UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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DATE: July 10, 2014

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 Ukraine

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I. SUMMARY

In this final determination, the Department of Commerce (Department) finds that certain oil country tubular goods (OCTG) from Ukraine 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 respondent in this case, Interpipe Europe S.A.[1] 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.

1. Re-Export Sales
2. Reject Merchandise
3. Interpipe's U.S. and Home Market Packing Costs
4. Differences Between Theoretical and Actual Weights

[1] The Department found in the *Preliminary Determination* that Interpipe Europe S.A. is part of the larger group of companies, collectively referred to as Interpipe. No party challenged this finding and we find no reason to change this finding for this final determination. *See Certain Oil Country Tubular Goods from Ukraine: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 10482 (February 25, 2014) (*Preliminary Determination)* and accompanying Preliminary Decision Memorandum PDM) at 5-8.

5. Payment Information Provided at Verification as Minor Correction
6. Major Input Adjustment
7. Revalued Depreciation
8. Impairment Losses
9. Cost Verification Findings

II. BACKGROUND

On February 25, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of OCTG from Ukraine. The Department conducted the home market sales verification of Interpipe from March 24 through March 28, 2014, verification of cost responses March 31 through April 4, 2014 and the constructed export price (CEP) sales verification from April 14 and 15, 2014.[2] On March 4, 2014, the petitioners[3] alleged that the Department had made a ministerial error in the *Preliminary Determination*.[4] The Department reviewed this allegation and, on April 9, 2014, determined that the Department had not made a ministerial error in the *Preliminary Determination*.[5] Furthermore, on March 27, 2014, the petitioners requested that the Department conduct a hearing in this investigation; subsequently, on June 3, 2014, petitioners withdrew their request for a hearing.[6] Accordingly, no hearing was held by the Department.

The Department invited parties to comment on the *Preliminary Determination* and, between May 28 and June 4, 2014, we received case and rebuttal briefs from the petitioners and Interpipe.[7] Based on our analysis of the comments received, as well as our findings at verification, we made certain changes to the weighted-average dumping margin program from that presented in the *Preliminary Determination*. These changes are briefly explained below in "Margin Calculations."

The Department issued a draft suspension agreement on June 10, 2014 and received comments from interested parties on June 17, 2014. On July 1 and 3, 2014, we received requests from petitioners and Interpipe, respectively, requesting that we continue the investigation, should we enter into a suspension agreement. Subsequently, on July 10, 2014, the Department signed a

[2] *See* Home Market Verification Report (HMVR); *see also* Cost Verification Report (CVR); CEP Verification Report (CEPVR).
[3] 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).
[4] *See* Letter to the Department from Petitioners regarding "Oil Country Tubular Goods," dated March 4, 2014.
[5] *See* Memorandum to Edward Yang, Director, from Mark Hoadley, Program Manager regarding "Allegation of Ministerial Error in the Preliminary Determination," dated April 9, 2014.
[6] *See* Letter from Petitioners regarding "Oil Country Tubular Goods from Ukraine," dated June 3, 2014.
[7] *See* Letter from Petitioners regarding "Oil Country Tubular Goods from Ukraine," dated May 28, 2014 (Petitioners' Case Brief); *see also* Letter from Interpipe regarding "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine: Case Brief of Interpipe," dated May 28, 2014 (Interpipe's Case Brief); Letter from Petitioners regarding "Oil Country Tubular Goods from Ukraine," dated June 4, 2014 (Petitioners' Rebuttal Brief); *see also* Letter from Interpipe regarding "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine: Case Brief of Interpipe," dated June 4, 2014 (Interpipe's Rebuttal Brief).

suspension agreement with Interpipe. Pursuant to the requests for continuation discussed above, we have continued and completed the investigation in accordance with section 734(g) of the Act.

III. CRITICAL CIRCUMSTANCES

The Department preliminarily found that there was not a sufficient basis to find that the importer knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales pursuant to section 733(e)(1)(A)(ii) of the Act.[8] Accordingly, we preliminarily determined that there was no basis to believe or suspect the existence of critical circumstances.

Section 735(a)(3) of the Act provides that, if the final determination is affirmative, where there has been an allegation of the presence of critical circumstances under section 733(e) of the Act, the Department shall determine whether (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the importer knew or should have known that the exporter was selling the merchandise at less than fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. As in the *Preliminary Determination*, we continue to find that there is not a history of dumping or material injury because the Department is not aware of the existence of any active antidumping duty orders on OCTG from Ukraine in other countries.[9] We also continue to find that there is not a sufficient basis to find that the importer knew or should have known that the exporter was selling the subject merchandise at LTFV because the calculated margins for Interpipe and all others is less than 15 percent.[10] Because the knowledge criterion has not been satisfied, we have not addressed the second criterion of whether there have been massive imports of the subject merchandise over a relatively short period. Accordingly, for this final determination, our analysis continues to result in a negative critical circumstances determination.

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 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.

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[8] *See Preliminary Determination*, 79 FR at 10483, and accompanying PDM at 16-18.
[9] *Id.*, at accompanying PDM 16-18.
[10] *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002).

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

- We are now relying on the payment date information reported by Interpipe for the calculation of credit expenses;
- We are no longer adjusting for the short-term interest rate as Interpipe updated its calculations to reflect the rate used by the Department in the *Preliminary Determination*;
- We are adjusting the U.S. gross unit price by a differential between actual and theoretical weights;
- We are including third-country indirect selling expenses;
- We are including the rejected, non-repairable subject merchandise in the margin program;
- We are including some, but not all, of the "export sales" reported by Interpipe in the U.S. sales database provided after the *Preliminary Determination*;
- We replaced the general cost database with two manufacturer-specific cost databases provided by Interpipe; and,

- We made certain adjustments to the manufacturer-specific cost databases. [11]

VI. DISCUSSION OF THE ISSUES

Issue 1: Re-Export Sales

Interpipe's Comments

- Interpipe had four categories of re-export sales, none of which are subject merchandise because only United States sales are relevant to an antidumping calculation and can be applied to a comparison for antidumping duty analysis purposes.
- In order to be subject to an investigation, as indicated in *Stainless from Mexico* the Department requires that (1) there is a consumption entry; and, (2) a sale is made to an unaffiliated U.S. customer.[12]
- Evidence indicates that all four categories of re-export sales are not subject to the investigation.
- For each of these re-export sales, North American Interpipe (NAI), Interpipe's U.S. affiliate, either shipped the goods itself or there is evidence indicating that the goods left the United States.
- *Hiep Thanh*, which the Department relied upon in the *Preliminary Determination*, is distinguishable from Category 3 and 4 re-export sales;[13] *Torrington* instead correctly applies to these re-export sales.[14]

Petitioners' Rebuttal

- Category 2, 3 and 4 sales all entered the United States for consumption and should be included in the investigation.
- *Hiep Thanh* supports a conclusion that Category 2 through 4 sales should be considered subject to this investigation because even if the underlying documentation indicates the goods will be re-exported, if the transfer of title to an unaffiliated customer takes place in the United States, it is a U.S. sale.
- Based on *Hiep Thanh*, the record indicates that Category 2, 3 and 4 sales took place within the United States.
- Interpipe's reliance on *Torrington* is misplaced as *Torrington* focuses on the assessment of duties rather than whether the sale took place in the United States.

Department's Position: The Department finds that sales in Interpipe's reported Category 1 and 2 are not U.S. sales while those in Category 3 and 4 are, in fact, U.S. sales. Accordingly, for the

[11] *See* Memorandum to the File regarding "Antidumping Duty Investigation of Oil Country Tubular Goods from Ukraine: Interpipe Final Determination Analysis," dated concurrently with this memorandum (Final Analysis Memorandum).
[12] *See Stainless Steel Sheet & Strip in Coils from Mexico*, 67 FR 6490 (February 12, 2002) (*Stainless from Mexico*) and accompanying Issues and Decision Memorandum at Comment 15. *See* chart in the Department's Position for a description of each category of NAI's export sales.
[13] *See Hiep Thanh Seafood Joint Stock Co. v. United States*, 821 F. Supp. 2d 1335 (CIT 2012) (*Hiep Thanh*).
[14] *See The Torrington Company v. United States*, 82 F.3d 1039 (Fed. Cir. 1996) (*Torrington*).

purposes of calculating a margin in this instant investigation, we excluded Category 1 and 2 sales, but included Category 3 and 4 sales.

In the *Preliminary Determination*, we concluded, based on the information provided by Interpipe, that the company's reported re-export sales that entered the United States for consumption should be considered U.S. sales and noted that we would request information concerning these sales from Interpipe.[15] Subsequent to the *Preliminary Determination*, Interpipe provided the requested data and, during verification, Interpipe provided further explanation of the different types of claimed re-export sales.[16] Specifically, Interpipe stated that it had re-export sales under four different categories, as explained in the following chart, which corresponds with the re-export sale data provided in Interpipe's U.S. sales database.

Category	Bill To (DESTU)	Ship To (DEST2U)	Delivery to Port Arranged by:	Consumption Status (ENTRYTYPEU)
1	Inside/Outside United States	Outside United States	N/A	No consumption entry
2	Outside United States	Outside United States	NAI or Customer	Consumption entry made
3	Inside United States	Outside United States	NAI	Consumption entry made
4	Inside United States	Inside United States	Customer	Consumption entry made

As an initial matter, Interpipe contends that Category 1 sales did not enter the United States at any point in the transaction and, as such, it is not appropriate for the Department to include these sales in the margin program. The petitioners did not contest this argument in their rebuttal brief and, after analysis of the sales, we concur with Interpipe that these sales should be excluded because they were not entered for consumption in the United States.

With respect to Category 2 sales, Interpipe argues that, on the basis that these re-export sales were both invoiced and shipped to a customer outside of the United States, they should not be subject to the investigation. The petitioners, on the other hand, submit that these re-export sales should be included in the margin program because certain sales information indicates that these sales actually occurred in the United States. Moreover, the petitioners allege that it is likely that some of the merchandise which did not meet certain quality levels was sold in the United States rather than exported to the customer.

First, we note that Interpipe reported that all the re-export sales were stock (inventory) sales rather than back-to-back sales (sales of production made specifically for a customer's order).[17] During verification, we found no inconsistencies with the reported re-export sales.[18] When Interpipe enters merchandise into the United States, it has the goods inspected. It is only after

[15] *See Preliminary Determination*, and accompanying PDM at 15-16.
[16] *See* CEP Verification Exhibit CEPV-5.
[17] *See* Interpipe's September 20, 2013 Section A Questionnaire Response at A-16.
[18] *See* CEPVR at 10.

the merchandise has been inspected and any "reject" merchandise (merchandise that did not pass inspection and could not be repaired) is removed, that the "prime" goods enter into Interpipe's prime merchandise inventory.[19] Category 2 re-export sales are sold from this prime merchandise inventory. Thus, reject merchandise is not included in Category 2 sales.

Furthermore, in order to determine whether there is a U.S. sale which should be included in the margin calculation, we evaluated whether the unaffiliated customer is located in the United States,[20] whether the merchandise was delivered in the United States and finally, whether the goods entered for consumption.

In the case of Category 2 re-export sales, they were invoiced to a customer outside the United States and were shipped outside of the United States. While the goods entered into the United States for consumption, the first unaffiliated sale took place outside the United States and, as such, we determined not to include these sales in the U.S. sales database. With respect to the petitioners' argument that certain information concerning these sales supports a finding that the sales took place in the United States, we disagree. The record demonstrates that Category 2 re-export sales were imported by NAI into the United States, but sold to an unaffiliated customer outside the United States and that the goods were delivered to that customer for re-export.[21] Under *Torrington*, merchandise imported by a related party in the United States and then re-exported to a third country without a sale occurring in the United States is not subject to investigation. Moreover, we find the facts of this case differ from the facts underlying *Hiep Thanh*, because in that case, the respondent sold merchandise to an unaffiliated customer in the United States, which was then exported to a third country. For these reasons, we find it appropriate to consider Category 2 re-export sales to be non-U.S. sales and therefore, we excluded them from the margin program.

Finally, with respect to Category 3 and 4 sales, we agree with the petitioners that these sales should be included in the U.S. sales database. While Interpipe contends that these sales should also be excluded because the goods were ultimately re-exported, the respondent acknowledged that the unaffiliated customer is located in the United States and the sales were billed to customer(s) in the United States.[22] Thus, pursuant to section 772(b) of the Act, these sales are properly considered U.S. sales because they take place in the United States between Interpipe's U.S. affiliate and an unaffiliated customer in the United States. Regardless of where the goods ultimately were re-exported, the fact that the unaffiliated customer is located in the United States is sufficient to consider these sales subject to the investigation. We also find that *Torrington* does not support Interpipe's argument. In *Torrington*, the respondent did not report information regarding merchandise that was imported into the United States and then subsequently re-exported by the respondent's U.S. affiliate.[23] The Court of Appeals for the Federal Circuit

[19] The "reject" merchandise is maintained in a separate inventory system. *Id.* at 9.
[20] *See* section 772(b) of the Act (defining "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter."
[21] *See, e.g.*, Interpipe's Case Brief at 11 (citing to CEP Verification Exhibit CEPV-5).
[22] *See, e.g., id.*, at 12.
[23] *See Torrington*, 82 F.3d at 1042.

affirmed the Department's determination not to include these sales in the calculation because the merchandise was "neither sold in the United States nor likely to be sold in the United States."[24] In contrast, Interpipe's Category 3 and 4 sales were sold to U.S.-based unaffiliated customers.[25] Accordingly, any Category 3 and 4 sales reported in Interpipe's U.S. sales database have been included in the margin program for this final determination.

Issue 2: Reject Merchandise

Interpipe's Comments

- Reject merchandise is outside the scope of the investigation.
- The goods are inspected upon entering the United States and those that are classified as "reject" merchandise are sold "as is" with no guarantees that they are suitable for any application.
- Use in oil and/or gas wells is inherent to the scope of the investigation; if the goods are not capable of use in OCTG applications, they are outside the scope.
- The *Diversified Products*[26] criteria also support the exclusion of reject merchandise because the physical characteristics, expectations of ultimate purchasers, ultimate use of the product, channels of trade and price all distinguish the reject merchandise from OCTG.
- Alternatively, the Department should find these reject goods as a separate "class or kind" of merchandise as was done in *Bearings from Germany*.[27]

Petitioners' Rebuttal

- Interpipe's reject merchandise is subject merchandise and, as such, sales of the reject merchandise should be included in the margin calculations.
- The Department's practice is to include non-prime subject merchandise in the calculations; the Court of International Trade (CIT) upheld this practice.[28]
- There are anomalies in the reject merchandise sales database provided by Interpipe which support a determination that the sales should be included in the margin calculations.
- If the Department decides to exclude the reject sales, it must adjust all U.S. prices downward to factor in the expenses associated with the reject sales.

Department's Position: The Department finds that the "reject" merchandise reported by Interpipe is within the scope of the investigation and, as such, it is appropriate to include these sales in Interpipe's margin program.

Interpipe contends that its reported "reject" merchandise is not part of the scope of the investigation. Interpipe presents three points to make this argument: (1) reject merchandise cannot be used in OCTG applications, (2) use in oil and gas wells is inherent to the scope and (3)

[24] *Id.* at 1047.
[25] *See, e.g.*, Interpipe's Case Brief at 12.
[26] *See Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983) (*Diversified Products*); *see also* 19 CFR. 351.225(k)(2).
[27] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989) (*Bearings from Germany*).
[28] *See, e.g., Corus Staal BV v. United States*, 259 F.Supp. 2d 1253, 1268-69 (CIT 2003).

the *Diversified Products* criteria support exclusion.[29] The petitioners counter by arguing that the reject merchandise should be included in the calculations because (1) no record evidence establishes that such sales should be excluded from the margin analysis, and (2) Interpipe's classification of reject sales is unreliable.

In order to determine whether the "reject" merchandise is included in the scope, we examined the scope of the investigation, the first section of which reads:

> 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 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.[30]

As an initial matter, we note that Interpipe's so-called "reject" merchandise are those goods which enter the United States as OCTG and are then subject to inspection. Upon inspection, OCTG which is deemed to be damaged or otherwise non-compliant with API standards and cannot be repaired in a way to make them meet these standards, is classified as "reject" material.[31] Interpipe's first argument is that this "reject" merchandise cannot be used in OCTG applications because, upon inspection, it fails to meet API OCTG specifications (*e.g.*, hydrostatic pressure, electromagnetic induction) and thus, cannot be considered OCTG. However, the plain language of the scope of the investigation indicates that a failure to meet the requirements for OCTG applications does not render merchandise outside the scope, provided that merchandise meets the physical characteristics described in the scope. The scope specifically states that certain OCTG is included "whether or not conforming to . . . API or non-API specifications . . ." We also note that the scope of the investigation includes unfinished OCTG (including green tubes), which is "prime" merchandise which cannot be used in OCTG applications until it undergoes additional processing. Taken together, the scope language clearly covers a variety of goods produced as OCTG which may not currently meet established OCTG specifications for use in OCTG-specific applications. On this basis, we find that, whether or not Interpipe's merchandise failed inspection and therefore did not meet API specifications, it was still produced as OCTG, entered the United States as OCTG and is still OCTG, even if identified as damaged or otherwise unusable as prime merchandise.

Next, Interpipe submits that use in oil and gas wells is inherent to the scope of the investigation and thus, the fact that its so-called "reject" merchandise cannot be used in oil and gas well applications means that it cannot fall within the scope. We disagree. While it is reasonable to assume that use of OCTG in oil and gas well applications is the primary intended purpose of

[29] *See* Interpipe's Case Brief at 15-17.
[30] *See Preliminary Determination* at Appendix I, unchanged in the final determination.
[31] *See* CEPVR at 9.

OCTG, the scope does not limit or otherwise require that goods manufactured as OCTG be used in that capacity in order to be considered subject merchandise. Interpipe quotes the International Trade Commission's statement that "OCTG includes casing, tubing and coupling stock of carbon and alloy steel used in oil and gas wells"[32] and the antidumping and countervailing duty petitions description of OCTG as "either carbon or alloy tubular steel products used in oil and gas wells and includes both casing and tubing."[33] Again, the scope is not limited to those items meeting the physical characteristics that are used in oil and gas wells.

With respect to Interpipe's arguments that the *Diversified Products* criteria support the exclusion of its reject merchandise, as discussed above, we find that the reject merchandise is within the scope of the investigation, and find it unnecessary to consider such criteria.[34]

Because we find that the so-called "reject" merchandise is within the scope of the investigation, we next considered the petitioners' argument that it is non-prime subject merchandise.[35] In *Corus*, the CIT explained that:

> Corus argues that sales of defective hot-rolled steel by GalvPro should have been excluded because those transactions were outside the ordinary course of trade and not representative of GalvPro's other galvanized steel products. Commerce responds that there is no requirement that it exclude sales outside the ordinary course of trade and that it properly compared these U.S. sales to similar sales in the home market. The court agrees.[36]

The CIT further explained that, "where a respondent sells secondary or non-prime merchandise in the United States, it is Commerce's standard practice to include those transactions in its margin calculation by attempting to match these sales to non-prime sales in the home market."[37] The CIT also noted that, unlike the definition of NV, the definition of export price and CEP "contains no requirement that the prices used in {U.S. price} calculations be the prices charged 'in the ordinary course of trade.'"[38]

It is important to note that, as in *Corus*, Interpipe argues that the sales of defective or damaged OCTG are outside the normal or ordinary course of trade for OCTG. As discussed above, the

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[32] *See* Interpipe's Case Brief at 16 (citing Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. 4422 (ITC Preliminary Report) at 8).

[33] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, dated July 2, 2013. We also note that the term "used in oil and gas wells" is not included in the language of the scope of the investigations.

[34] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 2.

[35] *See* Petitioners' Rebuttal Brief at 18.

[36] *See Corus Staal BV v. United States*, 259 F. Supp. 2d 1253, 1267 (CIT 2003) (*Corus).*

[37] *Id.*

[38] *Id.*, citing *FAG Italia, S.p.A. v. United States*, 948 F. Supp. 2d 67, 71 (Ct. Int'l Trade 1996).

scope of the investigations does not require that the subject merchandise meet a production standard such as the API specifications or that it must be used in oil and gas well applications. While these goods may be sold as "rejects," they are not sold as scrap or as a product other than casing or tubing. Additionally, even Interpipe acknowledges that "customers for reject pipe generally sell the pipe for such purposes as use in pilings and other structural uses or to transport water."[39] This only further supports the determination that the goods manufactured as OCTG and sold as "reject" merchandise can still be used and are therefore more appropriately classified as non-prime merchandise, as in *Corus*.

In addition, while Interpipe argues that there are significant price differences, the petitioners correctly note that there are prices within the "reject" sales database which are quite similar to those Interpipe considers to be "prime" sales, as reported in the U.S. sales database. While this is not the case for all sales, the fact that some "reject" sales prices are virtually the same as some "prime" sales prices, further supports our conclusion that the reject sales are, in fact, sales of subject merchandise. Therefore, we included the sale of "reject" merchandise in the calculation of the antidumping duty margin for these final results of this investigation.

Issue 3: Interpipe's U.S. and Home Market Packing Costs

Petitioners' Comments

- Interpipe failed to report a per-unit packing cost for U.S. and home market sales, despite two requests for this information.
- The Department's verification report demonstrates that there are differences in the packing materials used for home and U.S. market sales which results in differences in packing costs.
- The requirements for application of facts available (FA), and facts available with an adverse inference (AFA) have been met.[40]
- As AFA, the Department should calculate a home market packing cost, then double it to determine a U.S. packing cost and apply these costs to all of Interpipe's home market and U.S. market sales, respectively.

Interpipe's Rebuttal

- There is no reason to apply AFA to determine Interpipe's packing costs because Interpipe reasonably reported its packing expenses.
- Interpipe does not separately track its packing costs; they are instead captured as part of manufacturing costs.
- Interpipe described in detail the packing materials used for each market, and the differences are negligible.
- The petitioners' proposed adjustment methodology is impermissibly arbitrary and punitive.
- If the Department is to use the petitioners' methodology for calculating these costs, some adjustments must be made so that the adjustment reasonably reflects Interpipe's packing costs.

[39] *See* Interpipe's Case Brief at 17.
[40] *See* sections 776(a) and (b) of the Act.

Department's Position: After reviewing the record of this proceeding, the Department determined that Interpipe reported the packing costs elsewhere in its questionnaire responses and, as such, the Department will not add additional packing costs as FA or AFA to Interpipe's margin calculation.

Section 776(a) of the Act provides that the application of FA is warranted where, among other reasons, necessary information is not available on the record, a party fails to provide information in the form and manner requested by the Department, or provides information which cannot be verified. Further, section 776(b) of the Act provides that adverse inferences may be warranted where the Department determines that an interested party fails to cooperate by not acting to the best of its ability. As the petitioners correctly contend, the Department requested that Interpipe report its packing costs for its U.S. and home market sales in the initial questionnaire as well as in a supplemental questionnaire. In its initial questionnaire response, Interpipe stated that it was not reporting its packing costs separately as they were included as part of the manufacturing costs but offered to report them separately, should the Department request it.[41] In a subsequent supplemental questionnaire, we requested that Interpipe provide this packing information separately.[42] In its response, Interpipe stated that it would provide this information in its Section D questionnaire response.[43] When Interpipe submitted its Section D questionnaire response it did not provide this information. Notwithstanding, during verification, we found that the packing costs were included in the costs reported to the Department as manufacturing costs.[44] Accordingly, while Interpipe did not report the packing costs as a separate item as we requested, the company did in fact report the packing costs and we were able to review the costs during verification. Because the information was reported and we were able to verify this information, we determine that the necessary information is available on the record.[45] Thus, the application of FA is not warranted; nor do we find that AFA is warranted.

Beyond the question of responsiveness, the petitioners also argue that "the Department's verification report demonstrates that there are multiple differences in the packing materials used in the home and U.S. markets . . ."[46] While we recognize that there are differences between the packing materials used when comparing home market and U.S. sales that may result in some cost differences, Interpipe argued that the cost differences are small.[47] In reviewing the record of this investigation, we find that these differences in packing costs are likely to be small and that Interpipe accounted for the packing costs in its cost databases.[48] In addition, because Interpipe reported its packing costs in its cost data, we also conclude that any decision to calculate and include a packing cost in the margin program or sales databases would result in a double counting of Interpipe's packing costs. Hence, we determine that it is not appropriate to make any adjustments to the margin program or sales or cost databases with respect to packing costs.

[41] *See* Interpipe's November 13, 2013 Section B and C Questionnaire Response at B-45, C-60.
[42] *See* December 20, 2013 Supplemental Questionnaire at 6.
[43] *See* Interpipe's January 13, 2014 Supplemental Questionnaire Response at 25.
[44] *See* CVR at 21.
[45] *See* section 776(a) of the Act.
[46] *See* Petitioners' Case Brief at 13.
[47] *See* Interpipe's Rebuttal Brief at 8.
[48] *See* HMVR at 24.

Issue 4: Differences Between Theoretical and Actual Weights

Petitioners' Comments

- Interpipe's U.S. sales were reported in theoretical weights while its home market sales and production costs were a mixture of theoretical and actual weights; the company did not identify which weights were actual or theoretical.
- The Department will not compare sales reported in theoretical and actual weights without a conversion factor; it is essential that the weights are on the same basis.
- The Department repeatedly requested that Interpipe provide all sales and cost information on a uniform unit of measure; Interpipe's failure to do so should result in applying partial AFA to adjust for the difference between actual and theoretical weights.
- In applying partial AFA, we should decrease U.S. price by the largest differential between actual and theoretical weights, as calculated by Interpipe and provided at verification.

Interpipe's Rebuttal

- Interpipe acted to the best of its ability to report the weight information and, when actual weights were not available, relied on industry standard formulas to calculate theoretical weights.
- No adjustment is warranted for a difference between theoretical and actual weights as there is no evidence on the record that there is a consistent difference between the two weights.
- If an adjustment is to be made, Interpipe proposes that the Department use another calculation than that offered by petitioners to obtain the differential between the actual versus theoretical weight of all shipments entering the United States.

Department's Position: The Department agrees with the petitioners that the home market and U.S. market weights should all be reported on the same basis, whether that be theoretical or actual. Moreover, the record indicates that a difference does exist between theoretical and actual weights and that Interpipe did not provide a conversion factor.

As an initial matter, at verification, we evaluated whether a difference exists between theoretical and actual weights.[49] As petitioners point out, Interpipe argued in a questionnaire response that "a theoretical weight pipe sale to a scale weight cost is not comparing price and cost on a different basis."[50] We interpreted this statement to mean that, according to Interpipe, there are no differences between its actual and theoretical weight calculations. By extension, we interpreted Interpipe's position to be that the company had not provided a conversion factor or updated weight information because it did not consider a difference to exist between theoretical and actual weights.

At verification, Department officials closely reviewed the actual and theoretical weight data reported and confirmed that Interpipe did not consider there to be a difference between the two types of weight factors.[51] Notwithstanding, during the home market and U.S. sales verifications, we specifically requested that Interpipe prepare and present information to document this claim.

[49] *See* HMVR at 12; *see also* CEPVR at 10-11.
[50] *See* March 13, 2014 Section D Supplemental Questionnaire Response at 7.
[51] *See* HMVR at 12.

During the home market verification, Interpipe explained that it had conducted some calculations to determine whether or not a differential exists between theoretical and actual weights and presented the results.[52] We noted that the difference was not large but, that a difference did exist nonetheless.[53]

Accordingly, we find that it is appropriate to calculate an adjustment to the gross unit price of all U.S. sales to account for this differential. However, because Interpipe did not provide a conversion factor, we find that necessary information is not on the record, such that the application of FA is warranted.[54] With respect to whether an adjustment to account for differences between theoretical and actual weights should be calculated based on AFA in accordance with section 776(b) of the Act, petitioners argue that Interpipe was not responsive to the Department's requests for information and, as such, AFA should be applied. However, Interpipe explained that it does not recognize a difference between actual weight and theoretical weight in the normal course of business, and Interpipe cooperated with the Department's requests for information regarding this issue at verification.[55] When the information was requested at verification, Interpipe willingly provided it. As such, we find that Interpipe has been cooperative during the investigation on this topic and acted to the best of its ability. Accordingly, we do not find that Interpipe failed to cooperate by not acting to the best of its ability.[56]

With the exception of a few specific shipments to the United States, which permits us to calculate an adjustment for each U.S. sale (*e.g.*, information on the actual weight of the goods upon entry and the calculated theoretical weight). Thus, in accordance with section 776(a)(1), we find that it is appropriate to apply FA to calculate and apply a differential to the gross unit price of each U.S. sale to offset the difference between theoretical and actual weights.

We reviewed the record to find the most reasonable information available to calculate the differential. In this case, we find that there are three possibilities. First, the petitioners propose selecting the highest differential, based on the weight analyses provided by Interpipe during home market sales verification.[57] As proposed by the petitioners though, this would involve using an adverse inference in the selection of FA. As we already determined that it is not appropriate to apply AFA in this case, we find this method not appropriate to calculate the differential. Second, Interpipe proposes calculating a differential based on information provided during the U.S. sales verification. While it appears this differential was calculated based on a few sample sales reviewed during the U.S. sales verification, Interpipe did not provide the calculations and we were unable to replicate the proposed differential.[58] Finally, as noted above, during home market sales verification, Interpipe provided the Department with the results of

[52] *Id.*
[53] *Id.*
[54] *See* section 776(a) of the Act.
[55] *See* HMVR at 12; *see also* CEPVR at 10-11.
[56] *See* section 776(b) of the Act; *see also Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum at Comment 12i.
[57] *See* Petitioners' Case Brief at 10-12.
[58] *See* Interpipe's Rebuttal Brief at 7.

analyses the company conducted to study the differences between actual and theoretical weights.[59] This information clearly demonstrates the differences between actual and theoretical weights by listing the actual weight and then, based on the length and other characteristics of the product, calculating a theoretical weight as well. This was done on a pipe-by-pipe basis on a number of Interpipe's reported re-export shipments.[60]

Because information presented at verification compares the theoretical versus actual weights of the same items, we find that this information provides a reasonable and appropriate means to calculate a differential. Accordingly, we relied on this information to calculate a weighted-average differential to adjust for the difference between the theoretical and actual weights reported by Interpipe; we applied this differential to all gross unit prices reported in the U.S. sales database. Due to the proprietary nature of the information, we provided the detailed calculation and related explanations in a separate memorandum.[61]

Issue 5: Payment Information Provided at Verification as Minor Correction

Petitioners' Comments

- At verification, Interpipe presented, as a minor correction, payment information for a large number of home market sales that it previously had not provided to the Department.
- These payment data do not qualify as a clerical error and were unsolicited and untimely new factual information that Interpipe could have presented prior to verification; the Department should reject the information and instead apply AFA to those payments.
- The Department previously rejected such information at verification and even when it has been accepted, it is not an indication that the Department will use the information in the final determination.[62]
- If the Department applies AFA, it should use the payment terms reported for each of the sales in question as the number of days outstanding.

Interpipe's Rebuttal

- We should accept Interpipe's minor corrections related to additional payment dates.
- The reconciliation related to these payments was complicated; Interpipe provided the information at the earliest moment it was able to assign the payments to the sales in question.
- We cannot disregard accurate, verified data on the record.[63]

Department's Position: The Department will rely on the payment information submitted by Interpipe as a minor correction during verification. Interpipe explained the basis for not providing the payment information at an earlier date.[64] Interpipe also explained that the reason

[59] *See* Home Market Verification Exhibit 4.
[60] *Id.*
[61] *See* Final Analysis Memorandum.
[62] The petitioners reference, *e.g.*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1378-84 (Fed. Cir. 2003) (*Nippon Steel*).
[63] Interpipe references *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013).
[64] *See* HMVR at 2.

for providing the information directly before verification had to do with reconciliations which were unrelated to the Department's investigation.[65] We also verified the information provided and found no discrepancies.[66]

The petitioners allege that this payment information is new information that had not been previously submitted to the Department and does not fall under the scope of a minor correction. Moreover, they contend that Interpipe's statements that it had not yet received payment for these sales are not consistent with the dates upon which these payments were received. Interpipe counters by explaining that, due to the nature of the payments, the company presented the information at verification because it had just been able to confirm that the payment information applied to the corresponding sales in question.[67] The Department may determine under certain circumstances to accept information that a respondent, in preparing for verification, realizes it omitted or incorrectly reported.[68] In this case, Interpipe explained that, as soon as the application of the payments to individual invoices had been completed, and the process of tying them to specific invoices was confirmed, Interpipe placed the information on the record. We determine that the facts in this case differ from those underlying the *Nippon Steel* case, because in that case, the Department found that the respondent failed to make efforts to obtain information requested by the Department, and insisted, prior to verification, that the Department did not need the information.[69]

As the petitioners point out, although we may also decline to rely upon information accepted at verification, in this case, we not only verified the information and found that it contained no discrepancies but also accepted Interpipe's explanation for why the information was submitted as a minor correction rather than earlier in the proceeding. Thus, we do not find that the application of FA or AFA is warranted, and we relied on the payment information, which has been verified.[70]

Issue 6: Major Input Adjustment

Petitioners' Comments

- The billets obtained from Interpipe's affiliated producer, Dneprosteel, account for a significant portion of the cost of OCTG, therefore, the affiliated inputs should be tested in accordance with the major input rule, *i.e.*, comparison of transfer price, market price, and the affiliate's cost of production (COP) for the billets.
- In doing so, the affiliate's COP for the billets should be adjusted (1) to reflect a cost reporting period (CRP) for the new facility of January 2013 to June 2013 rather than the CRP of March 2013 to June 2013 that Dneprosteel requested in lieu of a startup adjustment; and, (2) to include the depreciation expenses of the new billet plant.

[65] *Id.* We note that, as the details of this reconciliation are proprietary in nature, we are not presenting all these details herein.
[66] *See* HMVR at 19-20.
[67] *See* Interpipe's Rebuttal Brief at 4-5 (citing Home Market Verification Exhibit SV-11).
[68] *See, e.g., Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 79 FR 31092, 31093 (May 30, 2014).
[69] *See Nippon Steel*, 337 F.3d at 1384.
[70] *See also* section 782(d) of the Act.

- The application of the major input rule demonstrates that the overall market prices are higher than either the transfer prices or the affiliate's adjusted COPs; therefore, Interpipe's reported costs should be adjusted to reflect the average billet prices paid by Interpipe to unaffiliated parties during the POI.
- It is unnecessary to distinguish between grades of billets in applying the major input rule.

Interpipe's Comments

- No adjustment to the reported transfer prices of affiliated billets should be made because any observed price differences merely reflect normal price fluctuations.
- If a major input adjustment is made, the Department should base the analysis on the grade groupings for which Interpipe had market prices because prices of billets generally differ by steel grade.
- In calculating the affiliated billet producer's COP for the major input comparison, the Department should recognize that the billet producer reached commercial production levels at the end of February 2013; therefore, a startup adjustment is warranted pursuant to section 773(f)(1)(C) of the Act, and the appropriate CRP for the billets is March 2013 to June 2013.[71]
- The Department should follow the billet producer's normal books and records which are based on Ukrainian generally accepted accounting principles (GAAP) and even though they do not recognize any depreciation expense on the new facility until after the POI.

Department's Position: In accordance with section 773(f)(3) of the Act, we tested the transfer prices for Interpipe's affiliated billet purchases against market prices and the affiliate's COP to determine whether the transactions between the affiliates reflect arm's length values. In doing so, we found that the billet prices vary notably by grade groupings.[72] Therefore, we agree with Interpipe and base our major input analysis on those grade groupings that were obtained from both affiliated and unaffiliated parties. In doing so, we found that the market prices exceeded both the transfer prices and the affiliate's COPs for the billets. For the final determination, we adjusted Interpipe's reported per-unit costs for the average percent difference between the overall average market price and the overall average transfer price for the billet grade groupings obtained from both affiliated and unaffiliated parties.

With regard to the calculation of the affiliated billet producer's COP, the Act provides that adjustments shall be made for startup operations only where a producer is using new production facilities or producing a new product that requires substantial additional investment and production levels are limited by technical factors associated with the initial phase of commercial production.[73] The initial phase of commercial production ends at the end of the startup period.[74] The SAA provides that, to determine when a company reaches commercial production levels, the Department will consider first "the actual production experience of the merchandise in question"

[71] Interpipe references the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 835-36; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*Lumber from Canada*) and accompanying Issues and Decision Memorandum at Comment 32.
[72] *See, e.g.*, Cost Verification Exhibit CV-13 showing transfer and market prices by grade groupings.
[73] *See* section 773(f)(1)(C)(ii) of the Act.
[74] *Id.*

and that "production levels will be measured based on units processed."[75] Interpipe argues that a startup adjustment is warranted for January and February 2013, because the "ramp up" period exceeded the typical year period and based on the billet producer's production experience. The billet producer is using new production facilities, pursuant to section 773(f)(1)(C)(ii)(I), but we do not agree that a startup adjustment is warranted for January and February 2013 because we found that the billet producer had reached commercial production levels by the close of 2012 based on the units processed, consistent with the SAA and the Department's practice.[76] In fact, we determined that the production volume suggests a level of confidence in the new facility that demonstrates the plant was no longer hampered by significant technical issues.

We also agree with petitioners that the reported billet COPs should be adjusted to include the depreciation expenses related to the new facility. While the billet producer's Ukrainian GAAP based financial statements did not recognize any depreciation expense during the CRP (*i.e.*, the company's normal books and records were in accordance with home country GAAP), we find that the billet producer's failure to recognize a portion of the capitalized expenses in the reported billet costs is contrary to Department practice and to the requirements of section 773(f)(1)(A) of the Act in that they fail to "reasonably reflect the costs associated with the production of the merchandise."[77] Regardless, we note that the affiliate's COPs even as adjusted for these items were lower than the reported market prices for the billets. Therefore, we need not address this further as the affiliate's COP will not be relied upon in the calculation of Interpipe's per-unit OCTG costs for the final determination.

Issue 7: Revalued Depreciation

Interpipe's Comments

- Ukrainian GAAP does not permit the recognition of depreciation until a new facility has been officially certified and registered with the State authority, and so Interpipe did not include a charge for depreciation of its billet producer's new facility until after the POI, when the certification and registration of the facility was completed.
- If the Department concludes under U.S. GAAP that the affiliated billet producer's Ukrainian GAAP based financial statements do not reasonably reflect the cost of billets because they fail to include depreciation expenses, the Department must also exclude the OCTG

[75] *See* SAA at 836.

[76] *See, e.g.*, CVR at 28; *see* SAA at 836; *see also Lumber from Canada* and accompanying Issues and Decision Memorandum at 32 (applying production starts as the best measure of a facility's capacity to produce at commercial levels).

[77] *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) and accompanying Issues and Decision Memorandum at Comment 10 (*SSSS from Mexico I*) (where the Department adjusted the respondent's normal books to account for depreciation on its new mill); *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) and accompanying Issues and Decision Memorandum at Comment 6 (*SSSS from Mexico II*) (where the Department adjusted the respondent's costs to include three months of depreciation expense that was not recorded in the company's books); and, *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 6 (*Silicon Metal from Brazil*) (where the Department included depreciation expense for an idled plant).

producers' depreciation expenses that are related to revalued fixed assets, since U.S. GAAP only allows depreciation expense based on historical fixed asset costs.

Petitioners' Comments

- The Department does not rely on U.S. GAAP to determine depreciation expenses, but rather looks to calculate the fully absorbed COP for each OCTG producer.[78]
- The Department has a consistent practice, which has been upheld by the CIT, of including depreciation expense based on the revalued not historical costs of fixed assets.[79]

Department's Position: We agree with the petitioners and continue to rely on the OCTG producers' revalued depreciation expenses as recorded in their normal books and records. Section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on a respondent's normal books and records if they are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we find that the calculation of the OCTG producers' depreciation expense on a revalued basis is consistent with the companies' normal books and records, with Ukrainian GAAP, and with the Department's practice of applying foreign GAAP except where those principles distort the cost.[80]

We disagree with Interpipe's contention that if the billet producer's costs from its normal books and records are adjusted to include depreciation, the Department must also adjust the OCTG producers' costs to reflect depreciation based on historical rather than revalued fixed asset costs. Interpipe's argument suggests that the Department's adjustment of the billet producer's costs is based on an adherence to U.S. GAAP. Hence, because U.S. GAAP does not allow revalued depreciation, Interpipe concludes that the OCTG producer's books should likewise be altered to comport with U.S. GAAP. However, we disagree with Interpipe's contentions. While U.S. GAAP has been referenced on occasion by the Department, it is merely a guideline for basic accounting principles. Ultimately, in determining the reasonableness of a respondent's books and records, the Department assesses whether the reported per-unit costs reflect the fully absorbed cost to produce the product under consideration.[81] Recognizing no depreciation expense in a company's per-unit costs is unreasonable and distortive because it fails to capture the fully absorbed cost of producing the billet. However, with regard to the reported per-unit OCTG costs, Interpipe failed to demonstrate why the revalued depreciation expenses from its Ukrainian GAAP based normal books and records are unreasonable and distortive to the

[78] The petitioners reference *SSSS from Mexico I* and *Silicon Metal from Brazil*.
[79] The petitioners reference *Certain Frozen Warmwater Shrimp from Ecuador; Final Results of Antidumping Duty Administrative Review*, 74 FR 47201 (September 15, 2009); *Light-Walled Rectangular Pipe and Tube from Mexico; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 21; and, *Laclede Steel Co., v. United States*, 18 CIT 965, 975 (October 12, 1994) (*Laclede Steel*).
[80] *See, e.g., SSSS from Mexico II*, and accompanying Issues and Decision Memorandum at Comment 6; and, *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52061 (September 12, 2007) (*Shrimp from Brazil*), and accompanying Issues and Decision Memorandum at Comment 5.
[81] *See, e.g., SSSS from Mexico* I and accompanying Issues and Decision Memorandum at Comment 10, and *Silicon Metal from Brazil* and accompanying Issues and Decision Memorandum at Comment 6.

Department's calculations. Rather, where a company revalued its fixed assets in its GAAP based books and records, it has been the Department's practice to include depreciation expenses based on the revalued, not historical, fixed assets costs.[82] This practice has also been upheld by the CIT where it explained that depreciation based on the historical rather than revalued asset values would distort the production costs of a company because such a methodology would overlook the significant impact that the revaluation of the assets had on the company, such as increased equity values and an improved ability to borrow or acquire capital.[83] Therefore, because Interpipe failed to demonstrate that the use of the revalued depreciation expenses from its normal books and records is distortive, we continue to include the revalued depreciation expenses in the cost calculation for the final determination.

Issue 8: Impairment Losses

Interpipe's Comments:

- The fixed asset impairment losses recognized in Niko Tube's fiscal year financial statements should be excluded because they are offset by surpluses that are recorded in the equity section of its balance sheet.
- If the Department includes the impairment losses, it should likewise include the credit for the reversal of the prior asset impairment recorded in other income.

Petitioners' Comments:

- The Department has a consistent practice, also upheld by the CIT, of treating impairment losses as related to the general operations of a company.[84]
- The Department does not permit offsets to expenses for increases in a company's capital or equity.[85]
- The Department does not allow offsets for prior period reversals.

Department's Position: We agree with the petitioners in part and with Interpipe in part. Specifically, for the final determination, we included both the impairment losses and the impairment gains recorded in the income statement in the calculation of Niko Tube's general and administrative (G&A) expense rate. The Department's established practice with respect to impairment losses is to treat them as general expenses, and to include the total net amount

[82] *See, e.g., Shrimp from Brazil; Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008) and accompanying Issues and Decision Memorandum at Comment 10.

[83] *See Laclede Steel*, 18 CIT at 975-76.

[84] The petitioners reference, among others, *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086, (June 21, 2011) (*CWP from Mexico*), and accompanying Issues and Decision Memorandum at Comment 7; *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774, (October 1, 2009) (*Isos from Spain*), and accompanying Issues and Decision Memorandum at Comment 1; and, *Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286 (August 27, 2003).

[85] The petitioners reference *Stainless Steel Wire Rod from Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 6685, (February 13, 2002), and accompanying Issues and Decision Memorandum at Comment 4B.

recorded in the respondent's income statements in the G&A expense ratio calculation.[86] While Interpipe suggests that the fixed asset surpluses recorded in the equity section should be included in the G&A expense calculation, we disagree. As noted in the Department's verification report, "{w}here fixed asset values were adjusted downward, the impairment loss was charged directly to the income statement" and "{w}here fixed asset values were adjusted upward, the revaluation surplus was credited directly to an equity account and future depreciation was based on the new fixed asset value."[87] We note that such treatment is in accordance with the Ukrainian GAAP.[88] Thus, impairment losses are recognized on the income statement because they represent a loss in the asset value that is unrecoverable through future use (*i.e.*, the asset's productive value is impaired).[89] Impairment losses cannot be matched to economic benefits in future periods. Thus, the entire loss in value can only be related to the period in which the impairment is recorded. However, the surplus gains are recognized in the balance sheet because they represent an increase in the value of assets that will benefit production in future periods. Hence, because Niko Tube's normal books and records, which are in accordance with Ukrainian GAAP, record the surplus gains as an increase in the fixed asset and equity values reported on the company's balance sheet, we do not find it appropriate to reclassify the gains and treat them as income statement items for purposes of offsetting the current period impairment losses.

Finally, we agree with Interpipe that should Niko Tube's reported G&A expense rate be adjusted to include impairment losses, the surplus gains that were recorded on the company's income statement should likewise be included. In our verification report, we explained that there was a third situation where fixed assets that had been previously impaired were found to have increased in value.[90] As a result, under Ukrainian GAAP, a portion of the related surplus gains are recognized in the company's income statement and not the balance sheet.[91] Consequently, we find that both the impairment losses and the surplus gains that were recognized on Niko Tube's fiscal year 2012 income statement are related to the overall impact of the revaluation on the company's current period general operations. Hence, for the final determination, we included both the impairment losses and the surplus gains that were recognized on Niko Tube's 2012 income statement in the calculation of the G&A expense rate.

Issue 9: Cost Verification Findings

Interpipe's Comments:

- If the Department departs from the affiliated billet producer's Ukrainian GAAP based books and records to include depreciation expense, then the Department should be consistent and exclude the revalued production-related depreciation that is also not in accordance with U.S. GAAP.

[86] *See, e.g., CWP from Mexico*, and accompanying Issues and Decision Memorandum at Comment 7; and, *Isos from Spain*, and accompanying Issues and Decision Memorandum at Comment 1.
[87] *See* CVR at 6.
[88] *Id.*
[89] *See, e.g., Isos from Spain*, and accompanying Issues and Decision Memorandum at Comment 1.
[90] *See* CVR at 7.
[91] *Id.*

Petitioners' Comments:

- Interpipe's costs should be adjusted to include the omitted laboratory inspection costs, additional revalued production-related depreciation costs, slag processing costs, and other processing costs that were identified by the Department in its cost verification report.

Department's Position: We agree with the petitioners and adjusted Interpipe's reported costs to include the omitted laboratory inspection costs, additional revalued production-related depreciation costs, slag processing costs, and other processing costs that were identified in the cost verification report.[92] As previously explained, we disagree with Interpipe's contention that if the billet producer's costs from its normal books and records are adjusted to include depreciation, the Department must also adjust the OCTG producers' costs to reflect depreciation based on historical rather than revalued fixed asset costs. *See* Issue 7 (Revalued Depreciation) for additional details.

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)

[92] *See* CVR at 2.