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Investigation
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less than Fair Value Investigation of Certain
Oil Country Tubular Goods from India

I. SUMMARY

In this final determination, the Department of Commerce (Department) finds that certain oil country tubular goods (OCTG) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the respondents in this case, Jindal SAW Ltd. (Jindal SAW) and to GVN Fuels Limited (GVN). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

General Comments

1. Differential Pricing Analysis: Application of the Ratio Test
2. Differential Pricing Analysis: Calculation of the Ratio Test

GVN Specific Comments

3. GVN's Cash Deposit Instructions
4. Whether to Grant a Duty Drawback Adjustment for GVN
5. Whether the Duty Drawback Program is Countervailable
6. Calculation of Domestic Inventory Carrying Costs for GVN
7. Correction to GVN's Verification Report



8. Valuation of Non-Prime Merchandise
9. Whether GVN Should be Collapsed with MSL¹ and JPL²
10. Whether GVN Sold at Two Levels of Trade in the Home Market
11. Whether to Apply Facts Available for GVN's Commission Expense
12. Grade for N/L-80 Specified OCTG
13. Use of the Final Determination Date as the Payment Date

Jindal SAW Specific Comments

14. Sales Outside the Ordinary Course of Trade
15. Classification of TYPEH for Certain of Jindal SAW's Sales
16. Adjustment to Jindal SAW's COP Due to Duty Drawback
17. Correct U.S. Indirect Selling Expense for Jindal SAW
18. Whether Critical Circumstances Exist for Jindal SAW
19. Request to Apply Adverse Facts Available for the Final Determination
20. Affiliated Inputs: Billets and Electricity
21. Rejection of Untimely Filed New Factual Information

II. BACKGROUND

On February 25, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of OCTG from India.³ The Department conducted verification of Jindal SAW from March 10 through March 14, 2014, and April 16, 2014, and of GVN from March 18 through March 22, 2014. On March 19, 2014, and March 27, 2014, Jindal SAW and the petitioners, respectively, requested that the Department conduct a hearing in this investigation, which the Department conducted on June 5, 2014.⁴ On June 10, 2014, the petitioners requested that Department reject GVN's rebuttal brief in full because of untimely new factual information.⁵ The Department rejected the petitioners' request.⁶

We invited parties to comment on the *Preliminary Determination*. We received timely filed case briefs from the petitioners⁷ (specifically from United States Steel Corporation (U.S. Steel) and from Maverick Tube Corporation (Maverick)), Jindal SAW, and GVN in May 2014. Timely rebuttal briefs were filed by U.S. Steel, Jindal SAW, and GVN in June, 2014. Based on our

¹ Maharashtra Seamless Limited (MSL).

² Jindal Pipes Limited (JPL).

³ See *Certain Oil Country Tubular Goods from India: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 10493 (February 25, 2014) (*Preliminary Determination*).

⁴ See Transcript of Public Hearing regarding, "Oil Country Tubular Goods from India," dated June 5, 2014.

⁵ See Letter from the petitioners, "Oil Country Tubular Goods from India," June 10, 2014.

⁶ See Letter to the petitioners, "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India: Request to Reject GVN's Rebuttal Brief," June 27, 2014.

⁷ Boomerang Tube, Energex Tube, a division of JMC Steel Group, Maverick Tube Corporation, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, United States Steel Corporation, Vallourec Star, L.P., and Welded Tube USA Inc. (collectively, the petitioners).

analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margins from the *Preliminary Determination*.

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, 2013.⁸ Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day.⁹ Thus, the revised deadline for the final determination in this investigation is July 10, 2014.

III. CRITICAL CIRCUMSTANCES

The Department preliminarily found that importers, exporters, and producers did not have reason to believe that a petition was likely to be filed before July 2013, when the petition was filed.¹⁰ However, the Department preliminarily determined that critical circumstances existed for Jindal SAW, but not for GVN and all other producers or exporters.¹¹ For this final determination, we examined whether imports were massive by comparing shipments over a period beginning in July 2013 through February 2014 (the month of the publication of the *Preliminary Determination*) with the period November 2012 through June 2013.¹² Based on the examination of the shipping data placed on the record after the *Preliminary Determination*, as requested by the Department, we are now deviating from the *Preliminary Determination*. For this final determination, the Department now finds that imports were not greater than 15 percent and were therefore not “massive” for Jindal SAW or GVN. On this basis, we determine that critical circumstances do not exist for Jindal SAW¹³ or GVN. However, for all other producers and exporters, the Department, using the Global Trade Atlas for imports into the United States from India for the base and comparison periods, under Harmonized Tariff Schedule numbers 7304.29, 7305.20, and 7306.29, less the shipment data provided by Jindal SAW and GVN, determines that imports were greater than 15 percent and were therefore “massive.”¹⁴ Because the Department calculated a rate for all other producers or exporters that does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for export price (EP) sales and 15 percent for constructed export price (CEP) sales), the Department is finding that critical circumstances do not exist for all other producers or exporters.

IV. 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 Memorandum for the Record, “Deadlines Affected by the Shutdown of the Federal Government,” October 18, 2013.

⁹ 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).

¹⁰ See *Preliminary Determination*, 79 FR at 10494, and accompanying decision memorandum (PDM) at 22.

¹¹ See *Preliminary Determination*, and accompanying PDM at 22-23.

¹² See Memorandum to the File, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances,” July 10, 2014 (Critical Circumstances Memorandum).

¹³ See Comment 18 for a full discussion of whether critical circumstances exist for Jindal SAW.

¹⁴ See Critical Circumstances Memorandum.

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.

V. MARGIN CALCULATIONS

We calculated EP, CEP and normal value (NV) using the same methodology stated in the *Preliminary Determination*, except as follows:

GVN¹⁵

- Used databases provided in GVN's March 5, 2014 submissions
- Recalculated GVN's home market indirect selling expense and indirect selling expenses incurred in the country of manufacture based on verification
- Recoded the grade of certain sales from N-80 to L-80

¹⁵ See Memorandum, "GVN Fuels Limited Final Determination Analysis Memoranda," July 10, 2014 (GVN Final Analysis Memorandum).

- Deducted the days between the shipment of the OCTG from MSL's plant and the shipment of OCTG from the Indian port from GVN's inventory carrying costs incurred in the country of manufacture (DINVCARU)
- Setting payment dates for all unreported payments to the last day of GVN's verification
- Granting a duty drawback adjustment for the one license on the record
- Adjusted TOTCOM (*see* Comment 8, below)

Jindal SAW¹⁶

- Used databases provided in Jindal SAW's March 7, 2014 and March 10, 2014 submissions
- Corrected Jindal SAW's INDIRSU ratio
- Updated credit expenses to reflect multiple payment dates in the home and U.S. market
- Included returned quantities in both the home and U.S. market
- Recalculated domestic inland freight (DINLFTPU) using quarterly averages provided at verification
- Adjusted TOTCOM (*see* Comment 19, below)
- As a result of our differential pricing analysis, we have used an alternative comparison method to determine Jindal SAW's final weighted-average dumping margin

Cost of Production Analysis

On July, 29, 2013, the Department initiated a sales-below-cost investigation with respect to GVN and Jindal SAW's home market sales for consideration in this final determination.¹⁷ We applied our standard methodology of using annual costs based on the reported data, as adjusted and described below.¹⁸

1. Calculation of Cost of Production

We calculated the cost of production (COP) based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by GVN and Jindal SAW in their questionnaire responses for the COP calculation.

We adjusted GVN's COP for non-prime pipe and duty costs. Based on an analysis of the comments received from interested parties, we adjusted Jindal SAW's COP for (1) conversion costs at a certain proprietary production stage; (2) revised G&A to include G&A expenses related to the company as a whole and to include certain other adjustments to the numerator and

¹⁶ See Memorandum, "Jindal SAW Ltd. Final Determination Analysis Memoranda," July 10, 2014 (Jindal SAW Final Analysis Memorandum).

¹⁷ See *Preliminary Determination*, and accompanying PDM at 17.

¹⁸ For further discussion, see Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – GVN Fuels, Ltd.," July 10, 2014; *see also* Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Jindal SAW, Ltd.," July 10, 2014 (Final Cost Memorandum).

denominator of the ratio; and, (3) revised the net interest expense to include other interest expense and to include certain adjustments to the denominator of the ratio.¹⁹ We note that no interested party commented on the G&A or interest expense observations made in the cost verification report.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POI to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, direct and indirect selling expenses, and packing expenses.²⁰

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's comparison market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

The results of our cost test for GVN and Jindal SAW indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis for both GVN and Jindal SAW, and used the remaining above-cost sales to determine NV.²¹

VI. DISCUSSION OF THE ISSUES

Comment 1: Differential Pricing Analysis: Application of the Ratio Test

U.S. Steel Comments

- U.S. Steel claims “{b}ased on the Cohen’s *d* test, the Department found a pattern of significant price differences for comparable merchandise for 22.54 percent of GVN’s U.S. sales,” citing to the *Preliminary Determination*, and accompanying PDM at 11 - 12.

¹⁹ See Final Cost Memorandum.

²⁰ See GVN Final Analysis Memorandum; see also Jindal SAW Final Analysis Memorandum.

²¹ *Id.*

- U.S. Steel further states that the “Department found that a pattern of differential prices displayed by GVN’s U.S. sales did ‘not support consideration of an alternative to the A-to-A {average-to-average} method,’” quoting from the *Preliminary Determination*, and accompanying PDM at 11.
- For GVN, U.S. Steel also points to the fact that in the *Preliminary Determination*, the Department found, when it applied the alternative average-to-transaction (A-to-T) method to all of GVN’s U.S. sales, that the weighted-average dumping margin was 2.07 percent, which according to the Department’s approach, is a meaningful difference from the weighted-average dumping margin calculated using the A-to-A method only.
- For Jindal SAW, U.S. Steel again claims that “the SAA simply calls for the application of the A-to-T methodology ‘where targeted dumping may be occurring’ without regard to any ‘ranges’ or partial application of the methodology,” quoting from the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA) at 843. In the *Preliminary Determination*, the Department found that 60.58 percent of Jindal SAW’s U.S. sales passed the Cohen’s *d* test, which established a pattern of prices that differ significantly, and as a result the Department should apply the A-to-T method as the alternative comparison method without limitations.
- For Jindal SAW, U.S. Steel also points to the fact that in the *Preliminary Determination*, the Department found, when it applied the alternative A-to-T method to all of Jindal SAW’s U.S. sales, that the weighted-average dumping margin is 71.29 percent, which according to the Department’s approach, is a meaningful difference from the weighted-average dumping margin calculated using the A-to-A method only.
- U.S. Steel asserts that neither the statute nor the SAA includes a provision to limit the application of the A-to-T method based on the extent of the identified pattern of prices that differ significantly. In doing so, the Department improperly included an additional element into the two requirements set forth in the statute.
- U.S. Steel points to *Wood Flooring from the PRC*²² and *PRCBs from Taiwan*²³ as examples of cases in which the Department stated that when targeted dumping is found that it should apply the A-to-T method to all, rather than to a limited subset of, U.S. sales. U.S. Steel further argues that the decision by the Court of International Trade (CIT) in *Timken I*²⁴ and *Timken II*²⁵ are not relevant in this investigation since both of these decisions did not involve the differential pricing analysis employed in this situation, and the proportion of sales found to be targeted was “miniscule.”
- Further, the Department’s use of “ranges” to determine which methodology to employ is arbitrary, and the Department never provided an explanation to substantiate the ranges it uses.

²² See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring from the PRC*), and accompanying Issues and Decision Memorandum (IDM) at comment 4.

²³ See *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) (*PRCBs from Taiwan*), and accompanying IDM at comment 1.

²⁴ See *The Timken Co. v. United States*, 968 F. Supp. 2d 1279 (CIT 2014) (*Timken I*).

²⁵ See *The Timken Co. v. United States*, Ct. No. 13-69, Slip Op. 2014-51 (CIT 2014) (*Timken II*).

- Accordingly, because the Department established that there exists a pattern of prices that differ significantly for both GVN and Jindal SAW, it must apply the alternative A-to-T method to all U.S. sales for each respondent. Further, there is a meaningful difference in the weighted-average dumping margins for both respondents when using the A-to-A method for all U.S. sales and the A-to-T method for all U.S. sales. Therefore, the Department must use the A-to-T method for all U.S. sales for both respondents in its final determination.

Jindal SAW's Rebuttal Comments

- There is no basis or legal precedent provided by the petitioner for the Department to depart from its current targeted dumping practice.
- The ranges used by the Department in its differential pricing analysis are an established element of its approach.
- The Department correctly employed its stated differential pricing methodology in the *Preliminary Determination*, and there is no basis to revise the Department's current practice for the final determination in this investigation.

GVN's Rebuttal Comments

- Consistent with a well-established line of cases, the Department found that the proportion of GVN's U.S. sales passing the Cohen's *d* test does not warrant the consideration of the alternative A-to-T method.
- The Department should continue to apply its A-to-A method for the final determination.

Department's Position: The Department disagrees with U.S. Steel that the differential pricing analysis, including the Cohen's *d* and ratio tests, is unreasonable or unlawful. In applying the statute, the Department determines whether "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and.... why such differences cannot be taken into account using {the A-to-A or transaction-to-transaction (T-to-T) comparison method}."²⁶ With the statutory language in mind, the Department relied on the differential pricing analysis in this investigation to determine whether these criteria are satisfied such that application of the A-to-A method or an alternative comparison method may be appropriate.²⁷

In the *Preliminary Determination*, as part of the differential pricing analysis, the Department described the ratio test:

{T}he "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

²⁶ See section 777A(d)(1)(B) of the Act.

²⁷ See 19 CFR 351.414(c)(1).

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.²⁸

For GVN, the Department further stated that:

{T}he 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.²⁹

The Department disagrees with U.S. Steel's characterization of its statements from the *Preliminary Determination* with regard to the results of the Cohen's *d* and ratio tests. Under the differential pricing analysis used in this investigation, sales passing the Cohen's *d* test do not, in and of themselves, satisfy the requirement under section 777A(d)(1)(B)(i) of the Act. For GVN, the Department did not find a pattern of prices that differ significantly as claimed by U.S. Steel as noted above.³⁰ Rather, the Department found that the 22.54 percent of GVN's U.S. sales that passed the Cohen's *d* test *did not* establish that there existed a pattern of prices that differ significantly. Accordingly, the Department found that the requirement provided for in section 777A(d)(1)(B)(i) of the Act was not satisfied, and the Department used the standard A-to-A method to calculate GVN's weighted-average dumping margin for the *Preliminary Determination*. Since these results have not changed for this final determination, the Department continued to calculate GVN's weighted-average dumping margin using the standard A-to-A method for all of GVN's U.S. sales in this final determination.

Further, the Department disagrees with U.S. Steel's claim that it should find that there is a meaningful difference in the weighted-average dumping margins calculated using the A-to-A method for all U.S. sales and an alternative comparison method. As described in the *Preliminary Determination*, *see above*, the Department established a framework by which to determine whether the provisions of section 777A(d)(1)(B) of the Act have been fulfilled to permit the Department to consider the application of the A-to-T method. Further, the Department invited:

Interested parties {to} present arguments and justifications in relation to the above-described {differential pricing analysis} used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.³¹

²⁸ See *Preliminary Determination*, and accompanying PDM at 11.

²⁹ *Id.* at 12.

³⁰ See Letter from U.S. Steel, "Oil Country Tubular Goods from India," May 23, 2014, at 45 and 46.

³¹ See *Preliminary Determination*, and accompanying PDM at 12.

U.S. Steel presented no such argument based on the factual record of this investigation as to why the 33 percent (or 66 percent) thresholds should be modified. As noted above, the factual information on the record does not support the consideration of applying the A-to-T method as an alternative to the A-to-A method, either for a portion of GVN's U.S. sales or for all of GVN's U.S. sales.

The Department also disagrees with U.S. Steel's assertion that there is a meaningful difference in the weighted-average dumping margins between the standard comparison method and an alternative comparison method. Simply because a weighted-average dumping margin can be calculated based on a different comparison method and those results are meaningfully different from those using the standard comparison method does not automatically compel the Department to use such an alternative comparison method. Section 777A(d)(1)(B) provides two requirements which must be satisfied for the Department to consider the application of an alternative comparison method based on the A-to-T method. What U.S. Steel proposes is that the Department use an alternative comparison method when only one of these two requirements has been satisfied as defined by the differential pricing analysis employed in this investigation. The Department finds this proposal unsupported by the statute.

The Department disagrees with U.S. Steel's argument that it should consider as an alternative comparison method applying the A-to-T method for all U.S. sales to calculate the weighted-average dumping margin for Jindal SAW. As discussed above for GVN, U.S. Steel has also provided no argument based on the factual record of this investigation as to why the 66 percent threshold is unreasonable, except that the results of the margin calculations are different. As stated above for GVN, the fact that a weighted-average dumping margin can be calculated based on a different comparison method and that those results are meaningfully different from those using the standard comparison method does not provide support, in and of itself, for applying the different comparison method.

The Department disagrees with U.S. Steel that either the statute or the SAA prohibits the Department from limiting the application of the A-to-T method to a portion of the U.S. sales. As an initial matter, we note that U.S. Steel's arguments have no grounding in the language of the statute. U.S. Steel does not argue that the Department's reliance on the Cohen's *d* and ratio tests to either determine whether there exists a pattern of prices that differ significantly or in what manner the A-to-T method may be applied as an alternative comparison method violates the statutory language, nor can it. There is nothing in the statute that mandates how the Department should measure whether there is a pattern of EPs that differ significantly or how the A-to-T method may be applied as an alternative to the standard A-to-A method. To the contrary, carrying out the purpose of the statute here is a gap filling exercise by the Department to determine whether the A-to-A method is appropriate, consistent with 19 CFR 351.414(c)(1). As such, the Department's differential pricing analysis is reasonable, and the use of the Cohen's *d* and ratio tests as components in this analysis is in no way contrary to the law.

The Department disagrees that its establishment of the 33 percent and 66 percent thresholds are impermissible or otherwise unlawful. As noted above, the Department's approach in determining whether the requirements of section 777A(d)(1)(B) of the Act have been satisfied, and if satisfied, how the A-to-T method may be applied as an alternative comparison method, is a

gap filling exercise. The Department used its discretion to determine under what circumstances and to what extent the A-to-T method is appropriate. The Department's approach in this matter has changed over time as the Department gained experience in examining whether the A-to-A method is an appropriate comparison method, whether dumping is being masked or hidden though the use of the A-to-A method in accordance with the section 777A(d)(1)(B) of the Act, and what alternative comparison method may be applied to address these questions. In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent's U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute. Contrary to U.S. Steel's claims, this same concept of a "sufficiency test" existed under the Department's previously used targeted dumping analysis, as demonstrated in its final determination for *OBA's from Taiwan*.³²

Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.

The Department disagrees with U.S. Steel's reliance on *Wood Flooring from the PRC* and *PRCBs from Taiwan*, both of which involved LTFV investigations in which the Department used its targeted dumping analysis based on the *Nails*³³ test to determine whether the criteria of section 777A(d)(1)(B) of the Act are satisfied. In neither of these final determinations is there information to understand what proportion of sale volumes were found to have passed the *Nails* test, which led the Department to use an alternative comparison method. Although the Department used its targeted dumping analysis (including the *Nails* test) rather than the current differential pricing analysis (including the Cohen's *d* test) in these three investigations, these investigations still were based on the concept that there may be a minimum volume or value of sales passing the *Nails* test when the Department applies the A-to-T method to all U.S. sales.

³² See *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) (*OBA's from Taiwan*).

³³ See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008); *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008); and *Mid Continent Nail Corp. v United States*, Slip Op. 2010-47, Court No. 08-00224 (CIT May 4, 2010) (collectively, *Nails*).

This is borne out in the Department's final determination in *OBA's from Taiwan*, where the Department found an insufficient volume of sales passing the *Nails* test, and it thus declined to apply an alternative comparison method. This concept has also been affirmed by the CIT with respect to the Department's targeted dumping analysis in *Timken I* and *Timken II*, as discussed below.

The Department disagrees with U.S. Steel's assertion that *Timken I* and *Timken II* are not relevant to this investigation. Although these two opinions from the CIT involve administrative reviews using the Department's targeted dumping analysis based on the *Nails* test, the principle affirmed by the CIT is equally valid in both investigations and administrative reviews, and when using the differential pricing analysis or the targeted dumping analysis. In both *Timken I* and *Timken II*, the petitioner challenged the Department's use of a "sufficiency test" which required that a sufficient volume of sales pass the *Nails* test in order to satisfy the requirement under section 777A(d)(1)(B)(i) of the Act. The Department finds that this situation is analogous to the 33 percent threshold used in this investigation for GVN, where the results of the Cohen's *d* test, as presented in the ratio test, were insufficient to satisfy the first criterion of the statute.

The Department also finds misleading U.S. Steel attempt to compare the results in *Timken I*, described by the CIT as "miniscule," with the numerical results of the ratio test for GVN in this investigation. The *Nails* test used in the targeted dumping analysis and the Cohen's *d* test used in this investigation are very different approaches in evaluating whether the requirement under section 777A(d)(1)(B)(i) of the Act has been satisfied. The *Nails* test looks to identify a specific type of pattern (*i.e.*, "targeted" low prices) and the sufficiency of the results of that test was evaluated in that context. The Cohen's *d* test though takes a much broader view when examining whether there exists a pattern of prices that differ significantly and, thus, the evaluation of the sufficiency of the results of this approach are different than the results from the *Nails* test. To compare the numerical values of the results of these two tests would amount to an unreasonable apples-to-oranges comparison with no intrinsic meaning.

Therefore, in accordance with the above discussion, the Department continues to apply the same differential pricing analysis in this final determination as was applied in the *Preliminary Determination*. The Department finds that 24.14 percent of GVN's sales pass the Cohen's *d* test, which does not confirm the existence of a pattern of prices that differ significantly. Accordingly, for the final determination, the Department considered an alternative comparison method for GVN and calculated its weighted-average dumping margin using the A-to-A method for all U.S. sales. For Jindal SAW, the Department finds that 56.53 percent of Jindal SAW's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of prices that differ significantly such that the Department should consider an alternative comparison method where the A-to-T method is applied to the U.S. sales passing the Cohen's *d* test and the A-to-A method is applied to the U.S. sales not passing the Cohen's *d* test. When the weighted-average dumping margin is calculated for Jindal SAW using the standard A-to-A method and the appropriate alternative comparison method, there is a meaningful difference in the results. Accordingly, for the final determination, the Department applied the mixed alternative method to calculate the weighted-average dumping margin for Jindal SAW.

Comment 2: Differential Pricing Analysis: Calculation of the Ratio Test

U.S. Steel Comments

- If the Department continues to use ranges, then the denominator it uses should only include the sales used in the Cohen's *d* test.

Jindal SAW's Rebuttal Comments

- There is no need to change the denominator used in the ratio test as requested by the petitioner.

Department's Position: The Department disagrees with U.S. Steel that the denominator of the ratio test should only include those sales for which comparisons were made in the Cohen's *d* test. 19 CFR 351.414(c)(1) states that "the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case." In LTFV investigations, section 777A(d)(1)(B) of the Act provides the criteria that the Department must use in order to make this determination. The first of these requirements is whether there exists a pattern of prices that differ significantly. The Department finds that this pattern must be found relative to all of a respondent's U.S. sales since this is the basis on which the A-to-A method is to be applied under 19 CFR 351.414(c)(1). Accordingly, when the Department is accumulating the results of the Cohen's *d* test under the ratio test, these results must be considered with respect to all U.S. sales and not a subset of a respondent's U.S. sales. If the Department is unable to evaluate some sales, then it simply cannot find that these sales contributed to a pattern of prices that differ significantly, as required by the statute. Therefore, for this final determination, the Department continues to include in the denominator of the ratio test all of the respondent's U.S. sales.

Comment 3: GVN's Cash Deposit Instructions

GVN's Comments

- Because it found GVN, MSL and JPL were affiliated in the *Preliminary Determination*, and should continue to find the three companies affiliated in the final determination, the Department should indicate in the cash deposit instructions it issues as a result of this final determination that the weighted-average dumping margin it assigns to GVN applies to MSL and JPL.

U.S. Steel Comments

- The cash deposit rate is determined based on U.S. entries of OCTG. Neither MSL nor JPL exported OCTG to the United States during the POI, so they are not entitled to GVN's cash deposit rate.
- GVN should not be collapsed with its affiliated suppliers, and in turn, the affiliated suppliers should not be assigned GVN's weighted-average dumping margin.

Department's Position: The Department should have notified U.S. Customs and Border Protection (CBP) that the *Preliminary Determination* rate applied to GVN also applied to MSL and JPL. In the "company note" for GVN on CBP's Automated Commercial Environment (ACE), the Department stated that "This rate also applies to the following companies:

Maharashtra Seamless Limited; Jindal Pipes Limited.” However, unlike the instructions issued for the accompanying countervailing duty (CVD) investigation, we did not include this statement in our *Preliminary Determination* instructions sent to CBP. For this final determination, we continue to find that GVN should be collapsed with MSL and JPL.³⁴ Any instructions issued pursuant to this final determination will include a note that the weighted-average dumping margin and cash deposit requirements assigned to GVN applies to MSL and JPL.

Comment 4: Whether to Grant a Duty Drawback Adjustment for GVN

GVN’s Comments

- GVN provided all details related to the duty drawbacks it receives under the advanced license program (ALP).
- Even though only one license is on the record, GVN should be granted an adjustment for all duty drawbacks it received under this program because it reported them to the Department.
- The Department verified the license on the record, which substantiates all duty drawback amounts received on sales made during the POI.
- If the Department applies a duty drawback adjustment to deemed export home market sales, the drawback amount per metric ton should be recalculated to include the deemed export sales quantity in the denominator.

U.S. Steel Comments

- GVN’s duty drawback adjustment does not pass the Department’s two-pronged test for duty drawback adjustment ((1) that the import duty on raw materials and the rebate or exemption from such a duty are directly linked to, and dependent upon, one another, and (2) that the respondent imported sufficient volumes of raw material to account for the drawback received on the exported product).
- GVN did not substantiate its claimed duty drawback adjustment because it did not tie specific sales or invoices to an advanced license or similar document authorizing the supposed duty exemption.
- The Department should increase GVN’s home market deemed export sales by the average duty drawback amount applied to its U.S. sales.
- If GVN is granted a duty drawback adjustment, its weighted-average dumping margin should not be offset by the export subsidy applied to ALP benefits.

Maverick Comments

- GVN had an affirmative duty to provide the laws and regulations, and at the very least a narrative description, of how the ALP program operates, but failed to do so.
- GVN did not demonstrate there was any linkage between the raw materials imported and the products exported, and has not demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the export of OCTG.
- Exempted duties must be added to the reported cost database regardless of whether the Department grants a duty drawback adjustment.

³⁴ See Comment 9.

Department's Position: The Department is granting a duty drawback adjustment for GVN for the U.S. sales that GVN was able to tie to a specific ALP license only. In the *Preliminary Determination*, the Department granted GVN a duty drawback adjustment for the ALP program. To reach this determination, the Department thoroughly reviewed the documentation provided by GVN, and noted that:

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. The Department is therefore preliminarily granting an increase to GVN's starting price for duty drawback under the ALP.³⁵

GVN discussed the reconciliation, noted above, in a supplemental questionnaire response.³⁶ It was based on one license GVN reported receiving through the ALP program. GVN provided the license number, a copy of the license, and the U.S. sales that were tied to this license, including copies of the associated commercial invoices and customs documentation.³⁷ The Department's *Preliminary Determination* was consistent with recent judicial precedent, which requires that respondents present a duty drawback methodology that links specific duty-exempt eligible imports to specific exports to the United States on an entry-by-entry basis.³⁸ The petitioners correctly note that in *United States Steel Corp. v. United States*, the CIT upheld the Department's denial of a respondent's duty drawback claim for the respondent's failure to directly connect the sales invoice with the license authorizing respondent's participation in the duty drawback program in question.³⁹ In that case, "[t]o prove that duty-free import of raw materials took place prior to exportation of its finished goods, Essar 'submitted each shipping bill that contains an endorsement that specifies the advance license number and date.'"⁴⁰ When one sales invoice could not be directly tied to a particular advance license, the CIT upheld the Department's denial of the duty drawback adjustment for that sale.⁴¹

Because GVN originally reported its duty drawback expense to include the duty drawback it received through two programs, the DDS and the ALP, the Department requested that GVN break out this one variable into two variables, one for each drawback program.⁴² GVN was able to report its duty drawback under the separate programs in its last supplemental response, which was timely filed one week before its verification began. However, in its new ALP-specific variable, GVN only included the total quantity exported under six licenses it had not previously

³⁵ See *Preliminary Determination*, and accompanying PDM at 14.

³⁶ See Letter from GVN, "Oil Country Tubular Goods from India; Supplemental Sections A, B and C Response of GVN Fuels Limited," January 23, 2014 (GVN January 23 SQR), at exhibit S1-25(c), exhibit S1-25(d) and exhibit S1-25(e).

³⁷ *Id.*

³⁸ See *US. Steel Corp. v. United States*, No. 08-00216, Slip Op. 12-48 at 5 (CIT April 11, 2012).

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 5.

⁴² See *Preliminary Determination*, and accompanying PDM at 14.

reported. These additional licenses were not placed on the record, nor were U.S. sales tied to specific licenses. Instead, GVN calculated an average duty drawback adjustment by amalgamating the theoretical duty drawback it would have received under all the licenses. This submission was not at all as complete as GVN's January 23 SQR, relied upon in the *Preliminary Determination*, for this adjustment. The petitioners note, and the Department agrees, that “{t}he burden of creating a record from which the ITA could determine whether {respondent} was entitled to a duty drawback adjustment rested with {respondent}, not Commerce.”⁴³

During verification, Department officials only verified information pertaining to the one license GVN placed on the record. We did not verify any of the new drawback amounts reported in GVN's March 7, 2014 supplemental questionnaire response, including how it calculated an average duty drawback amount. As noted in the verification agenda, “verification is not intended to be an opportunity for submission of new factual information.”⁴⁴ Because GVN did not timely provide all information pertaining to its duty drawback adjustment, only information provided on the record (*i.e.*, the one ALP license) was reviewed during verification. This one license is the only license tied to specific sales for which we are able to accurately calculate a duty drawback adjustment for GVN in this final determination. The Department calculated this adjustment using the methodology GVN used in its original reporting.⁴⁵

Because we are adjusting specific U.S. sales based on which ones were tied to the ALP license on the record, instead of applying an average duty drawback adjustment to all U.S. sales, we are not adjusting deemed export sales by an average duty drawback amount. Furthermore, the record does not demonstrate that any duty drawback was provided for deemed exports.

Regarding petitioners' double counting concerns, the Department is making a limited adjustment to the dumping cash deposit rate for this export subsidy. Specifically, the Department is offsetting GVN's cash deposit rate by the export subsidy calculated for the ALP program in the companion CVD investigation, less the increase to U.S. price in the dumping margin calculations.⁴⁶

Additionally, consistent with the *Preliminary Determination*, for the final determination we adjusted the reported cost of manufacturing to include the exempted duties associated with the duty drawback adjustment.

Comment 5: Whether the Duty Drawback Program is Countervailable

Maverick Comments

- The Department found in the corresponding CVD investigation that India's duty drawback scheme program (one type of duty drawback program) was countervailable.

⁴³ See *Primary Steel, Inc. v. United States*, 17 CIT 1080, 1090, 834 F. Supp. 1374, 1383 (1993); see also *Tube & Conduit Corp. v. United States*, 29 CIT 502, 507 (2005).

⁴⁴ See Letter to GVN, “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India,” March 5, 2014.

⁴⁵ See GVN Final Analysis Memorandum.

⁴⁶ *Id.*

- Any duty drawback program that is found countervailable should be considered *per se* ineligible for a duty drawback adjustment in an antidumping proceeding.

Department's Position: In the *Preliminary Determination*, the Department stated that we were “preliminarily granting an increase to GVN’s starting price for duty drawback under the ALP.” We also noted that GVN requested a duty drawback adjustment under the duty drawback scheme, which we did not grant because there was not sufficient record information demonstrating that quantities of imported materials and exported finished products are linked.⁴⁷ The duty drawback program discussed by Maverick, which the Department did find countervailable in the corresponding CVD investigation, applies to the duty drawback scheme – a different program than the ALP program.⁴⁸ As stated in the *Preliminary Determination*, the Department is not granting an adjustment under the duty drawback scheme, but only for the ALP program. While Maverick’s point is therefore moot in this instant investigation because we are not adjusting duty drawback under the specific program referenced by Maverick, we are granting a duty drawback adjustment for another program (ALP) that we are countervailing in the companion CVD investigation. Under 19 CFR 351.519, the Department must follow very detailed criteria for determining when and to what extent duty drawback is countervailable. However, neither the Act nor the regulations provide guidance for when duty drawback should be added to U.S. price. Therefore, neither the Act nor the regulations necessitate that the Department use the identical test in LTFV and CVD investigations. In fact, in a CVD investigation, the focus under 19 CFR 351.519 is on the government and the government’s system and procedures to track duty drawback. The government is not a respondent in a LTFV investigation, where the focus is on the company’s cost and pricing behavior. Given the record evidence in this investigation, and the Act and regulations the Department must follow when faced with duty drawbacks, we are granting an adjustment to GVN’s U.S. price for the ALP program. .

Comment 6: Calculation of Domestic Inventory Carrying Costs for GVN

GVN’s Comments

- In the *Preliminary Determination*, the Department recalculated GVN’s credit expense using “SHIPDAT2U,” the date of the shipment from MSL’s plant, instead of the date of shipment from the Indian port.
- However, GVN’s domestic inventory carrying costs (DINVCARU) calculation included the number of days between the shipment of the OCTG from MSL’s plant and the shipment of OCTG from the Indian port.
- The Department needs to recalculate DINVCARU to avoid double counting days.

Department’s Position: GVN is correct in that the Department recalculated GVN’s credit expense variable, and did not deduct the days between the shipment of the OCTG from MSL’s

⁴⁷ See *Preliminary Determination*, and accompanying PDM at 13-14.

⁴⁸ See Memorandum, “Post-Preliminary Analysis of New Subsidy Allegations and of Programs that Needed Additional Information at the Preliminary Determination,” May 8, 2014, at 3-6.

plant and the shipment of OCTG from the Indian port from its DINVCARU calculation.⁴⁹ We corrected this double counting for this final determination by deducting the days between the shipments.⁵⁰

Comment 7: Correction to GVN's Verification Report

GVN's Comments

- The Department's verification report noted that "neither D.P. Jindal nor his son were directors or had more than two percent shares in GVN or MSL."⁵¹
- According to Form 24AA, Mr. Saket Jindal, D.P. Jindal's son, does own 2.46 percent of shares of MSL.

Department's Position: The Department reviewed sales verification exhibit two, and agrees with GVN. Mr. Saket Jindal holds "2.46 percent of the paid up capital" of MSL.⁵²

Comment 8: Valuation of Non-Prime Merchandise

GVN's Comments

- Non-prime OCTG is a co-product and not a by-product because it is a commercially viable product that is sold for profit, just as prime OCTG. Full costs should be assigned to the non-prime products.
- Sales revenue from non-prime OCTG is recorded as "sales" and not "other revenue" as sales of by-products would be recorded, and the sale of non-prime products constitute an important product line.
- Non-prime OCTG pipes undergo the full manufacturing process and thus should appropriately absorb all the costs that prime pipes absorb. It is only at the end of the production process that pipe is classified as non-prime because it does not meet the criteria for OCTG (*i.e.*, non-prime pipe is sold without any guarantee of specification/grade/manufacturing certificate).

U.S. Steel Comments

- The Department should allocate the net costs of producing non-prime pipe to the costs of producing the subject merchandise (*i.e.*, only assigning to non-prime product costs equal to its market value).
- Non-prime product should be considered a by-product and not a co-product.
- Reallocation of production costs to the non-prime product is appropriate because of the different end uses of prime OCTG and non-prime OCTG.

⁴⁹ See Memorandum, "GVN Fuels Limited Preliminary Determination Analysis Memoranda," February 13, 2014, at 7.

⁵⁰ See GVN Final Analysis Memorandum.

⁵¹ See Memorandum, "Verification of the Sales Response of GVN Fuels Ltd in the Antidumping Duty Investigation of Oil Country Tubular Goods from India," May 5, 2014 (GVN Sales Verification Report), at 4.

⁵² See Letter from GVN, "Oil Country Tubular Goods from India: Notification of Service of Sales Verification Exhibits," March 28, 2014 (Sales Verification Exhibits) at sales verification exhibit 2.

- Citing *Fresh Garlic from the PRC*, under similar circumstances, the Department classified such merchandise as a by-product rather than a co-product.⁵³

GVN's Rebuttal Comments:

- The fact that a product is not sold as a prime product or that the product has a different end use than OCTG does not downgrade the product to a by-product.
- Similar to line pipe (classified as merchandise not under consideration), non-prime OCTG does not have the same end use as OCTG and is not considered a by-product.
- Product downgraded from one grade or pipe category to another cannot be considered a by-product.
- The petitioners' reliance on *Fresh Garlic from the PRC* is off point because in the instant case, the company did allocate production costs between commercial pipe and other products, and allocating costs to all pipe production in accordance with MSL's⁵⁴ normal books and records reasonably reflects the costs associated with the production and sale of the merchandise.
- The Department's analysis for determining the treatment of a joint product supports MSL's treatment of commercial pipe as a co-product.

U.S. Steel's Rebuttal Comments:

- Non-prime OCTG products do not constitute commercially viable products because the record demonstrates that these products are sold at a loss.
- This loss generating non-prime merchandise may help mitigate losses because it can be sold for a higher amount than scrap, but it cannot be considered an important product line because it is sold at a loss and is not included in product brochures.
- Scrap and other rejected pipe likewise incurred the same production costs but were treated by GVN as by-products for reporting.
- Sales of non-prime product are not recorded as "sales" rather than an offset to costs or "other revenue." MSL also has separate sales accounts for "pipe end cutting/rejecting" and "scrap sales," yet these products were not treated by MSL the same as non-prime OCTG.

Department's Position: We find that the downgraded pipe in question should be valued at the net market value of the downgraded pipe and not the full cost incurred in producing OCTG. For the reasons discussed below, we believe that valuing the pipe at the net market value is consistent with Generally Accepted Accounting Principles (GAAP) and reasonably reflects the cost of producing the downgraded commercial products.

As a preliminary matter, we disagree with GVN and the petitioners that a discussion of co-products is relevant in this case. In pipe making, there is no simultaneous production process up to a split point, so there are no co-products. Rather, pipes are made sequentially on a production line, and costs and production activities are generally identifiable to individual products. The

⁵³ See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 78 FR 36168 (June 17, 2013), and accompanying IDM at comment 14 (*Fresh Garlic from the PRC*).

⁵⁴ MSL produces the OCTG that GVN exports.

Department has stated that, “{t}echnically, the issue of whether to include the production quantity of the down-graded B and C pipe in the total production quantity of subject merchandise is not a joint product issue.”⁵⁵

The issue here is whether the down-graded pipe can still be used in the same applications as the subject merchandise (*i.e.*, is it still OCTG).⁵⁶ The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor and the product remains within a product group,⁵⁷ while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used for the same applications. In the latter case, the product’s market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between grades, the Department adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.⁵⁸

In the normal course of business, as MSL produces OCTG products, individual tubes and casings are tested and sometimes do not meet the specifications of OCTG. These downgraded products that fail the required OCTG testing are classified by MSL as “commercial pipe,” not OCTG, and are sold at a significantly lower price for use in applications that differ from that of OCTG. MSL does not have a cost accounting system and does not assign costs to individual products in its normal books and records. Instead, MSL simply expenses all production costs to cost of goods sold and the revenue is recorded in a sales account for these commercial pipes. For reporting purposes, GVN allocated full OCTG production costs to the commercial pipe products in the same manner as it did for the OCTG products. However, GVN’s normal accounting records, which simply assign all production costs to cost of goods sold, do not record costs on a product-specific basis,⁵⁹ and as such, do not provide guidance as to how we should cost these pipes. Therefore, we disagree with GVN that its normal books and records value the commercial pipes the same as OCTG.

GVN argues that the downgraded products are not by-products, but rather are commercially viable products that are sold for profit, just as OCTG.⁶⁰ Further, GVN argues that commercial pipe is similar to line pipe, which is also classified as merchandise not under consideration. GVN reasons that since line pipe is not sold for the same end uses as OCTG, under the Department’s methodology, it would also be treated as a by-product when it clearly is not.⁶¹ Thus, GVN argues commercial pipe also should be assigned its full cost like line pipe and not be

⁵⁵ See *Final Results of Antidumping Duty Administrative Review of Circular Carbon Steel Pipes and Tubes From Thailand*, 77 FR 61738 (October 11, 2012), and accompanying IDM at comment 7.

⁵⁶ *Id.*

⁵⁷ See *Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 78 FR 65272 (October 31, 2013), and accompanying IDM at comment 10.

⁵⁸ *Id.*

⁵⁹ See GVN’s November 18, 2013 section D response at 14 which states that “MSL does not have a cost accounting system.”

⁶⁰ See Letter from GVN, “Oil Country Tubular Goods from India; Rebuttal Brief of GVN Fuels Limited,” June 2, 2014 (GVN Rebuttal Brief), at 26-28.

⁶¹ *Id.*

treated as a by-product.⁶² GVN's argument is off point. The issue at hand is how to treat pipe produced during OCTG production that fails to meet OCTG quality requirements. These pipes still have value and there is demand for the products in the market place. However, these downgraded pipes are not OCTG and they should not be assigned costs as if they were. Instead, it is reasonable to assign costs to them based on their net market value (*i.e.*, what they can be sold for in the market place). Regarding GVN's reference to line pipe as a by-product, we disagree with GVN's logic. Line pipe is a completely separate product from OCTG, is produced in separate runs, is produced to different standards, and is made with different grades of steel. Presumably GVN produces line pipe for the purpose of making a profit and should rightfully assign to such product the actual cost incurred to produce it. However, if in the course of producing line pipe, GVN finds pipes that cannot meet the specifications of line pipe, and can only be used for lesser purposes, it would be proper to assign to the downgraded line pipe its net market value. As noted above, the commercial pipe (*i.e.*, the downgraded OCTG) is sold without any guarantee of specification, grade, or manufacturing certificate. Thus it cannot be sold for use as OCTG.

GVN argues that MSL incurred the same materials, labor, and overhead costs to produce the OCTG products as it did for the commercial pipe products. However, scrap generated from that production process also incurs the same materials, labor, and overhead costs as the OCTG product, and GVN is not arguing for these items to be valued the same as OCTG. Although the record shows that the commercial pipe has a value considerably higher than scrap, the record also shows that the value of the commercial pipe is considerably less than the costs MSL allocated to it. Setting the cost of downgraded pipe at the net market value of these commercial pipes is consistent with GAAP. In order to avoid the overstatement of inventory accounts on the balance sheet, GAAP does not allow companies to value products held in inventory at an amount greater than their market price. The practice is called "lower of cost or market – LCM." The LCM rule recognizes that it is not always appropriate to value an inventory item at its allocated production costs if there is evidence that the market value of that item cannot recover those costs. GVN, by assigning net market value to downgraded scrap in its normal books is recognizing this accounting principle, that an item in inventory should not be valued for more than its market value. The same treatment is warranted for GVN's commercial pipe. We also note that the CIT has accepted valuing a product at its market price.⁶³

Lastly, we note that in *IPSCO Inc. v. United States*,⁶⁴ the Department's decision to cost limited service OCTG at the same amount as prime OCTG was upheld. In *IPSCO*, the issue related to cost allocation between prime OCTG products and limited service OCTG. While both products were of varying quality and market value, both were still used as OCTG, a fact highlighted in the decision and distinguishable from the current case.

⁶² *Id.*

⁶³ See *E. I. DuPont De Nemours & Co. v. United States*, 932 F. Supp. 296 (CIT 1996) (*E.I. Dupont v United States*) where the court opined that "assigning {recycled} pellets the cost of virgin chips would overstate the actual cost of PET film."

⁶⁴ See *IPSCO v United States*, 965 F. 2d 1056, 1059-1061 (Fed. Cir. 1992) (*IPSCO*).

Comment 9: Whether GVN Should be Collapsed with MSL and JPL

U.S. Steel Comments

- Record evidence does not support collapsing GVN with MSL and JPL under the Department's regulations, *i.e.*, 19 CFR 351.401(f).
- There is a low and diffuse level of cross-ownership, no shared managerial employees or board directors, and limited sales and production cooperation such that collapsing GVN, with MSL and JPL is not warranted.
- GVN's NV should be based on constructed value using GVN's acquisition costs for OCTG obtained from MSL and JPL.

GVN's Comments

- It is the Department's practice to collapse non-producing exporters with other producing affiliates when evidence establishes there is a significant potential for the manipulation of prices or production by reason of intertwined operations.
- In the *Preliminary Determination*, the Department correctly found that GVN, MSL and JPL are affiliated because they are all controlled by the Jindal family. Additionally, the 13.34 percent indirect ownership of GVN's equity by the D.P. Jindal family is sufficient to determine to collapse GVN with its production affiliates.
- Mr. D.P. Jindal is the Chairman of MSL and JPL's boards, and his family exercises control over GVN.
- The record abundantly supports the claim that GVN's operations are intertwined with MSL's and JPL's operations. There is high degree of transactions among the affiliates, the companies share facilities, and they are involved in each other's pricing, production and sales information.

Department's Position: The Department is continuing to collapse GVN with MSL and JPL for this final determination. For the *Preliminary Determination*, the Department concluded that there was sufficient record evidence to support collapsing of GVN with MSL and JPL. We stated 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."⁶⁵ After determining this, we found that:

Pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(a)(3), we find GVN, MSL, {and} 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.⁶⁶

⁶⁵ See *Preliminary Determination*, and accompanying PDM at 6.

⁶⁶ *Id.* at 7.

Since the *Preliminary Determination*, GVN submitted responses to a supplemental questionnaire discussing the Jindal family's direct and indirect control of GVN. GVN noted that the companies where members of the Jindal family directly hold shares, in turn hold shares as corporate owners of GVN, thus the Jindal family thereby indirectly holds shares in GVN.⁶⁷ By its calculations, confirmed during verification, the Jindal family holds over five percent of shares of GVN.⁶⁸ The Department asked GVN to "explain in detail why, under section 771(33)(F) of the Tariff Act of 1930, as amended, there is common control over GVN on the one hand, and over MSL and JPL on the other." Besides the D.P. Jindal family directly and indirectly holding more than five percent of shares in each company, GVN stated that it is "operationally intertwined" with MSL and JPL "because the companies share offices, personnel, and management. In addition, GVN shares its export prices with MSL and JPL, and MSL and JPL provide GVN with their price lists."⁶⁹ Further, the management of GVN, MSL and JPL share production, pricing, and sales data with each other."⁷⁰ Lastly, GVN explained that "MSL and JPL have an informal understanding that all exports will be made through GVN and hence there is no written agreement between the two companies. GVN is the international trading arm of MSL and JPL through which exports are made by MSL/JPL."⁷¹

We continue to find that GVN, MSL and JPL are under the common control of the D.P. Jindal family and therefore are affiliated within the meaning of section 771(33)(F) of the Act. The D.P. Jindal family owns, directly or indirectly, 13.34 percent of GVN. The D.P. Jindal family also indirectly owns 55.70 percent of MSL and 80.65 percent of JPL, which means that it controls these two entities. Under section 771(33) of the Act, "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." Although the D.P. Jindal family's share in GVN is not particularly large, GVN provided numerous examples of how the D.P. Jindal family exercises control over GVN, which make GVN's other shareholders appear to be passive in their control.⁷² The other ownership of GVN is diffused ownership by corporate entities with numerous layers of cross-ownership.⁷³ There is also no evidence that these other shareholders have ever attempted to veto the D.P. Jindal family's exercise of control over GVN. Moreover the difference between the D.P. Jindal family's ownership of GVN and the largest shareholders is not great (about six percent). While somewhat smaller than other investors, the D.P. Jindal family is actually exercising control over GVN, whereas others are not, and do not appear to have even – individually – the potential for control. In short, the D.P. Jindal family has intertwined the operations of the three companies to such a degree (and plays key roles in them) that they function under the family's direction. Indeed, it is for this reason that 19 CFR 351.102(b)(3) specifically mentions family groupings as indicative of control.

⁶⁷ See Letter from GVN, "Oil Country Tubular Goods from India; Second Supplemental Sections A., B and C Response of GVN Fuels Limited," March 6, 2014 (GVN March 6 SQR), at 5.

⁶⁸ See Sales Verification Exhibits at exhibit 2.

⁶⁹ See GVN March 6 SQR at 6.

⁷⁰ *Id.* at 6.

⁷¹ *Id.*

⁷² See GVN Sales Verification Report at 1-2, 5, and 8-10.

⁷³ See Sales Verification Exhibits at exhibit 2.

Turning to collapsing, we agree with GVN when it stated that “Petitioner is incorrect that collapsing is limited to entities that produce the subject merchandise and is not applicable to non-producing exporters.”⁷⁴ The Department previously collapsed production companies with affiliated exporting companies controlled by the same family, finding that a significant potential for the manipulation of prices and production exists by reason of their intertwined operations.⁷⁵

The petitioners next take issue with whether a significant potential exists for the manipulation of price and/or production, within the meaning of 19 CFR 351.401(f)(2), among GVN, MSL and JPL. The Department found in the *Preliminary Determination* that significant potential for manipulation existed due to the: (i) the level of common ownership; (ii) the extent to which the firms share managerial employees; and (iii) the intertwined operations.

First, regarding the level of common ownership, GVN provided extensive calculations and supporting documentation to show that the D.P. Jindal family had 13.34 percent share ownership of GVN. Although this is less than majority ownership, it is considerable, particularly given GVN’s otherwise diffused ownership by corporate entities with numerous layers of cross-ownership.⁷⁶ The D.P. Jindal family also owns 55.70 percent of MSL and 80.65 percent of JPL.

Second, with respect to the sharing of board members and managerial employees, GVN’s verification report notes that MSL and GVN share marketing offices throughout India.⁷⁷ Indeed the sales verification, which covered all three companies, took place in the shared corporate offices in Gurgaon. This indicates that the employees of the three companies work together. GVN also noted that it made an adjustment to its indirect selling expense to account for the salary of an employee working for GVN, but paid by MSL.⁷⁸ Additionally, Mr. D.P. Jindal is the chairman of the boards of both MSL and JPL, and also exercises control (the ability to direct or restrain decisions relating to the production, pricing, or cost of the subject merchandise) over GVN because the Jindal family controls GVN.⁷⁹

Finally, information provided since the *Preliminary Determination* continues to demonstrate that the companies have intertwined operations. During verification, Department officials reviewed the significant transactions between the companies, noting that “GVN operates as the exporter for both MSL and JPL. We observed during the Verification that GVN does not produce any

⁷⁴ See GVN Rebuttal Brief, at 2.

⁷⁵ See *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; see also *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635, 54639 (September 9, 2004); see also *Small Diameter Graphite Electrodes 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, in Part*, 73 FR 49408, 49412 (August 21, 2008).

⁷⁶ See GVN March 6 SQR at 5-7 and exhibit S2-6; see also Sales Verification Exhibits at exhibit 2.

⁷⁷ See GVN Sales Verification Report at 3.

⁷⁸ See Letter from GVN, “Oil Country Tubular Goods from India: Sections B and C Response of GVN Fuels Limited,” November 5, 2013, at exhibit C-12.

⁷⁹ See Letter from GVN, “Oil Country Tubular Goods from India; Section A Response of GVN Fuels Limited,” October 25, 2013, at exhibit M-2 and exhibit J-2.

subject merchandise, and only exported subject merchandise produced by MSL and JPL.”⁸⁰ We also verified the sharing of sales information among the companies, noting that GVN and MSL are both involved in export pricing decisions, and we reviewed the price list established by both companies working in tandem.⁸¹ Finally, Department officials noted the involvement in pricing and production decisions between the companies. GVN reported that the three companies can and do access each other’s accounting systems, and in addition, the Department verified that the three companies share the same chart of accounts.⁸²

Based on the information provided since the *Preliminary Determination*, and the facts reviewed during verification, the Department continues to find that the D.P. Jindal family controls GVN, MSL and JPL, and that there exists significant potential for manipulation of price or production among the three companies such that they should be collapsed for the final determination.

Comment 10: Whether GVN Sold at Two Levels of Trade in the Home Market

U.S. Steel Comments

- The disparity in the types and intensity of selling activities that exist between home market sales to exploration and production (E&P) customers and to original equipment manufacturers customers is great enough that the Department should find that GVN has two levels of trade (LOTs) in the home market.
- The selling function and level of marketing at which OCTG is sold in the United States are most similar to the selling functions and level of marketing for CHANNELH2 sales (sales to resellers).

GVN’s Comments

- While there are two channels of distribution in the home market, the selling activities between the two channels do not warrant two LOTs.
- The record demonstrates that there are no significant differences between the two channels with respect to sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support.
- Petitioners failed to identify any significant correlation between prices and selling expenses, as required by the Department.
- Petitioners have not supported their contention that the U.S. channel of distribution is like CHANNELH2 based on the record evidence.

Department’s Position: The Department continues to find that there is only one LOT for GVN in the home market. To determine if the home market sales are made at a different LOT than EP 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 in the *Preliminary*

⁸⁰ See GVN Sales Verification Report at 2.

⁸¹ *Id.* at 9.

⁸² *Id.* at 5 and 11.

*Determination.*⁸³ After reviewing record information, we preliminarily determined that “each respondent’s home market constitutes a single LOT.”⁸⁴

During GVN’s verification, we reviewed with company officials the various selling functions in the home market and in the U.S. market. Company officials stated that there were two channels of distribution in the home market and one channel of distribution in the United States.⁸⁵ We found the information presented in regard to selling activities, customer categories, sale terms or distribution channels to be consistent with that reported in GVN’s questionnaire responses. Additionally, at verification, we examined the selling activities in more depth for channel one, sales to E&P customers. We noted a few minor differences between sales to public sector and private sector E&P customers, but GVN had no major changes to its degree of selling activities in any of its channels of distribution.⁸⁶

The Department’s practice does not automatically equate two channels of distribution with two LOTs.⁸⁷ Pursuant to 19 CFR 351.412(c)(2), the Department “will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent).” The regulation specifies that “{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.” Furthermore, the Preamble to the Department’s regulations states that:

It is sufficient that, at the more remote level (*i.e.*, more remote from the factory), the seller takes on a role comparable to that of a reseller if the merchandise has changed hands twice. For example, a producer that normally sells to distributors (that, in turn, resell to industrial consumers) could make some sales directly, taking over the functions normally performed by the distributors. Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different level of trade.⁸⁸

The Preamble continues, stating that “{a}lthough the type of customer will be an important indicator in identifying differences in levels of trade, the existence of different classes of customers is not sufficient to establish a difference in the levels of trade.”⁸⁹ For the Department

⁸³ See 19 CFR 351.412(c)(2).

⁸⁴ See *Preliminary Determination*, and accompanying PDM at 16.

⁸⁵ See GVN Sales Verification Report at 9.

⁸⁶ *Id.*

⁸⁷ See *e.g.*, *Notice of Final Determination of the Sales at Less Than Fair Value; Silicomanganense from Venezuela*, 67 FR 15533 (April 2, 2002), and accompanying IDM at Comment 8 (“separate channels of distribution alone do not qualify as separate levels of trade particularly when the selling functions performed for each channel are similar”).

⁸⁸ See *Antidumping Duties: Countervailing Duties*, 62 FR. 27296, 2737 (May 19, 1997) (Preamble).

⁸⁹ *Id.*

to grant a LOT adjustment, “there must be a significant correlation between prices and selling expenses on the one hand, and levels of trade on the other.”⁹⁰

The petitioners argue that it is “evident that CHANNELH1 sales require an intense level of activity for several selling functions, including bid preparation, drafting and distribution of sales documentation, negotiations, arranging bank guarantees and pre-shipment services.”⁹¹

Therefore, the petitioners believe “the process for CHANNELH2 sales has little in common with the CHANNELH1 sales process.”⁹² However, as GVN notes, there are no differences in inventory maintenance, and warehousing practices, and only minimal difference in freight, and insurance practices, resulting in minimal differences in the selling expenses between the two home market channels. The record shows that regardless of the channel of distribution, prices are negotiated on a sale-by-sale basis based on market conditions, volume, and prices of raw materials. The time that must be devoted to the negotiation process is roughly the same, regardless of whether the customer is part of the private or public sector.⁹³

The petitioners note that sales through CHANNELH1 involve lengthy negotiations that require the use of facilitators. However, the lengthy decision process does not imply that suppliers are incurring additional selling expenses; during the extended process outlined by the petitioners, they are simply awaiting a decision from the public sector customer. The record indicates that facilitators are used in both the home market and U.S. market, and do not correlate to the complexity of the sales process; the role of the agent is to interface personally with the customer to cement the solidity of the relationship.⁹⁴

The petitioners tried to demonstrate that different LOTs existed by lastly focusing on MSL’s third party inspections, inland freight and inland insurances services to E&P customers. However, record evidence indicates that third party inspections were not significantly different between the various channels.⁹⁵ GVN argues that MSL occasionally provides inland freight insurance through both channels at the same intensity.⁹⁶ Petitioners note that the Department found two LOTs in the home market where “both distribution channels in the home market were similar with respect to sales process and warehousing services but different with respect to

⁹⁰ See “Matching at Levels of Trade,” Policy Bulletin 92/1 (July 29, 1992); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574, 30580 (June 8, 1999) (where sales to end-users and trading companies constituted two LOTs in the home market, but because there was no consistent, significant pattern of price differentials, no LOT adjustment was made).

⁹¹ See Letter from petitioners, “Oil Country Tubular Goods from India,” May 23, 2014, at 30.

⁹² *Id.*

⁹³ *Id.* at 7-8.

⁹⁴ See GVN Sales Verification Report at 7.

⁹⁵ See GVN Rebuttal Brief at 21.

⁹⁶ *Id.* at 21-22.

freight services.”⁹⁷ GVN points out that MSL itself does not provide any freight services, but merely arranges such services from an outside vendor. Indeed, the “home market sales listing reveals that for over 99 percent of the sales made in CHANNELH1, the customer either paid the freight directly, or MSL paid the freight and charged the customer for the freight as a separate line item on the invoice. In fact, in CHANNELH1, there was only one sale for which MSL provided freight services.” A majority of sales through CHANNELH1 are sold on an ex-factory basis, as are all sales in CHANNELH2. In the case cited by the petitioners, the Department found that the degree of freight and delivery services provided by the respondent was higher for traders than for end-users.⁹⁸ In the instant case, MSL’s payments of freight and delivery services are identical for 99 percent of the sales in CHANNELH I and CHANNELH2. The record clearly demonstrates that while there are two channels of distribution in the home market, the selling activities performed are very similar, and do not warrant two LOTs.

Comment 11: Whether to Apply Facts Available for GVN’s Commission Expense

U.S. Steel Comments

- GVN has not adequately explained how it reported its commissions incurred for U.S. sales, nor tied its explanation to supporting documents.
- GVN’s failure to provide such information impedes the Department’s investigation, and warrants the use of facts available for GVN’s commission expense.
- The Department should apply a five percent commission expense to each U.S. sale as facts available, the rate noted on GVN’s sales documentation.

GVN’s Comments

- GVN has correctly reported all of the commissions it paid during the POI, and the Department found during verification, after reviewing GVN’s commissions payable account that all commissions paid/payable for the POI were reported.
- The record demonstrates that, for operational ease, MSL includes a commission on its invoices so that there are no procedural issues at the time of realization of payment. This note does not indicate that a commission will be paid though.

Department’s Position: The Department is not applying facts available for GVN’s commission expense. During verification, GVN explained that its invoices included a line for “commissions,” even though it did not record any commissions paid out on these invoices. GVN officials explained that, if they do not note commissions on the invoice, but end up needing to pay a commission, their bank will not allow them to pay a commission in the currency of the invoice.⁹⁹ For operational ease, GVN includes a five percent commission on the invoice so that

⁹⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from India*, 72 FR 62826, 62827 (November 7, 2007) (*Glycine from India*) (finding separate LOTs in the home market solely because the channels of distribution were “different with respect to freight services”) (unchanged in final); see also *Final Results of Redetermination Pursuant to Court Remand*, *Timken US Corporation and Timken Nadellager, GmbH v. United States*, Court No. 00-09-00454 (June 7, 2004), at 10 (finding separate LOTs where there were significant differences in the customer type, selling activities, and the point where the subject merchandise entered the channel of distribution).

⁹⁸ See *Glycine from the India*, 72 FR at 62833.

⁹⁹ See GVN Sales Verification Report at 22.

there are no procedural issues at the time of realization of payment, if commissions end up being due. Commissions are not booked into GVN's accounts unless they are payable or paid to the facilitator.

The petitioners argue that this explanation is problematic for three reasons. First, the petitioners believe this practice implies that GVN incurs commissions so frequently that it includes a default term for its sales. Second, commissions are identified on the export shipping bill or the customs invoice provided to Indian customs, and not on the commercial invoice used for the customer and the bank, even for sales where a commission is paid. Third, the commercial invoice is not even drafted until the time of shipment, which occurs months after GVN would know whether or not a commission would be due. The Department had similar concerns going into GVN's verification, but GVN sufficiently supported its commission expense reporting. First, GVN does not frequently incur commissions, but routinely includes commissions on its shipping documents for operational ease, as explained during verification.¹⁰⁰ GVN's business practices reflect the bank regulations it must follow, which the company discussed in depth at verification. And finally, whether GVN might know whether a commission is due or not on a particular shipment is irrelevant. In order to avoid currency concerns with its bank, GVN has set up its practice of noting commissions on each of its shipping documents.¹⁰¹

More importantly, during verification, we found no unreported commissions:

We reviewed account 209 and 253 in GVN's Tally system to identify all commissions paid during the POI. We asked the company to provide invoices for each entry in these accounts. We analyzed these invoices and determined whether the invoice was for a sale in the POI, and was for subject merchandise sold in the United States. We tied all commissions for subject merchandise sold in the United States to GVN's latest U.S. market sales database without exception.¹⁰²

GVN provided sufficient documentation explaining its commissions reporting methodology. The Department found no instance of unreported commissions on sales to the United States in GVN's accounting system. Therefore, the use of facts available is not warranted in this case.

Comment 12: Grade for N/L-80 Specified OCTG

U.S. Steel Comments

- N/L-80 grade products constitute a distinct grade for both production and sales purposes.
- The Department should rely on facts available, since GVN did not report a separate cost for N/L-80 grade specifically, and use the highest cost assigned to an L-80 grade product as the cost for this distinct grade.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 21.

GVN's Comments

- The invoice GVN sends to its customers must match the product description in the mill test certificate.
- However, MSL's production records, as well as its invoices to GVN, demonstrate that MSL actually produced N-80 grade OCTG for these re-coded transactions.

Department's Position: The Department is assigning to sales that had a mill test certificate indicating a grade of N/L-80 a grade of L-80 for this final determination. GVN provided numerous mill test certificates on the record of this investigation.¹⁰³ During verification of this issue, the Department noted that "we reviewed several MSL invoices and mill test certificates for these reclassified sales, and noted that in each instance, the documentation from MSL was clearly for N-80 graded products."¹⁰⁴ However, to clarify, while MSL's invoice to GVN does clearly indicate the grade as being N-80, the petitioners are correct that these invoices are the only document in the sales trace indicating the product is grade N-80. The mill test certificate provided with each transaction actually indicates a dual grade of N/L-80.¹⁰⁵ GVN submitted data on the record for sales of N-80 grade OCTG, but it explicitly identified the sale as an N-80 grade product on the corresponding mill certificates, and not as an N/L-80 grade product. Further proprietary record information also supports the claim that N/L-80 is a dual grade produced by MSL.¹⁰⁶ GVN's sales documentation to U.S. customers indicates it sells OCTG as grade N/L-80 in the U.S. market.

In previous cases with multiple grades, the Department stated that "when the customer orders a product to meet multiple specifications and grades in order to be suitable for a variety of applications, the strictest requirements of any of the standards must be satisfied."¹⁰⁷ In these cases, we assigned the product with the highest performance requirement as the most similar model match. In the instant case of an N/L-80 dual grade, L-80 has the stricter requirements,¹⁰⁸ and will be assigned to all instances of dual grade sales on the record.

Comment 13: Use of the Final Determination Date as the Payment Date

U.S. Steel Comments

- The Department should calculate the imputed credit expense for unpaid sales using the date of the final determination, consistent with its normal practice.

Department's Position: GVN has not reported receipt of payment for certain U.S. sales. As stated in the initial questionnaire issued to GVN, the Department has a preference for calculating credit expenses on a transaction-specific basis using actual payment dates: "This expense should be calculated and reported on a transaction by transaction basis using the number of days

¹⁰³ See GVN March 6 SQR at S2-3; *see also* Sales Verification Exhibits at sale verification exhibit 14.

¹⁰⁴ See GVN Sales Verification Report at 20.

¹⁰⁵ See Sales Verification Exhibits at sale verification exhibit 14.

¹⁰⁶ See GVN January 23 SQR, at exhibit S1-6c and S1-14.

¹⁰⁷ See *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil*, 70 FR 7243 (February 11, 2005), and accompanying IDM at comment 1.

¹⁰⁸ See GVN January 23 SQR at exhibit S1-14.

between date of shipment to the customer and date of payment.” When it is not possible to calculate credit expenses on such a basis, when payment dates are missing from the respondent’s database, or when payment has not yet been received, the Department relies on a number of proxies for payment date, derived by the Department or reported by the respondent. Such proxies for payment date include: the date of the preliminary determination,¹⁰⁹ the due date for new factual information,¹¹⁰ the last day of verification,¹¹¹ the due date indicated by the payment terms of the invoice or contract,¹¹² payment dates for other sales,¹¹³ and accounts receivable turnover.¹¹⁴ In the instant investigation, the last opportunity GVN had to report payment date was during verification. We are therefore using the last day of verification as the payment date for those U.S. sales where GVN has not reported receiving payment.

Comment 14: Sales Outside the Ordinary Course of Trade

Jindal SAW’s Comments

- Jindal SAW has specific home market sales that should be considered outside the ordinary course of trade because they have characteristics that are extraordinary based on the totality of circumstances.
- The record demonstrates that these sales differ from ordinary sales in product characteristics, quantity, price, production process, production cost and sales process.
- Including these sales leads to irrational, aberrational and unrepresentative results.

U.S. Steel Comments

- Jindal SAW’s sample sales are not outside the ordinary course of trade, and should be included in the Department’s margin calculation.
- These sales do not differ from sales in the normal course of trade in their physical characteristics, sales process, or product process and cost, based on record evidence.

Department’s Position: Jindal SAW’s main argument regarding this issue is that the Department should make corrections to certain home market sales in order to ensure proper dumping margin calculations. To that end, the Department carefully scrutinized these sales and the record to determine whether the sales should be included in our analysis.

¹⁰⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Outboard Engines From Japan*, 69 FR 49863, 49869 (August 12, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines from Japan*, 70 FR 326 (January 4, 2005) (*Outboard Engines from Japan*) and *Stainless Steel Bar From Germany: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 5493, 5496 (February 5, 2004), unchanged in *Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review*, 69 FR 32982 (June 14, 2004).

¹¹⁰ See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005) and accompanying IDM at comment 3.

¹¹¹ See, e.g., *Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy*, 67 FR 35481 (May 20, 2002) and accompanying IDM at comment 9 and *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Administrative Review*, 69 FR 74495 (December 14, 2004) and accompanying IDM at comment 1.

¹¹² See *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain*, 67 FR 35482 (May 20, 2002) and accompanying IDM at comment 9.

¹¹³ See, e.g., *Outboard Engines from Japan* and accompanying IDM at comment 9.

¹¹⁴ *Id.*

First, the Department finds that, based on documents collected during verification, certain sales whose documentation indicates they are essentially sample sales, will be treated as sample sales that are outside the ordinary course of trade and not included in our analysis.¹¹⁵

Second, for certain home market sales, the Department was provided with additional information regarding product characteristics to support Jindal SAW's March 7, 2014 supplemental questionnaire response, in which Jindal SAW recoded the product characteristics for these sales based on the company's careful review of its documentation. The Department agrees with the changes made by Jindal SAW, and will use its March 7, 2014 home market database in our analysis. Our analysis showed that these home market sales with the recoded product characteristics are then not matched to a U.S. market sale.¹¹⁶ While this sale is for a product that itself is not representative of the majority of OCTG sold by Jindal SAW, the main differences are accounted for in the product characteristics. The record evidence does show that this sale was part of a "developmental order;" however, the same order included several other line items that Jindal SAW *included* in its sales database. This, and the fact that the sales process was similar to Jindal SAW's normal sales process, leads us to conclude that this sale is in the ordinary course of trade.

We last turn to the remaining sample home market sales, and we determine that the record does not support finding them to be outside the ordinary course of trade. We retained these sales for our final determination of Jindal SAW's weighted-average duty margin.¹¹⁷ The record shows that these sales are for products that have similar characteristics to subject merchandise, are sold in a similar manner as subject merchandise, and do not have production costs that are distinguishable from any of Jindal SAW's other reported production costs of similar merchandise.¹¹⁸

Comment 15: Classification of TYPEH for Certain of Jindal SAW's Sales

Jindal SAW's Comments

- During the sales trace conducted at verification, it was discovered that certain sales were set to an inappropriate TYPEH based on the product specifications noted in the supporting documentation.
- The Department should correct the TYPEH for these sales as they do not fall under any of the listed types of OCTG in field TYPEH.

U.S. Steel Comments

- The Department does not permit parties to add additional categories for TYPEH beyond what was expressly established in the initial questionnaire.

¹¹⁵ See Letter from Jindal SAW, "OCTG from India: Cost & Sales Verification-Verification Exhibits," March 25, 2014 (Jindal SAW Verification Exhibits), at SV exhibit 14a.

¹¹⁶ See Jindal SAW Final Analysis Memorandum, for a complete discussion on the product characteristic determination and margin calculation.

¹¹⁷ *Id.*

¹¹⁸ See Jindal SAW Verification Exhibits at exhibit 14b.

- Parties had an opportunity to comment on model match criteria, but no party, including Jindal SAW, raised this issue at that time. The facts on the record do not provide a compelling reason for the Department to revise its model-match categories for TYPEH.

Department’s Position: For this final determination, the Department finds that a new TYPEH category is unwarranted because the model match hierarchy in its current form already accounts for the characteristic feature Jindal SAW is trying to capture. The Department previously solicited comments from interested parties regarding proposed product characteristics and model match hierarchy.¹¹⁹ Jindal SAW provided no comments at that time. Interested parties were issued the final product characteristics in the initial questionnaires. One product characteristic was “TYPEH,” and was broken down into four categories: tubing, casing, green tube, and coupling stock. Unlike certain other product characteristics, such as “Outside Diameter,” and “Grade,” the Department does not permit respondents to add additional categories for TYPEH beyond those that the Department expressly established.¹²⁰

The Department does not revise model match criteria “unless there is evidence that the model-match is not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason present requiring a change.”¹²¹

Jindal SAW argues that it could not previously correct and submit a revised database with the corrected TYPEH as the “misclassification of variable TYPEH was discovered by Department officials, Jindal SAW officials, and counsel while reviewing the sample sales.”¹²² We note that the verification report does not note this discovery. While the sale in question may have unique features which were examined during verification, Jindal SAW has not provided record evidence supporting a change in the TYPEH of this sale. Indeed the special quality that is inherent in this one sale (and which is proprietary in nature), is captured by another product characteristic in the model match, as noted by the petitioners. For these reasons, the Department is not altering the TYPEH assigned to a certain sale as requested by Jindal SAW.

Comment 16: Adjustment to Jindal SAW’s COP Due to Duty Drawback

Jindal SAW’s Comments

- The Department should not adjust Jindal SAW’s reported costs to include duty drawback.

¹¹⁹ See Letter to Interested Parties, “Proposed Model Match Criteria,” July 29, 2013.

¹²⁰ See Letter to Jindal SAW, “Antidumping Duty Investigation: Certain Oil Country Tubular Goods from India,” August 27, 2013, at B-9.

¹²¹ 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 IDM at comment 1 (requiring a showing of compelling reasons to change the model match); see also *Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996) and accompanying IDM at comment 7 (“our policy is to ‘maintain a stable, normal and predictable approach’ with regards to model match, and not to alter that methodology unless compelling reasons exist”).

¹²² See Letter from Jindal SAW, “OCTG from India: Administrative Case Brief of Jindal SAW Ltd.,” May 23, 2014, at 9-10.

- Jindal SAW demonstrated at verification that neither the income from duty drawback nor the income from DEPB licenses was used to offset the cost of materials.

Department's Position: We reviewed the calculation of material costs at verification and determined that neither the income from duty drawback nor the income from DEPB licenses was used to offset the cost of materials for Jindal SAW. Therefore, we used the material costs as reported for the final determination.

Comment 17: Correct U.S. Indirect Selling Expense for Jindal SAW

Jindal SAW's Comments

- The Department should use the corrected ratio provided during verification to calculate the per-unit U.S. indirect selling expense (INDIRSU).

Department's Position: The Department will use the corrected ratio provided during verification for Jindal SAW's INDIRSU variable. Jindal SAW first provided this variable in its March 7, 2014 supplemental questionnaire. The company discovered an error in this variable during verification. The Department reviewed the correction and the supporting documents demonstrating the amount of Jindal SAW's INDIRSU ratio without discrepancy.¹²³

Comment 18: Whether Critical Circumstances Exist for Jindal SAW

Jindal SAW's Comments

- Critical circumstances do not exist for Jindal SAW.
- The Department provided no evidence that there was a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of subject merchandise.
- Jindal SAW's weighted average dumping margin does meet the minimum threshold to impute knowledge of dumping once the Department accurately calculates Jindal SAW's final margin.

U.S. Steel Comments

- The rate calculated for Jindal SAW in the *Preliminary Determination* was over 25 percent, so there was sufficient basis to find that importers knew or should have known that Jindal SAW was selling OCTG at LTFV.
- Comparing the base period to the comparison period, Jindal SAW had massive imports over a relatively short period.
- The Department should continue to find that critical circumstance exist for Jindal SAW.

Department's Position: For this final determination, the Department finds that Jindal SAW did not have massive imports over a relatively short period of time. Therefore, critical circumstances do not exist for Jindal SAW. In the Department's letter to respondents requesting shipping data, we asked the parties to "report monthly quantity and value data for subject merchandise shipped

¹²³ See Memorandum, "Verification of the Sales Response of Jindal SAW Ltd. in the Antidumping Duty Investigation of Oil Country Tubular Goods from India," May 5, 2014 (Jindal SAW Verification Report), at 22.

to the United States between April 2010, through the month of the publication of the preliminary determination of this investigation (*i.e.*, February 2014).”¹²⁴ In the *Preliminary Determination*, we also stated that “the Department expands the periods as more data are available.”¹²⁵ At the time of the *Preliminary Determination*, shipping data was only available through December 2013, so the Department used the period January 2013 through June 2013 compared with July through December 2013.¹²⁶ Based on the data present at the time, the Department determined critical circumstances did exist for Jindal SAW.¹²⁷ After the *Preliminary Determination*, both respondents filed shipping data through February 2014. For this final determination, we expanded the periods to include this additional data, and therefore used the period November 2012 to June 2013, compared to July 2013 to February 2014. After expanding these periods, the Department conducted its analysis to determine if massive imports existed for any respondent, but found that neither Jindal SAW nor GVN had imports that increased by at least 15 percent from the base period to the comparison period. Therefore, pursuant to 19 CFR 351.206(h), neither Jindal SAW nor GVN had massive imports over a relatively short period.¹²⁸ Because neither selected respondent met this prong of the critical circumstances analysis, we find that critical circumstances do not exist for either Jindal SAW or GVN. As discussed above, while all other producers and exporters did have massive imports over a relatively short period, because the all others rate was below the threshold for importers to impute knowledge of dumping, we are also finding that critical circumstances do not exist for all other producers and exporters.

Comment 19: Request to Apply Adverse Facts Available for the Final Determination

U.S. Steel Comments

- The methodology Jindal SAW used to determine its product specific costs did not include the processing cost differences related to differences in wall thickness and outside diameter, two of the Department’s model match characteristics.
- Documents obtained at verification demonstrate that Jindal SAW had the ability to use an alternative methodology for determining product specific costs and that there is evidence that the costs under this alternative methodology were significantly different from the reported costs.
- Jindal SAW failed to account for differences in yield loss attributable to different production processes.
- Because Jindal SAW repeatedly failed to comply with the Department’s requests and withheld vital information about its processing costs that the Department had requested, the Department must apply an adverse inference in selecting the facts available to apply.

Jindal SAW’s Comments

- Jindal SAW provided the Department with an alternative cost allocation methodology at verification in order to validate the accuracy of its cost reporting methodology. The

¹²⁴ See Letter to Jindal SAW, “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India: Request for Quantity and Value Shipment Data,” December 30, 2013.

¹²⁵ See *Preliminary Determination*, and accompanying PDM at 21.

¹²⁶ *Id.* at 22.

¹²⁷ *Id.*

¹²⁸ See Critical Circumstances Memorandum.

alternative cost methodology based on processing time showed an insignificant difference in cost.

- Jindal SAW's reported cost methodology did not result in costs being shifted from OCTG or an underreporting of OCTG costs.
- Wall thickness and outside diameter do not impact the total production costs incurred or the quantity of OCTG produced. The reported yield loss was reasonable because tracking yield losses by production stage is a cost prohibitive and time consuming approach that does not result in any material differences in the total yield loss.
- The Department fully verified the actual cost of these sale which should dispel any doubt as to the validity and veracity of the reported production costs.

Department's Position: We find that partial adverse facts available (AFA) is warranted in this case. Accordingly, we relied on Jindal SAW's reported costs, adjusted as described below, for this final determination.

In our Section D questionnaire, we instructed respondents to report a unique cost in their cost database for each control number (CONNUM) based on the physical characteristics identified by the Department.¹²⁹ At issue is the fact that Jindal SAW failed to differentiate costs for two physical characteristics – wall thickness and diameter of OCTG. Thus, contrary to the original Section D questionnaire instructions, and our additional supplemental questionnaire requests, Jindal SAW has failed to report a unique conversion cost for each CONNUM.¹³⁰ Instead, it reported multiple CONNUMs with the same cost.

Jindal SAW's contention throughout this proceeding has been that wall thickness and diameter of OCTG do not significantly impact the cost of production.¹³¹ That is, Jindal SAW claims that it costs the company virtually no difference on a per unit weight basis, to produce two pipes that may both be the same length, but different in diameter and wall thickness. As such, Jindal SAW continued to report the same conversion costs for a particular production stage for all products in its cost database.

At verification we discussed the company's normal books and records, reviewed its cost reporting methodology, and discussed the production process and what drives product specific processing time differences with company officials.¹³² Based collectively on all of the information on the record, we note that, on a per unit weight basis, there is actually a significant difference in cost associated with producing OCTG of different diameters and wall thicknesses.

¹²⁹ See Letter to Jindal SAW, "Section D Antidumping Duty Questionnaire," August 26, 2013 (Jindal SAW Section D Questionnaire).

¹³⁰ See Letter to Jindal SAW, "First Section D Supplemental Questionnaire," December 5, 2013; *see also* Letter to Jindal SAW, "Second Section D Supplemental Questionnaire," December 19, 2013 (Jindal SAW Second Section D Supplemental Questionnaire), and Letter to Jindal SAW, "Third Section D Supplemental Questionnaire," January 16, 2014. Conversion costs are the costs of changing raw materials into finished or semi-finished products. Conversion costs include wages, other direct production costs and the production overhead.

¹³¹ See Letter from Jindal SAW, "Oil Country Tubular Goods from India; Supplemental Section D Response to the 1st and 2nd Supplemental Questionnaires," January 6, 2014, at 21 and 33.

¹³² See Memorandum to Neal Halper, "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India: Cost Verification Report," May 12, 2014 (Jindal SAW Cost Verification Report), at 21-25.

In its normal books and records Jindal SAW allocates conversion costs at a certain production stage using both a proprietary allocation method and a weight-based method.¹³³ In reporting costs to the Department, Jindal SAW followed its normal accounting treatment and allocated conversion costs from the certain production stage using both the proprietary and weight-based methodologies. While the company's normal proprietary method takes into account dimensional differences between product-lines, it elected not to use the same information and methodology to allocate the conversion costs to the different OCTG products. At verification we discussed the production process with company officials. Company officials confirmed at verification that this proprietary method was most appropriate for allocating conversion cost at the proprietary production stage.¹³⁴ Using information provided by Jindal SAW, we were able to allocate cost to a sample of products based on the proprietary method and convert the result to a cost per unit weight, which is the unit used for reporting costs in the cost database.¹³⁵ The results show a significant difference in costs allocated to the different dimensions of products analyzed between the reported weight-based method and another more appropriate proprietary method.¹³⁶ As such, reported product specific conversion costs for a proprietary production stage are inaccurate and unusable. The smaller diameter and thinner wall thickness products' costs are understated while the larger diameter and thicker wall thickness products are overstated. Although we cannot correct the cost database because we do not have the necessary proprietary data on the record, we can adjust the smaller diameter and wall thickness products' costs in a way to ensure that they are not understated.

Section 773(f)(1)(A) of the Act mandates that a respondent's costs be based on the respondent's records if such records are kept in accordance with the GAAP of the producing country and reasonably reflect the costs associated with the production and sale of the merchandise. Furthermore, the costs a respondent reports to the Department should reflect cost differences attributable to the different physical characteristics of the merchandise under consideration. This approach ensures that the product-specific costs we use for the below-cost test accurately reflect the corresponding product's physical characteristics.¹³⁷ This principle is supported by section 773(a)(6)(C)(ii) of the Act, which requires the Department to account for and adjust for any differences attributable to physical differences between the subject merchandise and the foreign like product if similar products are compared in the analysis of home-market and U.S. prices. Such comparison criteria are logical because physical characteristics provide the Department with a dependable, measurable means of comparing two different products sold in two different markets.

¹³³ See Final Cost Memorandum.

¹³⁴ See Jindal SAW Cost Verification Report at 24.

¹³⁵ See Letter from Jindal SAW, "Oil Country Tubular Goods from India; Administrative Case Rebuttal Brief," June 2, 2014 at Attachment 1.

¹³⁶ See Final Cost Memorandum.

¹³⁷ See *Preliminary Results in the Antidumping Duty Administrative Review of Stainless Steel Bar from India*, 76 FR 12044 (March 4, 2011) unchanged in *Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part*, 76 FR 56401 (September 13, 2011) (finding that, under the statute, "a respondent's reported product costs should reflect cost differences attributable to the different physical characteristics, as defined by the Department, to ensure that the product-specific costs used for the sales-below-cost test...accurately reflect the corresponding product's physical characteristics").

Therefore, under section 773(f)(1)(A) of the Act, the reported conversion costs at a certain proprietary production stage do not reasonably reflect the costs associated with the production and sale of the merchandise since they do not reflect product specific cost differences associated with the differences in the products. Jindal SAW argues that unless costs are distorted by shifting or reducing the reported costs of production away from the merchandise under investigation, or in some other way are not representative of the respondent's normal accounting principles, then the Department does not have the authority to adjust the reported costs. Jindal SAW cites to *Thai Plastic Bags Indus. Co. v. United States* to support its position.¹³⁸ We disagree with Jindal SAW's understanding of *Thai Bags*. In that case the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) said:

Section 1677b(f)(1)(A) does not require Commerce to accept TPBI's records. It requires only that reported costs must "normally" be used if they are "based on the records...kept in accordance with the {GAAP} and "reasonably reflect" the costs of producing and selling the merchandise. {citation omitted} TPBI's records met neither criterion. Commerce reasonably interpreted its statutory obligations, and its underlying findings are supported by substantial evidence.¹³⁹

In this case, Jindal SAW reported certain conversion costs that have not met the second criterion cited by the Federal Circuit in that they do not reasonably reflect the costs associated with the production and sale of the merchandise.

For the reasons stated below, we determine that the use of partial facts otherwise available with an adverse inference is appropriate for the final determination with respect to Jindal SAW's reported conversion costs for a proprietary production stage.

Section 776(a)(2)(A)-(D) of the Act provides that, if an interested party (1) withholds information requested by the Department; (2) 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; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, it will notify the respondent of the deficiency and, to the extent practicable, provide an opportunity to remedy or explain the deficiency. Further, section 782(e) of the Act states further that the Department 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 demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

¹³⁸ See *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1358 (Fed. Cir. 2014) (*Thai Bags*).

¹³⁹ *Id.*

In this case, because Jindal SAW failed to provide CONNUM specific conversion costs for a certain proprietary production stage even though such information was available, we find that it withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding by not providing a reasonable cost allocation at this proprietary production stage.¹⁴⁰ Jindal SAW failed to provide product specific conversion costs for a certain proprietary production stage even though, in accordance with section 782(d) of the Act, it was requested to do so by the Department on at least two occasions.¹⁴¹ Moreover, because the information Jindal SAW did provide is so incomplete that it cannot serve as a reliable basis for reaching a determination in this investigation, we have determined that section 782(e) of the Act is inapplicable. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for certain conversion costs. Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁴² In addition, the SAA, explains that the Department 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.”¹⁴³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁴⁴ It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

We find that Jindal SAW has not acted to the best of its ability in providing certain conversion information on a product specific basis at a certain proprietary production stage where record evidence indicates that Jindal SAW had information available to calculate the requested product specific conversion cost.¹⁴⁵ Jindal SAW had access to the information it needed to report product specific conversion costs accurately, yet chose not to do so. In short, Jindal SAW did not put forth its maximum efforts in responding to our requests for information. We used partial AFA in this case because Jindal SAW has cooperated in all other aspects of this case except for providing product specific conversion costs at a certain proprietary production stage.¹⁴⁶

The Department’s concern in this case is that Jindal SAW not benefit from understated product specific costs. The reported product specific conversion costs for a proprietary production stage are inaccurate and unusable. The smaller diameter and thinner wall thickness products costs are

¹⁴⁰ See sections 776(a)(2)(A), (B), and (C) of the Act.

¹⁴¹ See Jindal SAW Section D Questionnaire; see also Jindal SAW Second Section D Supplemental Questionnaire.

¹⁴² See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); see also *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); see also 19 CFR 351.308.

¹⁴³ See SAA at 870; see e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁴⁴ See, e.g., *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); see also *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

¹⁴⁵ See Final Cost Memorandum.

¹⁴⁶ *Id.*

understated while the larger diameter and thicker wall thickness products are overstated. While we cannot correct the cost database, we can adjust the smaller diameter and wall thickness products costs to ensure that they are not understated. Additionally, as the reported dimensional product specific costs are not reliable for DIFMER purposes, for any similar matches of products having different diameters or thicknesses, we selected, as partial AFA, the highest dumping margin calculated from either identical matched sales or similar matched sales (that had identical diameter and wall thickness characteristics).¹⁴⁷

We agree, however, with Jindal SAW that record evidence from verification showed that reallocation of conversion costs after a certain proprietary production stage would result in an insignificant change in the reported costs and therefore the reported costs are reasonable. Jindal SAW relied on yield rates calculated in its normal books and records. These yields were subsequently used to adjust the reported costs for yield losses. Jindal SAW's methodology of calculating yield is reasonable given that the total yield is captured through this methodology. Although yield is not calculated by production stage as advocated by the petitioners, we do not find evidence that the reported yield is unreasonable. Further, we did not ask Jindal SAW to revise its yield methodology during the investigation.

Comment 20: Affiliated Inputs: Billets and Electricity

U.S. Steel Comments

- Jindal SAW failed to act to the best of its ability to obtain the COP for billets purchased from alleged affiliated suppliers and therefore the Department should apply partial AFA to determine the cost of billets.
- Jindal SAW's letter to the alleged affiliate for the COP for billets is not sufficient.
- As partial AFA, the Department should calculate an adjustment factor based on the difference between the highest transfer price for billets and lowest price for billets.
- Jindal SAW's transactions with its alleged affiliated electricity supplier were not at arm's length.

Jindal SAW's Comments

- Jindal SAW and its alleged affiliates are prohibited from sharing costs, prices, *etc.* under the Anti-Competition Act of India
- Jindal SAW's transactions with its alleged affiliates are at arm's length

Department's Position: Because we have not found Jindal SAW affiliated with any of its suppliers, this issue is moot. The Department notes that as part of the petitioners' argument of this issue, they raise the concern that Jindal SAW should be affiliated with its suppliers. However, there is no information cited in the petitioners' case briefs that the Department neglected to consider in reaching the *Preliminary Determination* finding, other than the verification reports (which only verified information the Department relied on in reaching the *Preliminary Determination*). Therefore, we are not changing our position regarding Jindal SAW's affiliations for this final determination.

¹⁴⁷ See Jindal SAW Final Analysis Memorandum.

Comment 21: Rejection of Untimely Filed New Factual Information

U.S. Steel Comments

- The Department's regulations clearly define the deadlines for parties to submit new factual information.¹⁴⁸
- Jindal SAW, in its March 7, 2014 supplemental questionnaire response, untimely submitted revised home market sales and COP databases that included unexplained but significant changes that were not requested by the Department one day before the start of its verification.
- The Department should reject these new databases because they are untimely filed and are detrimental to other parties and the Department.

Jindal SAW's Comments

- Jindal SAW's submission was timely filed on the deadline established by the Department.
- All information Jindal SAW provided in its second supplemental questionnaire response were a result of the companies careful review of the Department's questions and Jindal SAW's actual experience.
- The Department was able to verify the actual costs and sales data submitted in the second supplemental questionnaire without any discrepancies.

Department's Position: The Department is not rejecting Jindal SAW's March 7, 2014 supplemental questionnaire response as untimely filed new information. The Department carefully reviewed Jindal SAW's March 7, 2014 supplemental questionnaire. The information provided by Jindal SAW was a direct result of questions the Department asked Jindal SAW to complete, and therefore does not constitute untimely filed new information. Jindal SAW did submit these new databases three days before verification. However, the Department established a deadline of March 7, 2014, knowing in advance that deadline was three days before verification commenced. Therefore, Jindal SAW's filing on the Department's established deadline is timely, regardless of how close that deadline is to the start of verification, and is irrelevant to this timeliness issue.

Next, as Jindal SAW correctly points out, the Department asked numerous and probing questions that would require any company to re-examine its reporting. The Department asked one question containing five sub-parts relating to Jindal SAW's sample sales alone.¹⁴⁹ Jindal SAW's revised databases reflected its responses to these questions. While these were "new" changes, they were related to the Department's request for information. Jindal SAW attempted to explain the changes it made to the databases, and while its explanation was brief, the Department was able to see each individual change Jindal SAW made.

We disagree with the petitioners that the revised costs for certain home market sales should be rejected. We reviewed the costs reported at verification and traced the costs to supporting

¹⁴⁸ See 19 CFR 351.301(c).

¹⁴⁹ See Letter to Jindal SAW, "Sections A, B, and C Supplemental Questionnaire in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India," February 20, 2014, at question 16.

documentation. Other than the conversion cost allocation at a certain proprietary production stage noted above, we found the costs supported by record evidence.¹⁵⁰

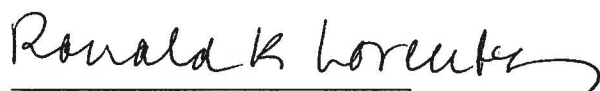
VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.

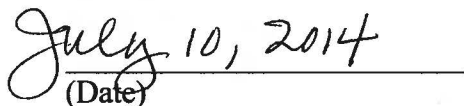
✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)

¹⁵⁰ See Jindal SAW Cost Verification Report at 4 and Cost Verification Exhibits 18 and 19.