the Department also found reasonable grounds to believe or suspect that sales of the foreign like products were made below the cost of production (COP), within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide COP investigation on sales of OCTG from India.³

¹ United States Steel Corporation, Vallourec Star L.P., TMK IPSCO, Energex (division of JMC Steel Group), Northwest Pipe Company, Tejas Tubular Products, Welded Tube USA Inc., Boomerang Tube LLC, and Maverick Tube Corporation (collectively, petitioners).

² See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 45505 (July 29, 2013) (*Initiation Notice*).

³ *Id.*, 78 FR at 45510.



On July 29, 2013, we placed on the record of this investigation the U.S. import data of OCTG from India obtained from the U.S. Customs and Border Production (CBP), and invited interested parties to comment on the data and the Department's respondent selection methodology. Petitioners and United Seamless Tubulaar Pvt. Limited submitted comments on August 5, 2013, which the Department considered in its analysis. Subsequently, on August 26, 2013, the Department selected two mandatory respondent companies for examination in this investigation, GVN Fuels Limited (GVN) and Jindal Saw Ltd. (Jindal SAW), and decided that, despite requests from several interested parties, no voluntary respondents would be selected at that time.⁴ We issued an AD questionnaire to both mandatory respondents. Between September 6, 2013, and November 18, 2013, GVN and Jindal SAW submitted responses to sections A, B, C and D of the Department's questionnaire, which were timely filed. Both GVN and Jindal SAW timely responded to all supplemental questionnaires issued by the Department. As the Department stated in the Respondent Selection Memorandum, for voluntary responses submitted in accordance with section 782(a) of the Act and 19 CFR 351.204(d), the Department recommended evaluating the circumstances during the course of this investigation to determine whether we could examine more respondents in addition to the mandatory respondents identified above. At this time, the Department is not selecting any voluntary respondents since both mandatory respondents are actively participating in this investigation. On February 5, 2014, and February 6, 2014, petitioners filed comments for the Department to consider in its preliminary determination. No other party submitted comments regarding the preliminary determination. On February 5, 2014, Jindal SAW requested a postponement of the final determination and an extension of the provisional measures.

On August 12, 2013, WSP Pipe Co., Ltd. (WSP) submitted scope comments. Specifically, WSP requested that the Department exclude "pierced billets" from the scope of the investigation.⁵ On August 22, 2013, petitioners filed rebuttal comments addressing WSP's scope comments.⁶

On December 18, 2013, petitioners filed amendments to the petition, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of OCTG from India.⁷ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, the Department must issue a preliminary finding not later than the preliminary determination.

On December 30, 2013, the Department requested that respondents report their shipment data for a three-year period ending in February 2014, the month of the preliminary determination. On January 7, 9 and 14, 2014, respondents submitted their shipment data up to December 2013.

⁴ See Memorandum to Gary Taverman, "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India: Respondent Selection," dated August 26, 2013 (Respondent Selection Memorandum).

⁵ See Letter from WSP, "Comments on scope of investigations: Antidumping Duty Investigations of Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam; Countervailing Duty Investigation of Oil Country Tubular Goods from India and Turkey," August 12, 2013.

⁶ See Letter from petitioners, "Certain Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam: Rebuttal Comments on Scope of Investigation," August 22, 2013.

⁷ See Letter from petitioners, "Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from India," December 18, 2013.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2013.⁸

IV. POSTPONEMENT OF PRELIMINARY DETERMINATION

On October 21, 2013, the Department fully postponed the deadline for issuing the preliminary determination to no later than 190 days after the date on which it initiated this investigation.⁹ As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.¹⁰ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.¹¹ Accordingly, the revised deadline for the preliminary determination of this investigation is now February 14, 2014.¹²

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on February 5, 2014, Jindal SAW requested that the Department postpone the final determination and that the Department extend the provisional measures from four to six months. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter Jindal SAW accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

VI. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of

⁸ See 19 CFR 351.204(b)(1).

⁹ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 65268 (October 31, 2013).

¹⁰ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

¹¹ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

¹² Due to the closure of the Federal Government on February 13, 2014, the Department completed this determination on the next business day (*i.e.*, February 14, 2014).

iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

Excluded from the scope of the investigation are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

VII. SCOPE COMMENTS

In the *Initiation Notice*, the Department invited interested parties to “to raise issues regarding product coverage.”

On August 12, 2013, we received scope comments from WSP (the sole mandatory respondent in the concurrent LTFV investigations involving OCTG from Thailand), requesting that the Department “clarify the scope of these oil country tubular goods (OCTG) investigations by excluding certain “pierced billets” from the scope.” WSP described the merchandise subject to the request as “billets with a chemical composition used to produce a variety of pipe and tube products (including but not limited to OCTG), which have been pierced, but which have not been otherwise further processed prior to importation into the United States.” WSP further described the merchandise as “heated and pierced; it has not been rolled, sized, straightened, cut, etc., prior

to importation into the United States.” WSP stated that it did not think that such “pierced billets” constitute “unfinished OCTG, including green tubes” because the billets are not dedicated for use as OCTG or green tubes and can be used for other applications such as diesel sleeves, mine crane rear axles, and mechanical or structural pipe. WSP also claimed that the merchandise in question requires substantial additional processing before it could be considered unfinished OCTG and thus subject to the scope of the investigations.

We received rebuttal comments from petitioners on August 22, 2013, in which petitioners claim that the Department should reject WSP’s request and that the merchandise in question is covered by the scope of the investigations. Petitioners state that the scope language of the investigations covers “hollow steel products of circular cross section” that are unfinished and may be used as OCTG, and argue that the merchandise described by WSP fits this physical description and thus is clearly within the scope of the investigations. Petitioners further state that the inclusion of this merchandise in the scope is consistent with previous practices and decisions by the Department. Petitioners also argue that WSP provided no information to substantiate the claim that “pierced billets” require substantial additional processing, and moreover that there are many types of unfinished OCTG besides “green tubes” that are covered by the scope. Finally, petitioners believe that any “pierced billets” imported into the United States would be classified under the heading 7304 of Chapter 73 of the HTSUS, and that such a classification would indicate that the merchandise was a form of unfinished OCTG and covered by the scope.

In response to WSP’s arguments, petitioners argued in part that the physical characteristics of the product in question were the same as merchandise covered by the scope of the investigations and that there was no evidence that the merchandise in question required further manufacturing. WSP never responded to petitioners’ arguments, provided no further information, and subsequently did not respond to the Department’s AD Questionnaire. Therefore, we preliminarily find that the merchandise described by WSP is covered by the scope of the investigations. We invite parties to comment on this in their case briefs so that the issue can be addressed in the final determination.

VIII. AFFILIATION AND SINGLE ENTITY

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: (1) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (section 771(33)(F) of the Act); or (2) any person who controls any other person and such other person (section 771(33)(G) of the Act). Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statements of Administrative Action (SAA) notes that control may be found to exist within corporate or family groupings.¹³ The Department’s regulations at 19 CFR 351.102(b)(2) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the

¹³ See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. We examined record evidence to determine whether affiliations between each respondent and any of the following entities existed during the POI: (1) other producers of OCTG, (2) suppliers of inputs used to produce OCTG; (3) reported home market customers; and (4) reported U.S. customers.

According to the record, the respondents are members of two “informal” groups of companies associated with the Jindal family. These two groups originated with two brothers: Mr. O.P. Jindal (now deceased) and Mr. B.C. Jindal.¹⁴ Mr. B.C. Jindal’s son, Mr. D.P. Jindal, then separated from his father and created a third group of companies, “the D.P. Jindal group.”¹⁵ Jindal SAW belongs to the O.P. Jindal group and GVN, Maharashtra Seamless Limited (MSL), and Jindal Pipe Limited (JPL) belong to the D.P. Jindal group. The B.C. Jindal group includes another OCTG producer, Jindal India Ltd, a company not selected as a respondent in this investigation. The O.P. Jindal group includes suppliers of inputs used by the OCTG producers in all three groups. Each group has a number of other companies involved in varied businesses.¹⁶ According to the respondents, these groups are not legal entities, but informal groupings of companies associated with various Jindal family members.¹⁷

The Jindal Family

In previous proceedings, the Department found with respect to section 771(33)(F) of the Act, that “any person” may denote a family grouping. The Department defined a family grouping to encompass not only parents, children, siblings, spouses, and lineal descendants, but also uncle-nephew relations as well as first cousins. As noted above, the companies under consideration are each associated with various members of the Jindal family. For this preliminary determination, the Department finds that the descendants of Mr. O.P. Jindal as well as of Mr. B.C. Jindal and his descendants, including Mr. D.P. Jindal, all comprise a single family grouping, the Jindal family.

GVN, MSL, and JPL

GVN responded to the Department’s questionnaire stating it was not a producer of subject merchandise but an exporter of the merchandise produced by MSL and JPL. GVN stated it considers itself affiliated with MSL and JPL and provided a consolidated response on behalf of itself and the two producers. GVN stated that Mr. D.P. Jindal and his immediate family owned shares in each of these three companies either directly or indirectly. Mr. D.P. Jindal is also the chairman of the boards of directors of MSL and JPL. GVN is engaged exclusively in one activity: the exporting of subject and non-subject merchandise produced by MSL and JPL. All of MSL and JPL exports are through GVN. Further, GVN stated that its regular operations were managed by its business division in coordination with MSL staff and that each of the three companies has access to the others’ accounting systems. All three companies share corporate

¹⁴ See Letter from GVN, “Oil Country Tubular Goods from India; Section A Response of GVN Fuels Limited,” October 25, 2013 (GVN Section A Response), at A-17, A-18.

¹⁵ *Id.*, at A-15, A-17.

¹⁶ *Id.*, at A-17.

¹⁷ *Id.*

offices in Mumbai. GVN reported that while day-to-day operations are directed by the heads of the relevant divisions of the three companies, major decisions are referred to Mr. D.P. Jindal.

Under section 771(33)(F) of the Act, two or more companies are affiliated if they are controlled by a common individual or entity. According to 19 CFR 351.102(a)(3), in determining whether control over another person exists, the Department will consider the following factors, among others: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Department 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.

Pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(a)(3), we find GVN, MSL, JPL to be affiliated through the common control of the Jindal family. The Jindal family controls MSL and JPL through the direct and indirect ownership it holds in the two companies, in combination with its chairmanship of the boards of directors of both companies. GVN, which is also partially owned by the Jindal family, is completely dependent on MSL and JPL for the merchandise it sells. Likewise, MSL and JPL export exclusively through GVN. All three companies are considered part of the D.P. Jindal group and work in a coordinated fashion concerning the production, pricing, and cost of exported OCTG.

The Department's regulations at 19 CFR 351.401(f) state that the Department will treat affiliated producers as a single entity where they 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 Department concludes that there is a significant potential for the manipulation of price or production. 19 CFR 351.401(f) further states that in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) 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. The *Preamble* to the final regulations clarifies how the Department should apply this section in its collapsing analysis, explaining that this list of factors is "non-exhaustive."¹⁸ The *Preamble* states, however, that the Department must still find that the potential for manipulation of price and production is significant.¹⁹ The Department also previously explained its practice of collapsing affiliated companies:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies "constitute separate manufacturers or exporters for purposes of the dumping law."²⁰

¹⁸ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).

¹⁹ *Id.*, 62 FR at 27345-46.

²⁰ See *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative*

We preliminarily determine the affiliation among GVN, MSL, and JPL has a significant potential for manipulation of price or production as the operations of GVN, MSL and JPL are significantly intertwined. As noted, GVN is the sole exporter of OCTG produced by MSL and JPL, and GVN only exports OCTG produced by MSL and JPL, demonstrating both a close supplier relationship and a significant volume of interparty transactions.²¹ The three companies share confidential information (*e.g.*, their accounting systems, and purchase order information from U.S. customers) and share facilities (*e.g.*, Mumbai sales offices). The operations of GVN, MSL and JPL are further intertwined based on record evidence concerning price negotiation, production planning, and shipment of merchandise.²² Thus, in accordance with 19 CFR 351.401(f) and the Department's practice,²³ we are treating GVN, MSL and JPL as a single entity for purposes of this preliminary determination.

The record indicates no affiliation between these three companies and any other member of the D.P. Jindal group or of the other groups of companies associated with and partially owned by members of the Jindal family (*i.e.*, the O.P. Jindal group or the B.C. Jindal group) relevant to this investigation. Specifically, GVN, MSL, and JPL do not own more than five percent directly or indirectly of the other members of the Jindal family groups and there is no common control of the GVN/MSL/JPL "single entity" and these other companies.

Jindal SAW

Jindal SAW reported numerous subsidiaries, none of which are involved in the production of OCTG or inputs in the production of OCTG. None of these subsidiaries are home market customers of OCTG. One is the U.S. importer and warehouse for certain U.S. sales (discussed below). While, as noted above, Jindal SAW is a member of the O.P. Jindal group, the record indicates no affiliation between Jindal SAW or its subsidiaries and any other member of the O.P. Jindal group or of the other groups of companies associated with and partially owned by members of the Jindal family (*i.e.*, the D.P. Jindal group or the B.C. Jindal group) relevant to this investigation. Specifically, neither Jindal SAW nor its affiliates owns more than five percent directly or indirectly of these other companies and there is no common control of Jindal SAW or any of its affiliates and these other companies.

Jindal India Ltd.

As noted above, the B.C. Jindal Group, headed by Mr. B.C. Jindal, also includes a company which is a producer of OCTG, Jindal India Ltd. However, the company has not been selected for

Reviews, 61 FR 42833, 42853 (August 19, 1996) (*Flowers from Colombia*), citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (*Granite Products from Spain*).

²¹ See GVN Section A Response at A-33.

²² See *e.g.*, GVN Section A Response at A-16, A-28; see also, Letter from GVN, "Oil Country Tubular Goods from India; Supplemental Sections A, B and C Response of GVN Fuels Limited," January 23, 2014 (GVN A-C SQR), at 9-10 (demonstrating the coordination between GVN and MSL in fulfilling the orders of its U.S. customers).

²³ See *Flowers from Colombia* (citing *Granite Products from Spain*); see also *Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (1997) (in which the Court of International Trade expressly affirmed the Department's authority to collapse affiliated parties for purposes of its antidumping analysis).

examination in this LTFV investigation. As noted above for the discussion of GVN and Jindal SAW, the Department preliminarily found that the companies in the B.C. Jindal Group, although associated with another member of the Jindal family, are not affiliated with either of the companies under examination in this investigation.

IX. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

To determine whether sales of OCTG from India to the United States were made at LTFV, we compared the export prices (EP) or constructed export price (CEP) to the normal value (NV), as described in the “U.S. Price” and “Normal Value” sections of this memorandum, below. As described further below, in accordance with section 777A(d)(1)(A) of the Act, we compared weighted-average EPs (and CEPs for Jindal SAW) to POI weighted-average NVs for both GVN and Jindal SAW.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the mandatory respondents in the home market that fit the description in the “Scope of the Investigation” section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home 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.

In making product comparisons, we matched foreign like products based on the physical characteristics established by the Department and reported by the mandatory respondents in the following order of importance: seamless or welded, type, grade, coupled, upset end, threaded, nominal outside diameter, length, heat treatment, and nominal wall thickness.²⁴ The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. As the Department noted “...selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.”²⁵

²⁴ See Letter from the Department to Jindal SAW and to GVN, “Antidumping Duty Investigation: Certain Oil Country Tubular Goods from India,” August 27, 2013; *see also* Memorandum to the File, “GVN Fuels Limited Preliminary Determination Analysis Memoranda,” concurrently dated with this memorandum (GVN Analysis Memorandum) for a proprietary discussion on GVN’s reported product characteristics.

²⁵ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1.

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs or EPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent LTFV investigations, the Department examined whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” (DP) analysis for determining whether application of the A-to-T method is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.²⁶ The Department finds that the DP analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this LTFV investigation.²⁷ The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods.²⁸ If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether there exists a pattern of prices that differ significantly. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes), which 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 being examined based upon the reported date of sale. For purposes of

²⁶ See, *e.g.*, *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) (*Flat-Rolled Steel from Japan*), and accompanying Preliminary Decision Memorandum.

²⁷ See, *e.g.*, *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013); *Certain Activated Carbon From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013); *Certain Steel Threaded Rod From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*); *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*).

²⁸ As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. See, *e.g.*, *Steel Threaded Rod; Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013); *Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010-2012*, 78 FR 20890 (April 8, 2013); and *Polyester Staple Fiber*.

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

In the first stage of the DP analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs (or CEPs) that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A 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 A-to-A 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 EPs (or CEPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin between the A-to-A method and the appropriate alternative

method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that 60.58 percent of Jindal SAW's U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to all U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Jindal SAW.²⁹

Based on the results of the DP analysis,³⁰ the Department finds that 22.54 percent of GVN's U.S. sales pass the Cohen's *d* test and therefore the analysis does not confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Accordingly, the Department determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for GVN.

D. U.S. Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and (b) of the Act, as appropriate.

Export Price Sales

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)."

For Jindal SAW, in accordance with section 772(a) of the Act, the Department based the U.S. price on EP for a portion of sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. Jindal SAW requested a duty drawback adjustment, stating that it participated in the

²⁹ See Memorandum to the File, "Jindal SAW, Ltd. Preliminary Determination Analysis Memoranda," concurrently dated with this memorandum (Jindal SAW Analysis Memorandum).

³⁰ See GVN Analysis Memorandum.

2011 “Duty Drawback Scheme” (DDS) through the Government of India (GOI). Under section 772(c)(1)(B) of the Act, the Department will increase the starting price by the duty drawback if the exporter or producer meets two criteria: the import duty and rebate must be directly linked to, and dependent on, one another; and the company must demonstrate that there were sufficient import volumes of the imported material to account for the duty drawback received for the export of the manufactured product.³¹ The Department first analyzes the record to determine if the information is sufficient to examine the drawback system and to determine if the government has controls in place to enable the Department to examine the criteria for receiving a duty drawback adjustment.³² In this case, the Department preliminarily determines it will not grant a duty drawback adjustment for Jindal SAW because the information provided did not demonstrate how the GOI calculated the duty drawback rates in general or how it calculated the rates for the OCTG industry in particular, nor does it state the specific factors that were considered to ascertain this rate or that cause the rate to change every year.³³ By Jindal SAW’s own admission, the drawback it receives is not tied to the quantity which it imports (*i.e.*, it would have received drawback even if it imported no inputs whatsoever).³⁴ Besides the theoretical disconnect between imported volumes and drawback, Jindal SAW did not show that it had sufficient volumes of imported material to account for the duty drawback received, despite the Department requesting it do so. Further, the calculations submitted by petitioners indicate that Jindal SAW’s imports fell far short of justifying the drawback received.³⁵

For Jindal SAW, we also made adjustments for credit expenses and certain direct selling expenses, as appropriate.³⁶ We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance.³⁷

In accordance with section 772(a) of the Act, the Department based U.S. price on EP for all of GVN’s U.S. sales because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States. For all U.S. sales, GVN reported that the merchandise under consideration was produced by MSL or JPL³⁸ and sold through GVN to the unaffiliated U.S. customers.³⁹ We based the starting price on the prices to unaffiliated purchasers in the United States. If applicable, for those sales where the shipment date from the factory preceded the invoice date, we used the shipment date from the factory as

³¹ See, e.g., *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

³² *Id.*

³³ *Id.*, (explaining that the parties had placed sufficient information on the record for the Department to find that the government had controls in place).

³⁴ See Letter from Jindal SAW, “OCTG from India: 1st Supplemental Section ABC Response,” January 14, 2014 (Jindal SAW January 14 SQR), at 34.

³⁵ See Jindal SAW January 14 SQR at 33-34.

³⁶ See Jindal SAW Analysis Memorandum.

³⁷ *Id.*

³⁸ See GVN Section A Response at A-7.

³⁹ *Id.*, at A-22.

the date of sale, in accordance with our practice.⁴⁰ Based on information provided by GVN, it appears its reported duty drawback includes amounts from the DDS program discussed above, as well as from the Advance License Program (ALP). While GVN's claim under DDS has the same deficiencies of Jindal SAW's, under the ALP, by contrast, quantities of imported materials and exported finished products are linked through standard input-output norms established by the GOI. The exporter is only allowed a drawback upon exportation for duties paid on the imported inputs. GVN provided a reconciliation of the quantities of inputs imported and the drawback received.⁴¹ The Department is therefore preliminarily granting an increase to GVN's starting price for duty drawback under the ALP.⁴² GVN's reported duty drawback amount was calculated to incorporate both drawback programs (*i.e.*, the calculated value includes the drawback amount received from the DDS and the ALP). The Department will request that GVN report its duty drawback separately by each program for the final determination.

For GVN, made adjustments for credit expenses, direct selling expenses, and commissions, as appropriate. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance.⁴³

Constructed Export Price Sales

For some of the U.S. sales that Jindal SAW reported, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales were made by Jindal SAW after importation from Jindal SAW's U.S. inventory to unaffiliated customers in the United States.⁴⁴ For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, or U.S. movement expenses in accordance with section 772(c)(2)(A) of the Act. If applicable, for those sales where the date of shipment from the U.S. warehouse preceded the invoice date, we used the shipment date as the date of sale, in accordance with our practice.⁴⁵

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, inventory carrying costs, credit expenses, and indirect selling

⁴⁰ 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) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum at Comment 11.

⁴¹ See GVN A-C SQR at exhibit 25 (both proprietary document and public version).

⁴² See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008), and accompanying Issues and Decision Memorandum, where the Department found that the ALP meets the Department's duty drawback requirements.

⁴³ See GVN Analysis Memorandum.

⁴⁴ See Letter from Jindal SAW, "OCTG from India: Response to Section A," October 24, 2013 (Jindal SAW's Section A Response), at 26.

⁴⁵ See, e.g., *Shrimp from Thailand*, and accompanying Issues and Decision Memorandum at Comment 11.

expenses incurred in the United States. Finally, we deducted CEP profit from U.S. price in accordance with sections 772(d)(3) and 772(f) of the Act.⁴⁶

E. Normal Value

1. 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. sales⁴⁷), we compared MSL's, which sells in the home market,⁴⁸ and Jindal SAW'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. Based on this comparison, we determined that MSL and Jindal SAW's aggregate volumes of home market sales of the foreign like product were greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.⁴⁹ Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

2. Affiliated Party Transactions and Arm's-Length Test

Pursuant to the Act and the Department's regulations, the Department will examine whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. We exclude home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁵⁰ Neither respondent reported home market sales to affiliated parties.⁵¹

3. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP

⁴⁶ See Jindal SAW Analysis Memorandum.

⁴⁷ See 19 CFR 351.404(b)(2).

⁴⁸ See GVN Section A Response at A-2 through A-4 (where GVN makes clear all home market sales are through MSL. For example, GVN explains that it "is an exporter of subject merchandise produced by MSL and JPL. GVN is not a producer of subject merchandise and it does not have any production facilities. It is only an exporter." Additionally, "MSL sold subject merchandise only in the home market. It did not export directly to United States or to any other third country." And lastly, GVN explains that "JPL had no sales of subject merchandise in the home market and it did not export directly to United States or to any other third countries").

⁴⁹ See GVN Section A Response at A-6 and exhibit M-4; see also Letter from Jindal SAW, "OCTG from India: Response to Quantity & Value," September 13, 2013, at exhibit A-1.

⁵⁰ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), citing *Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011).

⁵¹ See GVN Section A Response at A-5; see also Jindal SAW Section A Response at 3.

sales.⁵² The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on constructed value, those of the sales from which we derived selling, general, and administrative expenses (SG&A) and profit.⁵³ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁵⁴ 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.⁵⁵

To determine if the home-market sales are made at a different LOT than EP or CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁵⁶ If home market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.⁵⁷

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁵⁸ Neither respondent claimed a LOT or CEP adjustment. After examining the record evidence, we find that each respondent's home market constitutes a single LOT.⁵⁹ GVN reported EP sales in the U.S. market made at the same LOT and there appears to be no significant difference between GVN's selling and marketing practices in the home market and for its EP sales such that we consider GVN's EP sales to be at the same LOT as those associated with the home market.⁶⁰ Jindal SAW reported that its U.S. sales were EP and CEP sales, and reported two channels of distribution in the U.S. market.⁶¹ According to Jindal SAW, the first channel of distribution for sales is direct exports to the United States (EP sales), and the second channel of distribution involves warehouse export sales (CEP sales).⁶² However, record evidence indicates that the difference(s) in the selling activities and functions between the U.S. sales for direct export (EP sales) or those for warehouse export (CEP sales) are minor, and the expenses associated with these differences are elsewhere captured.⁶³ Additionally, both channels are to the same type of customer (*i.e.*, sales to unaffiliated trading companies, wholesalers or resellers in the United

⁵² See also section 773(a)(7)(A) of the Act.

⁵³ See 19 CFR 351.412(c)(1)(iii).

⁵⁴ See 19 CFR 351.412(c)(1)(i).

⁵⁵ See 19 CFR 351.412(c)(1)(ii).

⁵⁶ See 19 CFR 351.412(c)(2).

⁵⁷ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733 (November 19, 1997).

⁵⁸ See GVN Section A Response at A-28; see also *See* Jindal SAW Section A Response at exhibit A-15.

⁵⁹ See Letter from GVN, "Oil Country Tubular Goods from India: Sections B and C Response of GVN Fuels Limited," November 5, 2013 (GVN Section B-C Response), at B-21; see also Jindal SAW Section A Response at 20-21.

⁶⁰ See GVN Section A Response at A-30.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*, at exhibit A-15; see also Jindal SAW Analysis Memorandum.

States, who in turn sell to end users).⁶⁴ Accordingly, we find that the two U.S. market channels constitute a single LOT. Furthermore, there appears to be no significant difference between Jindal SAW's selling and marketing practices in the home market and its EP sales that are not elsewhere captured, such that we consider the LOT for Jindal SAW's U.S. sales to be the same as that for its home market sales.

We therefore made no LOT adjustment or CEP offset for the sales under investigation because we preliminarily find that there was only one home market LOT and one U.S. LOT, and both levels are identical for both respondents.

4. Cost of Production

We received allegations from petitioners that GVN and Jindal SAW made home market sales below their COPs. Based on our analysis of these allegations, we found that there were reasonable grounds to believe or suspect that GVN's and Jindal SAW's sales of OCTG in the home market were made at prices below their COPs. Accordingly, on July 22, 2013, the Department initiated sales-below-cost investigations of GVN's and Jindal SAW's sales, respectively.⁶⁵

i. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative (G&A) expenses, interest expenses, selling expenses, and comparison market packing costs.⁶⁶ We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁶⁷

We relied on GVN's and Jindal SAW's submitted COP data except as follows. For GVN, we increased GVN's reported cost of manufacture to include duty costs. For Jindal SAW, we: (1) We increased Jindal SAW's reported cost of manufacture to exclude the claimed adjustment for duty drawback; (2) revised the reported G&A rate to include G&A expenses related to the company as a whole and to include certain other adjustments to the numerator and denominator of the ratio; and, (3) revised the reported interest expense rate to include other interest expense and to include certain adjustments to the denominator of the ratio.⁶⁸

⁶⁴ See Jindal SAW Section A Response at 22.

⁶⁵ See *Initiation Notice*, 78 FR at 45510.

⁶⁶ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁶⁷ See *Flat-Rolled Steel from Japan*.

⁶⁸ For further discussion, see Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination for GVN" February 13, 2014, which is incorporated by reference; see also Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination for Jindal," February 13, 2014, which is incorporated by reference.

ii. *Test of Comparison Market Sales Prices*

With respect to each respondent, on a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices for each respondent were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁶⁹

iii. *Results of the COP Test*

Section 773(b)(1) of the Act provides that where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time” the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities, (*i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales).”⁷⁰ Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁷¹

Therefore, for both GVN and Jindal SAW, we disregarded below-cost sales for this preliminary determination where 20 percent or more of the sales of a given product control number (CONNUM) were priced below their COP, and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁷²

5. Price-to-Constructed Value Comparison

Where we were unable to find a home market sales of such or similar merchandise for use as the basis for NV, in accordance with section 773(a)(4) of the Act, we based NV on constructed value (CV). Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

6. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of each respondent’s material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the material and fabrication costs component of CV as described

⁶⁹ See GVN Analysis Memorandum; *see also* Jindal SAW Analysis Memorandum.

⁷⁰ See section 773(b)(2)(C)(ii) of the Act.

⁷¹ See section 773(b)(2)(D) of the Act.

⁷² See GVN Analysis Memorandum; *see also* Jindal SAW Analysis Memorandum.

above in the “Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market.

7. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Jindal SAW on delivered prices to unaffiliated customers in the home market. Where appropriate, we also added freight revenue to the starting price and capped it by the amount of freight expenses incurred, in accordance with our practice.⁷³ We made deductions, where appropriate, from the starting price for inland freight expenses, and inland insurance expenses under section 773(a)(6)(B)(ii) of the Act. For inland freight expenses, we included an amount for credit expenses based on the amount of associated freight revenue added to starting price. In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses and direct selling expenses (*i.e.*, circumstance of sale adjustments). In accordance with sections 773(a)(6)(A) and (B) of the Act, we also deducted home market packing costs, and added U.S. packing costs.

We calculated NV for GVN on the reported packed, FOB plant or delivered prices, as appropriate, to home market customers. Where appropriate, we also added freight revenue to the starting price and capped it by the amount of freight expenses incurred, in accordance with our practice.⁷⁴ In accordance with 19 CFR 351.401(c), we made adjustments to the starting price by adding late payment charges.⁷⁵ We made deductions for inland freight expenses and insurance expenses, pursuant to section 773(a)(6)(B)(ii) of the Act. For inland freight expenses, we included an amount for credit expenses based on the amount of associated freight revenue added to the starting price. In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses and direct selling expenses. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison market or U.S. market sales where commissions were granted on sales in one market but not the other. Specifically, because commissions were paid only in the U.S. market, we made a downward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of the indirect selling expenses incurred in the home market on U.S. sales.⁷⁶ In accordance with sections 773(a)(6)(A) and (B) of the Act, we also deducted home market packing costs, and added U.S. packing costs.

When comparing U.S. market sales with comparison market sales of similar, but not identical, merchandise, for Jindal SAW and GVN, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁷⁷

⁷³ See Jindal SAW Analysis Memorandum.

⁷⁴ See GVN Analysis Memorandum.

⁷⁵ *Id.*

⁷⁶ See 19 CFR 351.410(e).

⁷⁷ See 19 CFR 351.411(b). For detailed information on the calculation of NV, see GVN Analysis Memorandum; see also Jindal SAW Analysis Memorandum.

X. CURRENCY CONVERSION

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

XI. CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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 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 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. For the reasons explained below, we are preliminarily determining that critical circumstances exist for Jindal SAW, and do not exist for GVN and for All Others.

Analysis

We consider each of the statutory criteria for examining critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other country with regard to imports of the same merchandise. No parties made claims regarding completed AD proceedings covering OCTG from India, and the Department is not aware of the existence of active AD orders on OCTG from India imposed by other countries. As a result, the Department does not find that there is a history of injurious dumping of OCTG from India pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): 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 less than its fair value and that there was likely to be material injury by reason of such sales

The Department generally bases its decision with respect to knowledge on the weighted-average dumping margins calculated in the preliminary AD determination and the U.S. International Trade Commission's (ITC) preliminary injury determination. The Department normally considers rates of 25 percent or more for EP sales and rates of 15 percent or more for CEP sales as sufficient to impute importer knowledge of sales at LTFV. Jindal SAW had both EP and CEP

sales, the majority of which are EP sales.⁷⁸ GVN reported EP sales only.⁷⁹ The weighted-average dumping margin calculated for Jindal SAW exceeds the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP sales). Therefore, we determine that there is sufficient basis to find that importers should have known that Jindal SAW was selling the merchandise under consideration at LTFV. Because the Department calculated a *de minimis* rate for GVN, we find that there is not a sufficient basis to find that importers should have known that GVN was selling the merchandise under consideration at LTFV, leading us to preliminarily determine that critical circumstances do not exist for GVN.

Consistent with section 735(c)(5) of the Act and Department practice, we based the weighted-average dumping margin for all other producers and exporters on calculated rates that are not zero, *de minimis* or based entirely of facts available. For this preliminary determination, the only rate that is not zero, *de minimis* or based entirely on facts available which has been calculated for an individually examined respondent is the weighted-average dumping margin for Jindal SAW. Accordingly, we preliminarily assigned a weighted-average dumping margin to all other producers and exporters a rate of 55.37 percent. Therefore, the record supports imputing importer knowledge of sales at LTFV to importers of subject merchandise from all other producers and exporters as well.

Finally, since the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from India of OCTG, the Department determined that importers knew or should have known that there was likely to be material injury by reason of sales of OCTG at LTFV by Jindal SAW and all other producers and exporters.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later. Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed. In addition, the Department expands the periods as more data are available.

Petitioners maintain that importers, exporters, or foreign producers, through industry media and conferences, had reason to believe that the petitions were likely two months before they were filed. As such, petitioners argue that the comparison period should begin in May 2013, not in July 2013, when the petitions were filed. Furthermore, supported by import data published by

⁷⁸ See Jindal SAW Section A Response at 21; *see also* Letter from Jindal SAW, "OCTG from India: Response to Sections B, C, and D," November 15, 2013, at exhibit A-22 (PUBLIC VERSION).

⁷⁹ See GVN's Section B-C Response at C-16.

the Department's Bureau of Census and the ITC, petitioners claim that imports of OCTG from India increased by 50.92 percent between the base and comparison periods.

After reviewing the information petitioners submitted to support their claims that parties had advance knowledge of the petitions, we determined parties did not have reason to believe that petitions were likely until they were filed in July 2013. Petitioners presented evidence which they claim shows that certain parties considered these proceedings likely or even "imminent." The evidence also refers specifically to AD and countervailing duty proceedings. Specifically, petitioners presented evidence of the following:

- March 2013 – Two trade lawyers publish an article in Global Trade Monitor (GTM), a publication of their own law firm, stating proceedings against Korea may come as soon as the end of the month. Their analysis also presents data for India, Turkey, Ukraine, and Vietnam.
- March 2013 – The president of the American Institute for International Steel (AIIS) mentions the possibility of proceedings against India, Turkey, Vietnam, and "others" during an AIIS luncheon in Houston.
- April 2013 – An article in American Metal Market (AMM) reports that proceedings against Korea are imminent and mentions the possibility of proceedings against "other Asian" and "Eastern European" countries.
- May 2013 – Another article in AMM reports that proceedings against Korea will be filed in July and mentions the possibility of proceedings against India, the Philippines, and Turkey, among other countries.
- June 2013 – A third AMM article reports that a "suspension deal" is possible for Korea and that the end of June (the end of the fiscal quarter) will be a "decisive day" for the U.S. industry to decide whether proceedings should be filed against Korea, India, Turkey, Ukraine, and Vietnam.

However, all the evidence provided is speculative and also demonstrates that much doubt still existed. For example, while the GTM article states proceedings against Korea might be filed by "the end of the month," it also notes "rumors" of such filings might be "empty threats." Likewise, the AMM articles use words such as "imminent" when discussing proceedings against Korea, but also refer to the U.S. industry as "mulling" the possibility of filing a petition. The articles also quote industry insiders noting that such "rumors" have been circulating for years and that U.S. producers must first decide whether their profits will prevent an affirmative injury determination before filing. In sum, we preliminarily find that the evidence does not rise to the level of showing that importers or foreign exporters or producers had reason to believe, prior to the filing of the petitions, that a proceeding was likely. Therefore, we relied on the periods before and after the filing of the petitions in July in determining whether imports have been massive (*i.e.*, January 2013 through June 2013 compared with July through December 2013).

Respondents provided their shipment data from April 2010 through December 2013. After analyzing the data submitted, we determine imports from Jindal SAW were massive (*i.e.*, increased by more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h). Combining shipment data for the two mandatory respondents, we determine imports from all other producers and exporters


likewise were not massive.⁸⁰ On this basis, we determine that critical circumstances exist for Jindal SAW, but do not exist for all other producers and exporters. As noted above, because the Department calculated a *de minimis* rate for GVN, the Department is also finding that critical circumstances do not exist for GVN.

XII. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.


XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 FEBRUARY 2014
(Date)

⁸⁰ See Memorandum to the File, "Monthly Shipment Quantity and Value Analysis for All Other's Critical Circumstances," concurrently dated with this memorandum.