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June 25, 2021

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Abdelali Elouaradia
Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine

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I. SUMMARY

The Department of Commerce (Commerce) determines that imports of seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) 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 estimated dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice.

As a result of our analysis, we made changes to the dumping margin calculation for Interpipe,[1] the sole mandatory respondent in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a list of the issues for which we received comments from interested parties:

Comment 1: Whether to Accept a Minor Correction
Comment 2: Whether to Grant a Constructed Export Price Offset
Comment 3: Whether to Deduct Section 232 Duties from U.S. Prices
Comment 4: Whether to Offset G&A Expenses By Certain Other Net Sales Revenue
Comment 5: Whether to Adjust Niko Tube and NTRP's Depreciation Expenses

[1] Interpipe refers to the collapsed entity, Interpipe Ukraine LLC (Interpipe Ukraine), PJSC Interpipe Niznedneprovksy Tube Rolling Plant (NTRP), LLC Interpipe Niko Tube (Niko Tube). *See* Memorandum "Antidumping Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Preliminary Affiliation and Collapsing Memorandum for Interpipe," dated February 3, 2021. No party commented on the preliminary affiliation and collapsing decision and the decision is adopted for the final determination.

II. BACKGROUND

On February 10, 2021, Commerce published the *Preliminary Determination* in this investigation.[2] On February 12, 2021, Interpipe requested that Commerce schedule a hearing in which parties may present issues raised in case and rebuttal briefs.[3] On March 10, 2021, Commerce issued a verification questionnaire to Interpipe in lieu of performing an on-site verification. On March 18, 2021, Interpipe submitted its response to the verification questionnaire.[4] On April 6, 2021, Commerce rejected Interpipe's verification questionnaire response because it contained untimely new factual information and instructed Interpipe to redact the new information and resubmit its verification questionnaire response.[5] Interpipe submitted its revised verification questionnaire response and a revised cost database on April 8, 2021.[6] On April 15, 2021, Vallourec Star L.P. (the petitioner) and Interpipe submitted case briefs.[7] On April 22, 2021, the petitioner and Interpipe submitted rebuttal briefs.[8]

On February 18, 2021, Interpipe submitted a draft proposed suspension agreement.[9] In March and April 2021, the petitioner and Interpipe submitted new and rebuttal factual information related to the proposed suspension agreement.[10] On April 21 and April 27, 2021, United States

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[2] *See Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 8889 (February 10, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Request for Hearing" dated February 12, 2021.

[4] *See* Interpipe's Letter, "Antidumping Duty Investigation on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Questionnaire in Lieu of Verification Response," dated March 18, 2021.

[5] *See* Commerce Letter, Rejection of Interpipe's March 18, 2021 Response, dated April 6, 2021.

[6] *See* Interpipe's Letters, "Antidumping Duty Investigation on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Resubmitting Questionnaire in Lieu of Verification Response," dated April 8, 2021 (Verification Response) and "Antidumping Duty Investigation on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Submission of Revised Cost Databases in Response to Commerce's April 7, 2021 Letter," dated April 8, 2021.

[7] *See* Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Petitioner's Case Brief," dated April 15, 2021 (Petitioner's Case Brief); and Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Case Brief for Interpipe," dated April 15, 2021 (Interpipe's Case Brief).

[8] *See* Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Petitioner's Rebuttal Brief," dated April 22, 2021 (Petitioner's Rebuttal Brief); and Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Rebuttal Brief for Interpipe," dated April 22, 2021 (Interpipe's Rebuttal Brief).

[9] *See* Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Draft Proposed Suspension Agreement," dated February 18, 2021.

[10] *See* Interpipe's Letters, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Factual Information Related to Discussion of Suspension Agreement," dated March 24, 2021; "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Factual Information Related to Discussion of a Suspension Agreement," dated April 7, 2021; and "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Rebuttal to Petitioner's April 12, 2021 Submission of Factual Information regarding Interpipe's Suspension Agreement Request," dated April 15, 2021; *see also* Petitioner's Letters, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Factual Information regarding Interpipe's Suspension Agreement Request," dated April 12, 2021; and "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Reply to Interpipe's Suspension Agreement Submission," dated April 20, 2021.

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Steel Corporation, and Tenaris Bay City, Inc. and IPSCO Tubulars Inc., respectively, submitted letters notifying Commerce of their opposition to a suspension agreement.[11] On May 14, 2021, Commerce notified Interpipe that the circumstances do not "warrant departing from our normal approach of completing the investigation."[12] On June 10, 2021, Interpipe withdrew its hearing request.[13]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2019, through June 30, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2020.[14]

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Since issuing the preliminary determination we: (1) excluded sales of non-subject merchandise from the U.S. sales database;[15] (2) relied on a revised cost database that incorporates the minor correction identified in the Verification Response, discussed in Comment 1 below; and (3) revised our calculation of the preliminary adjustment to Interpipe's depreciation expenses, discussed in Comment 5 below.[16]

V. DISCUSSION OF THE ISSUES

Comment 1: Whether to Accept a Minor Correction

Petitioner's Comments[17]

- In its Verification Response, Interpipe revised the product code and costs assigned to one product matching control number (CONNUM) to reflect those of a cold-drawn, rather

[11] *See* United States Steel Corporation's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: United States Steel Corporation Opposition to Suspension Agreement with Ukraine," dated April 21, 2021; and Tenaris Bay City, Inc. and IPSCO Tubulars Inc.'s Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Letter of Opposition Regarding Proposed Suspension Agreement," dated April 27, 2021.
[12] *See* Commerce's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine – Submission of Proposed Suspension Agreement," dated May 14, 2021.
[13] *See* Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Withdrawal of the February 12, 2021 Hearing Request," dated June 10, 2021.
[14] *See* 19 CFR 351.204(b)(1).
[15] *See* Verification Response at V-7-8; and Memorandum, "Interpipe Final Determination Analysis," dated concurrently with this memorandum at 2.
[16] *See* Verification Response at 17; and Memorandum "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Interpipe," (Interpipe Final Cost Calculation Memorandum) dated concurrently with this memorandum.
[17] *See* Petitioner's Case Brief at 1-6.

than a hot-rolled, product. Commerce should reject this correction because it is not a minor correction and it is not sufficiently supported by record evidence.

- Commerce's well-established practice is to permit respondents to submit only minor corrections at verification.[18] A minor correction involves a "clerical error, not a methodological error, an error in judgment, or a substantive error,"[19] and can include a clerical error that only has a negligible impact on the calculation of a respondent's dumping margin.[20]
- Interpipe's correction involves a substantive methodological issue and it significantly impacts the dumping margin. Specifically, the correction results in significant changes in matching home market sales to U.S. sales. Therefore, it is not a minor correction and it should be rejected.
- Moreover, the support provided for, and Interpipe's explanation of, the correction are questionable.
- Interpipe provided only one document, which was generated after the preliminary determination, to support the corrected product code.
- The CONNUM at issue was not assigned to hot-finished, rather than cold-drawn, production as claimed by Interpipe (in its correction, Interpipe revised the product code from a code for a hot-finished product to a code for a cold-drawn product).
- The corrected product code appears unusual for the CONNUM in question because all of the other CONNUMs to which this product code was assigned have a different specification code in the CONNUM than the specification code imbedded in this CONNUM.
- There are other differences between the corrected information reported for the CONNUM at issue and information reported for CONNUMs with certain similar CONNUM coding, which raise additional questions regarding the validity of the correction (details involve proprietary information).
- Interpipe's claim that it assigned the wrong product code to the CONNUM in question is suspicious, since the normal process is to assign CONNUMs to product codes, not product codes to CONNUMs.
- Thus, the support for the correction is inadequate and the correction should be rejected.

Interpipe's Rebuttal Comments[21]

- Commerce should accept the minor correction because it involves an inadvertent transposition of the product code reported for a single CONNUM in the cost database, which is clearly a "clerical error, not a methodological error, an error in judgment, or a substantive error."[22]

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[18] *Id.* at 2 (citing *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009), and accompanying Issues and Decision Memorandum (IDM) at Comment 4).
[19] *Id.* at 2 (citing *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) (*Carbon from China*), and accompanying IDM at Comment 7).
[20] *See* Petitioner's Case Brief at 2 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73172 (December 29, 1999) (*CTL Plate from Indonesia*)).
[21] *See* Interpipe's Rebuttal Brief at 2-9.
[22] *Id.* at 3 (citing *Carbon from China* IDM at Comment 4).

- Contrary to the petitioner's assertions, there is no negligibility requirement in either Commerce's own decisions or case law; thus, the impact of the minor correction on Interpipe's dumping margin is irrelevant.[23] "The Courts have held that the effect of correcting an error does not transform a minor correction into new factual information."[24]
- Interpipe submitted multiple documents to support the correction which tie together, based on batch and production order numbers.
- The petitioner's claim that the supporting document with the correct product code was generated after the preliminary determination is based on the date when the document was printed for verification, not the date when the document was initially generated. Record evidence does not demonstrate that information in the document was generated after the POI.
- Although the petitioner attempts to undermine the validity of the minor correction by noting that the CONNUM in question was always reported for cold-drawn production, that merely highlights the need for the correction since the CONNUM at issue was for cold-drawn production but it was incorrectly assigned to a product code for a hot-drawn product.
- The petitioner's claim that the corrected product code appears unusual for the CONNUM in question based on the specification code in the CONNUM can be explained because Interpipe's product codes do not perfectly align with Commerce's CONNUMs.
- The other differences (which involve business proprietary information) that the petitioner noted between the corrected information reported for the CONNUM at issue and information reported for similar CONNUMs can be explained by the fact that the specification code in the CONNUM designates the standard and grade of the product, regardless of the production process.
- Interpipe has been transparent and forthcoming with Commerce regarding its process for matching product codes with CONNUMs. Nevertheless, the process used to match CONNUMs and product codes has no bearing on the legitimacy of this minor correction. The error is the same regardless of whether Interpipe matched product codes to CONNUMs or *vice versa*.
- Therefore, there is no reason to reject Interpipe's minor correction.

Commerce's Position:

We agree with Interpipe and have relied on the corrected cost data for the final determination. In its Verification Response, Interpipe stated that it discovered an error in its previously reported costs.[25] Specifically, Interpipe explained that in developing the reported cost database, it incorrectly assigned one particular CONNUM with a manufacturing process code for cold drawing (one of the CONNUM characteristics is manufacturing process), to a product code for a hot-finished product rather than to a product code for a cold-drawn product.[26] In support,

[23] *Id.* at 3 (citing *Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57010 (October 24, 2019) (*Kegs from China*), and accompanying IDM at Comment 4).
[24] *Id* at 4 (citing *Kegs from China* IDM at Comment 4 (citing *e.g., Goodluck India Limited v. United States*, 393 F. Supp. 3d 1352 (CIT 2019); and *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1208-09 (Fed. Cir. 1995))).
[25] *See* Verification Response at 17).
[26] *Id.* at 17.

Interpipe submitted source documents showing the correct cold-drawn product code and a revised cost allocation worksheet showing the effect on the CONNUM's costs.[27] We disagree with the petitioner's contention that this correction does not meet Commerce's definition of a minor correction and that the correction does not comport with record evidence.

Commerce routinely accepts minor corrections at the beginning of verification because such errors may be uncovered by respondents as they prepare for verification. The corrections accepted at verification typically include corrections of minor mistakes in addition, subtraction, or other arithmetic function, minor data entry mistakes, clerical errors resulting from inaccurate copying, duplication, or the like, and minor classification errors.[28] Contrary to the petitioner's assertion, Commerce does not consider the impact of the error on the respondent's dumping margin when determining whether or not a proffered correction is minor and should be accepted. Commerce is charged with calculating accurate dumping margins; thus, while the error's impact may inform Commerce of what additional steps are necessary (*e.g.*, additional analysis, supplemental questions, *etc*.), the purported minor correction's impact on the dumping margin cannot be the rationale for rejecting it. In fact, the Courts have held that the impact of the error does not transform it from a minor correction to new factual information.[29]

The petitioner's citation to *CTL Plate from Indonesia* is unavailing. While the respondents in *CTL Plate from Indonesia* proffered that the minor corrections should be accepted since they had an insignificant impact on the dumping margin, Commerce made no mention of the dumping margin impact in its rationale for accepting the corrections as minor. Rather, Commerce specified that the corrections were "minor in that they affected only specific accounts, did not change the reporting methodology, and corroborated, supported and clarified information already on the record."[30] Thus, consistent with our practice, we disagree with the petitioner that the impact of Interpipe's purported correction on the margin is a determining factor of whether the correction can be accepted as minor.[31]

Rather, Commerce evaluates whether: (1) the correction is clerical or methodological; (2) it is able to verify the error and is satisfied with the documentary support for the correction; (3) the error calls into question the overall integrity of the respondent's submissions; and (4) the correction amounts to a "substantial revision" of previously reported data.[32] In this case, we find that the correction does not involve a methodological error but, rather, it reflects a single instance of misclassification. Our review of the information submitted in Interpipe's original and supplemental section D responses corroborates Interpipe's contention that it mistakenly attributed a hot-formed product code and its associated costs to a cold-drawn CONNUM in its

[27] *Id* at 17 and Exhibit V-7-D.
[28] *See, e.g., Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) (*Coated Paper from China*), and accompanying IDM at Comment 10.
[29] *See Goodluck India Limited v. United States*, 393 F. Supp. 3d 1352 (CIT 2019); *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1208-09 (Fed. Cir. 1995).
[30] *See CTL Plate from Indonesia* IDM at Comment 4.
[31] *See, e.g., Coated Paper from China* IDM at Comment 10.
[32] *See Coated Paper from China* IDM at Comment 10.

cost calculation worksheets.[33] This error does not call into question the overall integrity of Interpipe's submissions, nor does it amount to a substantial revision of previously reported data.

Interpipe provided copies of source documents to support the corrected product code assignment. While the petitioner suggests that the documents and the information contained therein were created post-POI, we disagree. We find that the questioned dates represent the printing dates, not the creation dates, of the documents. A further review of the documents confirms that the creation dates are all within the POI. Moreover, we do not find it relevant that only one of the four documents specifically identifies the product code. We are able to link all documents based on the production order and batch numbers, thereby connecting the CONNUM reported to the revised product code.

We also find that the petitioner's observations regarding Interpipe's company-wide product code and cost information, which the petitioner believes calls into question the validity of Interpipe's minor correction, can be explained with similarly plausible observations that support the minor correction. However, because this involves business proprietary information (BPI), we included a more detailed discussion of this matter in the Final Cost Calculation Memorandum.[34]

While also a source of concern for the petitioner, Interpipe's methodology of assigning product codes to CONNUMs, rather than the reverse order, was clearly outlined in its submissions to Commerce. In its section D questionnaire response, Interpipe explained that because the mill certificates were the most reliable source for identifying each product's physical characteristics, Interpipe first assigned product characteristics, or CONNUMs, to every product shipped during the POI.[35] The CONNUMs were then matched to the underlying product codes and their associated production costs.[36] Hence, we do not find that the method employed by Interpipe to concatenate CONNUMs and match product codes suggests that the correction is suspect.

Based on the foregoing, we find that Interpipe's proposed correction is typical of the routine corrections that Commerce accepts at verification in that it is similar to a correction of a minor mistake in addition, subtraction, or other arithmetic function, minor data entry mistakes, clerical errors resulting from inaccurate copying, duplication, or the like, and minor classification errors.[37] Indeed, we have confirmed that the correction is neither a methodological nor a substantial revision but, rather, a correction for a clerical error that has been satisfactorily supported with underlying source documentation. Therefore, for the final determination, we have accepted and relied on the minor cost correction submitted by Interpipe in its Verification Response. Because some comments involve BPI, we have addressed the more detailed aspects of the parties' arguments in our Final Cost Calculation Memorandum.[38]

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[33] *See* Interpipe's Letter, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: Supplemental Section D Questionnaire Response," dated December 15, 2020 (SDQR) at Exhibit SD-32B.
[34] *See* Interpipe Final Cost Calculation Memorandum.
[35] *See* Interpipe's Letter, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: Sections B-D Initial Questionnaire Response," dated October 9, 2020 (BQR CQR DQR), DQR at 20.
[36] *See* DQR at 20.
[37] *See, e.g., Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010) (*Coated Paper from China*), and accompanying IDM at Comment 10.
[38] *See* Interpipe Final Cost Calculation Memorandum.

Comment 2: Whether to Grant a Constructed Export Price Offset

Interpipe's Comments[39]

- The factual conditions for granting a constructed export price (CEP) offset are present in this investigation and match those in *OCTG from Ukraine*, where Commerce granted a CEP offset. There is nothing on the record that supports a change from Commerce's determination in *OCTG from Ukraine*.[40]
- Commerce denied a CEP offset because: (1) Interpipe never specified that the selling activities reported for the home market applied to both home market channels of distribution; and (2) Interpipe did not provide a quantitative analysis of the differences in selling expenses between claimed levels of trade (LOTs). Neither of these reasons justifies a break from prior precedent.
- Commerce erred by concluding that Interpipe never specified that the selling activities reported for the home market applied to both home market channels of distribution.[41] Interpipe labeled the single column in which it reported the degree to which it performed various selling activities in the home market as "Home Market Sales" (it did not label the column as being for one particular home market channel of distribution) and it titled the page with this table as "Interpipe – Degree of Selling Activities for Each Combination of Distribution Channel and Customer Category." This indicates that the reported selling activities applied to each combination of distribution channel in the home market.
- Interpipe provided a further description of its home market selling activities in an Exhibit in a supplemental questionnaire response which it labeled "Selling Activities Performed by Interpipe Ukraine in the Home Market."[42] Thus, the reported selling activities apply to the entire home market. Since Commerce never asked any additional questions about this matter, it cannot claim the response was ambiguous.
- Commerce's assertion that Interpipe did not provide a "quantitative analysis" does not provide a justification for not making the CEP offset. Section 351.412(c)(2) of Commerce's regulations does not define the type of evidence (quantitative or qualitative) the respondent needs to supply in order to justify a CEP offset.
- Regardless of Commerce's assertion regarding a quantitative analysis, Interpipe provided sufficient data demonstrating that the home market LOT is more advanced than the CEP LOT.[43] Record evidence shows the amount of order processing for the CEP LOT is vastly different (and lower) than the home market LOT, given the existence of more

[39] *See* Interpipe's Case Brief at 4-8.
[40] *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), and accompanying PDM at 13, unchanged in *Suspension of Antidumping Investigation: Certain Oil Country Tubular Goods from Ukraine*, 79 FR 41959 (July 18, 2014) (*OCTG from Ukraine*)).
[41] *See* Interpipe's Letter, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: Section A Initial Questionnaire Response," dated September 16, 2020 (AQR) at Exhibit A-6-A, and Interpipe's Letter, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: Section A Supplemental Questionnaire Response," dated October 22, 2020 (SAQR) at Exhibit SA-6.
[42] *Id.*
[43] *See* CQR at Exhibit C-7.

frequent, smaller order volumes in the home market compared with fewer, larger orders for the United States. The record also establishes multiple situations where Interpipe Ukraine (in the home market) does not incur any of the selling expenses for U.S. sales, because the activity is handled by Interpipe's U.S. affiliate NAI.[44] Thus, Interpipe Ukraine is involved in fewer selling activities at lower levels of intensity for U.S. sales than for home market sales.

- As such, the home market LOT is different from, and more advanced than, the CEP LOT. Since there are no sales at a comparable LOT in the home market with which to determine the LOT adjustment, consistent with the statute and Commerce's established practice *vis-a-vis* this respondent, Commerce should grant a CEP offset.
- Beyond what was provided, Interpipe is not aware of any additional quantitative information that addresses the indirect selling expenses incurred in the CEP and home market LOTs.

Petitioner's Rebuttal Comments[45]

- Interpipe failed to make a compelling case for Commerce to reverse its decision not to grant Interpipe a CEP offset. The fact that a selling activities table was labeled "Interpipe – Degree of Selling Activities for Each Combination of Distribution Channel and Customer Category," does not convey that the selling functions are the same for each home market channel of distribution.
- Nowhere in its responses did Interpipe state that its *post hoc* discussion of the different sizes of the typical orders in the home and U.S. markets represents the required quantitative analysis. Making that argument now in its case brief does not rise to the level of providing the required quantitative analysis.
- Interpipe also argues that other "qualitative" and "informative," information that it provided in its responses support granting a CEP offset. The fact that Interpipe even needs to make this argument demonstrates that the quantitative analysis required for a CEP offset was not provided.
- Even if Commerce granted Interpipe a CEP offset in *OCTG from Ukraine*, granting a CEP offset to a company in one proceeding covering a different product does not mean a CEP offset must be granted to the company in another proceeding.[46] "The party seeking a CEP offset bears the burden of establishing that the differences in selling functions performed in the home and U.S. markets are 'substantial.'"[47]
- Therefore, Commerce should not grant Interpipe a CEP offset in the final determination.

Commerce's Position:

We continue to find that a CEP offset is not warranted pursuant to section 773(a)(7)(B) of the Act. As Commerce explained in the *Preliminary Determination*, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce calculates normal value (NV) based on sales

[44] *See* AQR at Exhibits A-6-A and A-6-B.
[45] *See* Petitioner's Rebuttal Brief at 2-5.
[46] *See* Petitioner's Rebuttal Brief at 2-3 (citing *Hyundai Steel Company v. United States*, 279 F. Supp. 3d 1349, 1371 (CIT 2017)).
[47] *Id.* at 3 (citing *Hyundai Steel Company v. United States*, 365 F. Supp. 3d 1294, 1300 (CIT 2019)).

made in the comparison market at the same LOT as the CEP or export price (EP), or adjusts for the differences in levels of trade.[48] Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[49] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference between marketing stages.[50] When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the U.S. sale, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market and, where possible, make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[51]

In the *Preliminary Determination*, we did not grant Interpipe a CEP offset for two reasons: (1) Interpipe did not separately report the selling functions, and the levels at which it performed those functions, for each home market channel of distribution; and (2) Interpipe did not provide a quantitative analysis showing how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability.[52] Therefore, in the *Preliminary Determination* we concluded that there was insufficient information to determine whether there is one or more LOT in the home market or whether a CEP offset was appropriate.

Interpipe reported making sales in the home market through two channels of distribution – back to back sales to end users and stock sales to unaffiliated customers that Interpipe claims are at the same LOT.[53] Interpipe argues that the title of the home market selling activities table in Exhibit A-6-A of its response to section A of the questionnaire, "Interpipe – Degree of Selling Activities for Each Combination of Distribution Channel and Customer Category," indicates that the sole sales activities column for home market customers in the table applies to both home market channels of distribution.[54] For the following reasons, we find that the title does not clearly establish that the sole column used to report home market selling activities for home market customers is for both home market channels of distribution.

The home market selling functions table that Interpipe provided has one column which appears to be for certain sales to home market customers and one column for home market selling activities performed for U.S. sales.[55] Hence, it is not clear whether the "Each Combination" in the title of the table refers to the combination of home market selling activities reported for *one* home market channel of distribution for home market customers (reported in one column) and the home market selling activities reported for another channel of distribution related to sales to Interpipe's U.S. affiliate (which were reported in a second column in the table). Interpreting the

[48] *See Preliminary Determination* PDM at 12-13.
[49] 19 CFR 351.412(c)(2).
[50] *Id.*; *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at Comment 7.
[51] *See Orange Juice from Brazil* IDM at Comment 7 and *Preliminary Determination* PDM at 13.
[52] *See Preliminary Determination* PDM at 13.
[53] *See* Interpipe's BQR at B-18.
[54] *See* AQR at Exhibit A-6-A.
[55] *Id.*

table in this manner, as Commerce did, means that Interpipe failed to report the level of selling activities for both home market channels of trade involving home market customers. Although Interpipe listed both home market customer types in the "home market column" and noted "Home Market Sales" at the top of the column, Interpipe never explicitly stated that the selling activities reported in the "home market column" are for both home market channels of distribution and, thus, the record does not clearly establish that Interpipe reported selling functions for both channels of distribution. Rather, it appears that Interpipe failed to list selling activities for the second home market channel of distribution in the table, particularly because Commerce explicitly requested that Interpipe complete the selling activities table in the questionnaire which has separate columns for reporting the level of selling activities for each channel of distribution in both the home and U.S. markets.[56] While Interpipe followed this format for the U.S. market and separately reported the levels of selling activities for both U.S. channels of distribution, it did not follow this format in its home market selling activities table, despite reporting in the narrative that it has two home market channels. This led Commerce to conclude that the table was missing information for a second home market channel of distribution. Lastly, it is not clear that the title "Interpipe – Degree of Selling Activities for Each Combination of Distribution Channel and Customer Category" has the meaning alleged by Interpipe, because Interpipe labeled its U.S. selling activities table, which lists the selling activities for each U.S. channel of distribution in separate columns, with the same title.[57]

Interpipe further relies on the table in Exhibit SA-6 of its October 22, 2020 response to a section A supplemental questionnaire to demonstrate that it reported selling activities covering all home market channels of distribution.[58] However, that exhibit was submitted in response to Commerce's request that Interpipe "provide a detailed description of the selling functions reported for each market" and "a detailed description of how the selling functions differ between the two markets" (*i.e.*, the U.S. and home markets). Therefore, it is not surprising that Interpipe reported information regarding selling activities performed in the home market as a whole in Exhibit SA-6. This does not mean that the levels of intensity for sales to home market customers reported in Exhibit A-6-A of its response to section A of the questionnaire were also for the entire home market (*i.e.*, both channels of distribution), particularly given that Commerce requested a table in which the respondent was supposed to separately report levels of selling activities for each channel of distribution.[59]

While Interpipe continues to claim that it reported selling activities for the home market as a whole (at a more advanced level than the selling activities for its U.S. sales), we could not determine whether Interpipe has one or two LOTs in home market and whether an LOT adjustment was possible because Interpipe never specified that the selling activities reported for the home market applied to both home market channels of distribution. Consequently, Commerce concluded that it did not have the information it required to determine whether an LOT adjustment or CEP offset was appropriate. Irrespective of this conclusion, and whether or not the selling activities reported for the home market applied to both home market channels of

[56] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated August 19, 2020 (AD Questionnaire).
[57] Because some comments involve BPI, we have addressed the more detailed aspects of the parties' arguments in our Final Analysis Memorandum.
[58] *See* SAQR at Exhibit SA-6, page 1.
[59] *See* AD Questionnaire.

distribution, as discussed below, we find that Interpipe failed to provide the quantitative analysis that Commerce requested showing how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability.

Record evidence indicating that indirect selling expenses vary between the claimed U.S. and home market LOTs (because of differences in the amount of order processing,[60] and the fact that certain selling expenses were incurred in only one market)[61] does not satisfy Commerce's request for a quantitative analysis. Commerce specifically requested that Interpipe "{p}rovide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability … Explain how the quantitative analysis provided in response to the requests for information above support the claimed levels of intensity for the selling activities reported in the selling functions chart."[62] While the evidence provided relates to the degree to which certain activities were performed, it is not the quantitative analysis of the actual selling expenses incurred for sales at different LOTs requested by Commerce that shows how those expenses affect price comparability. Interpipe never quantified the relevant selling expenses for sales at different LOTs, nor did it quantify differences in sales prices based on differences in selling expenses.

An "interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[63] The respondent also bears the burden to establish its entitlement to an LOT adjustment and by extension a CEP offset.[64] Interpipe failed to meet this burden because it completely disregarded Commerce's request for the required quantitative information. Interpipe never indicated in its questionnaire and supplemental questionnaire responses that it could not provide the requested quantitative analysis or that it was providing the information that it is now relying upon in lieu of such an analysis. Rather, Interpipe provided no response at all to Commerce's request for a quantitative analysis. While Interpipe contends in its case brief that it provided all that it could with respect to the quantitative analysis, it did not make that claim in its questionnaire response, and even if it had, it is Interpipe's burden to establish that it is entitled to a CEP offset.[65]

Interpipe also argues that Commerce's regulations do not specifically require a quantitative analysis in order to justify granting a CEP offset. Commerce's regulations at 19 CFR 351.412(c)(2) state 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."

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[60] *See* CQR at Exhibit C-7.
[61] *See* AQR at Exhibits A-6-A, A-6-B, and A-8-A.
[62] *See* AD Questionnaire.
[63] *See* 19 CFR 351.401(b)(1).
[64] *See Mattresses from Serbia: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Finding of Critical Circumstances*, 86 FR 15892 (March 25, 2021), and accompanying IDM at Comment 3.
[65] *See Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286, 1290 (2003) ("CEP offset analysis thus compares the indirect selling activities that are undertaken outside the United States in support of the U.S. and comparison market sales. It is not automatic each time export price is constructed. It must be demonstrated that the LOT of the home market sales used for NV is more advanced than the CEP LOT and that there is no appropriate basis for determining whether such difference effects price comparability. The burden of proof is upon the claimant to prove entitlement.") (internal citations omitted).

Commerce's requirement that respondents support LOT claims with quantitative evidence in all proceedings was implemented in 2018 to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs.[66] Although qualitative information is helpful and relevant to the LOT analysis, reliance on this information alone limits Commerce's ability to analyze selling functions to determine if LOTs identified by a party are meaningful and to evaluate whether a respondent's LOT claims are reasonable and accurate.[67] Indeed, reliance on qualitative evidence, such as narrative descriptions of differences in selling functions, customer correspondence, sample sales records, meeting presentations and the like, without supporting quantitative evidence frequently does not present a complete understanding of a respondent's selling activities. Additionally, reliance on purely qualitative information may create the potential for manipulation (or inaccurate reporting) by permitting respondents to create a narrative that is not linked in any way to its verifiable financial data. Requiring quantitative evidence enhances our LOT analysis because such information allows us to determine whether differences in prices among various customer categories or differences in levels of expenses in different claimed LOTs are, in fact, attributable to differences in LOTs or to some other unrelated factor such as relative sales volumes. Quantitative information permits Commerce to examine whether a respondent's narrative explanations and qualitative evidence are supported by its books and records maintained in the ordinary course of business. Additionally, the requirement that respondents provide quantitative support for their claimed LOTs reduces subjectivity and the likelihood of inconsistency in the application of Commerce's analytical framework that results from the analysis of purely qualitative information, which can be, by its nature, subject to different interpretations.

Since 2018, Commerce has required respondents to provide quantitative evidence in support of their LOT claims. For instance, in *Corrosion Resistant Steel from Korea*, Commerce considered, *inter alia*, the following quantitative information in its LOT and CEP offset analysis: (1) how expenses assigned to POR sales made at different claimed LOTs impact price comparability functions; (2) a demonstration of how indirect selling expenses vary by the different LOT claimed; and (3) an explanation of how the quantitative analysis provided by the respondent supported its claimed levels of intensity for the reported selling activities.[68] In *Corrosion Resistant Steel from Korea*, Commerce found that the quantitative analysis submitted by the

[66] *See, e.g., Magnesium from Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 32712 (July 9, 2019) (*Magnesium from Israel Preliminary Determination*), and accompanying PDM at 13, unchanged in *Magnesium from Israel: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 65781 (November 29, 2019) (*Magnesium from Israel Final Determination*); and *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019) (*CRS from the UK Preliminary Determination*), and accompanying PDM at 10, unchanged in *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 59771 (November 6, 2019) (*CRS from the UK Final Determination*).

[67] *See, e.g., Magnesium from Israel Preliminary Determination* PDM at 13, unchanged in *Magnesium from Israel Final Determination*; and *CRS from the UK Preliminary Determination* PDM at 10, unchanged in *CRS from the UK Final Determination*.

[68] *See Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*Corrosion Resistant Steel from Korea*), and accompanying IDM at Comment 4.

respondent corroborated its reported level of intensity information.[69] Additionally, in *Warmwater Shrimp from Thailand*, in conducting its LOT/CEP offset analysis, Commerce considered a respondent's selling expenses in combination with the analysis of selling functions in order to determine if the level of selling expenses substantiated the narrative explanation of selling functions.[70] Furthermore, in *ESB Rubber from Brazil*, Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent's LOT claims.[71]

Moreover, even though Commerce began expressly requesting that respondents support their LOT claims with quantitative evidence in 2018, respondents have long borne the burden of establishing their eligibility for an LOT adjustment or CEP offset by demonstrating that different prices and selling expenses are caused by differences in LOT and not by other factors, such as volume sold or arbitrary pricing.[72] Thus, the quantitative analysis requested by Commerce informs its decision as to whether there are substantial differences in selling activities that indicate different LOTs. As explained above, the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of Commerce the amount and nature of a particular adjustment.[73] Because we requested this analysis, but Interpipe failed to provide it, we find that the record lacks sufficient information make such a determination. Therefore, for the final determination we have not granted Interpipe a CEP offset.

Interpipe contends that because Commerce granted Interpipe a CEP offset in *OCTG from Ukraine*, it should grant it a CEP offset in this investigation. We disagree. First, there appears to have been no uncertainty in *OCTG from Ukraine* as to which home market channel of distribution the reported levels of selling activities applied, given that Interpipe only reported one home market channel of distribution in that investigation.[74] Second, based on the excerpts from *OCTG from Ukraine* provided by Interpipe, Commerce did not request a quantitative analysis in that investigation, consistent with the practice in place at that time. As explained above, in 2018, Commerce began requiring respondents to support LOT claims with quantitative evidence in all proceedings to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs. We requested a quantitative analysis here consistent with our revised practice and Interpipe

[69] *Id*. ("Further, Dongkuk's traceable expenses (*e.g.*, wages) for home market sales are seventy times of that for U.S. sales. A ratio derived from the traceable expenses is used to allocate indirect selling expenses to home market sales and CEP sales. As result, the indirect selling expense ratio for home market sales is more than two times of that for U.S. sales. Thus, we find that the quantitative analysis corroborated the reported level of intensity.") (citation omitted).

[70] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Warmwater Shrimp from Thailand*), and accompanying IDM at Comment 5.

[71] *See Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020), and accompanying IDM at Comment 1.

[72] *See NSK Ltd. v. Koyo Seiko Co.*, 190 F. 3d 1321, 1330 (Fed. Cir. 1999) ("Although NTN submitted evidence that merchandise at different levels of trade had different prices and selling expenses, NTN did not provide evidence to prove that those differences were not caused by other factors, such as volume sold or arbitrary pricing practices. In other words, NTN did not present evidence to establish that the difference in the level of trade caused the differences in price and selling expenses.").

[73] *See* 19 CFR 351.401(b)(1).

[74] *See* Final Analysis Memorandum.

failed to provide one. Lastly, as explained by the CIT, granting a CEP offset to a company in one proceeding covering one type of product does not dictate granting a CEP offset to that same company in another proceeding covering a different type of product.[75]

Consistent with the *Preliminary Determination*, for the reasons explained above, we have not granted Interpipe a CEP offset in the final determination.

Comment 3: Whether to Deduct Section 232 Duties From U.S. Prices

Interpipe's Comments[76]

- Commerce should not deduct section 232 duties from U.S. prices when calculating Interpipe's dumping margin.[77]
- Section 772(c)(2)(A) of the Act directs Commerce to adjust the prices of a respondent's U.S. sales of subject merchandise by "United States import duties." However, section 232 duties are not "United States import duties" because they are akin to antidumping, countervailing, and safeguard duties (section 201 duties). Such duties traditionally are not deducted from U.S. sales prices.
- *Borusan* is distinguishable from this investigation because the section 232 duties on Interpipe's imports are not final, and likely will be refunded or adjusted given Interpipe's challenge of Commerce's decision not to grant it certain exclusions from paying section 232 duties.[78]
- Interpipe challenged Commerce's failure to grant it certain exclusions from paying section 232 duties based on the same grounds that have consistently resulted in the refund of duties in other cases. Consequently, Commerce should not deduct section 232 duties from U.S. prices because the amount currently deposited with U.S. Customs and Border Protection for those duties may bear little relation to the actual section 232 duty liability on such imports.
- To do otherwise risks Commerce imposing an offset for a liability that does not exist or does not match the final liability.[79]

Petitioner's Rebuttal Comments[80]

- Commerce appropriately deducted section 232 duties from the prices of U.S. sales of subject merchandise in calculating Interpipe's dumping margin. The President's Section

[75] *See Hyundai Steel Company v. United States*, 279 F. Supp. 3d at 1371-72.
[76] *See* Interpipe's Case Brief at 8-11.
[77] *See also* Interpipe's Letters, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: New Factual Information," dated January 4, 2021 at Exhibit 1; and "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Pre-Preliminary Determination Comments," dated January 14, 2021, also included as Attachment 1 of Interpipe's Case Brief.
[78] *See Borusan Mannesmann Boru Sanayi ve Ticaret AS v. United States*, 494 F. Supp. 3d 1365 (CIT 2021), (*Borusan*).
[79] *See Federal-Mogul Corp. v. United States*, 813 F. Supp. 856, 872 (CIT 1993) (*Mogul*).
[80] *See* Petitioner's Rebuttal Brief at 5-11.

232 Proclamation makes clear that section 232 duties are import duties.[81] They are also explicitly distinguished from antidumping, countervailing, and special duties.

- Commerce previously rejected the claim that section 232 duties are akin to antidumping, countervailing, and safeguard duties, which are not deducted from U.S. prices.[82]
- Safeguard duties overlap with, and are complementary to, antidumping duties since they relate to injury caused by increased imports. However, section 232 duties are imposed because of threats to national security, not because of injury to a domestic industry. Also, unlike safeguard duties, there is no requirement to consider whether increased imports are due to dumping, to consider existing antidumping duties, or to consider whether a remedy is more appropriately achieved by way of antidumping duties when considering whether to apply section 232 duties.
- Interpipe attempts to distinguish *Borusan* from this investigation, because it filed an appeal with the CIT regarding the application of section 232 duties to its products. However, even though Borusan obtained a favorable decision at the CIT regarding the application of section 232 duties to its products in another case (*Transpacific*),[83] Commerce still deducted section 232 duties from the prices of Borusan's U.S. sales of subject merchandise in the most recently completed administrative review of *CWP from Turkey*. In that review, Commerce explained that it continued to deduct these duties from U.S. prices because it appealed the *Transpacific* decision.[84]
- Commerce should follow the same approach here because: (1) Interpipe's appeal is still pending, and there is even less reason to believe that Interpipe's ultimate duty liability will change in this case than there was in *CWP from Turkey*; (2) there have been no refunds of the section 232 duties paid by Interpipe; and (3) there is no evidence that the amount of section 232 duties paid by Interpipe changed because of its appeal. Therefore, there is no basis for reducing or eliminating the deduction for section 232 duties paid.

Commerce's Position:

We disagree with Interpipe and have continued to deduct section 232 duties from the prices of U.S. sales of subject merchandise in calculating Interpipe's dumping margin. In the *Preliminary Determination*, we explained our reasoning for treating section 232 duties as normal duties and deducting the expense from the U.S. price, and we incorporate our explanation by reference here.[85] As we stated in the *Preliminary Determination:*

[81] *See* section 772(c)(2)(A) of the Act.
[82] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020), and accompanying IDM at Comment 3.
[83] *See Transpacific Steel LLC v. United States*, 466 F. Supp. 3d 1246 (CIT 2020) (*Transpacific*).
[84] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2019*, 86 FR 15190 (March 22, 2021) (*CWP from Turkey*), and accompanying IDM at 24.
[85] *See Preliminary Determination* PDM at 9-11.

> the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.[86] The Annex to *Proclamation 9740* refers to section 232 duties as "ordinary" customs duties, and it also states that "{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein." Notably, there is no express exception in the Harmonized Tariff Schedule of the United States revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that ADs would be reduced by the among of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.[87]

Section 232 duties are not akin to antidumping or section 201 duties as section 232 duties are focused on addressing imports that threaten to impair national security, whereas antidumping and section 201 safeguard duties remedy injury to domestic industries.[88] Additionally, Commerce has consistently found that section 232 duties do not overlap with antidumping duties, and they have no termination provision and are not temporary in nature.[89]

On February 17, 2021, the CIT agreed with Commerce that section 232 duties are to be treated as "United States import duties" under section 772(c)(2)(A) of the Act.[90] Interpipe states that it disagrees with the CIT's decision in *Borusan*, but does not otherwise substantively dispute Commerce's analysis other than to argue that section 232 duties should not be considered "United States import duties" because in Interpipe's view, section 232 duties are more akin to antidumping, countervailing, and section 201 duties. As explained above and in our *Preliminary Determination*, we disagree with this view and the CIT has upheld Commerce's determination on this issue. Thus, we continue to find that section 232 duties are United States import duties and deduct them from U.S. price.

Interpipe argues that section 232 duties should not be subtracted from the prices of its U.S. sales of subject merchandise because the duties are not final and, in its view, likely will be refunded or otherwise adjusted based on the results of its future appeal of Commerce's decision in this review not to grant it certain exclusions from paying section 232 duties.[91] However, any appeal by Interpipe of Commerce's decision to not grant it certain exclusions is not yet final. Moreover,

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[86] *See Proclamation 9705 of March 8, 2018*, 83 FR at 11627; *see also Proclamation 9711 of March 22, 2018*, 83 FR at 13361, 13363 (March 28, 2018); *Proclamation 9740 of April 30, 2018*, 83 FR at 20685-87 (May 7, 2018) ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); *Proclamation 9759 of May 31, 2018*, 83 FR at 25857 (June 5, 2018); *Proclamation 9772 of August 10, 2018*, 83 FR at 40430-31 (August 15, 2018); and *Proclamation 9777 of August 29, 2018*, 83 FR at 45025 (September 4, 2018). The proclamations do not expressly provide that 232 duties receive different treatment.

[87] *See Preliminary Determination* PDM at 10-11 (citations omitted).

[88] *Id.* at 10.

[89] *See CWP from Turkey* IDM at Comment 2; *see also Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 15645 (March 24, 2021), and accompanying IDM at Comment 4; and *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 18513 (April 9, 2021), and accompanying IDM at Comment 1.

[90] *See Borusan*, 494 F. Supp. 3d at 1371-76.

[91] *See* Interpipe's Case Brief at 9.

Commerce must base its decision on the evidence before it at the time that it makes its decision, rather than base its decision on speculation regarding events that may take place in the future. Record evidence shows that section 232 duties were paid on imports of Interpipe's subject merchandise[92] and, as explained above, the Annex to *Proclamation 9740* refers to section 232 duties as "ordinary" customs duties. Therefore, we do not find Interpipe's argument compelling. In *CWP from Turkey*, Borusan made an argument similar to Interpipe's argument, which Commerce rejected and it continued to deduct section 232 duties from the prices of the respondent's U.S. sales of subject merchandise.[93]

Although Interpipe claims the tentative nature of section 232 duties means they are similar to antidumping and countervailing duty cash deposits which are not deducted from U.S. price,[94] section 232 duties are referred to as "tariffs," "duties," and "duty rates" not deposits in *Proclamation 9705*.[95] In particular, *Proclamation 9705* contains the following passage:

> all steel articles imports specified in the Annex shall be subject to an additional 25 percent *ad valorem* rate of duty with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on March 23, 2018. This rate of duty, which is in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from all countries except Canada and Mexico.[96]

Hence, duties, not cash deposits for estimated duties, were imposed by *Proclamation 9705*. Therefore, unlike cash deposits, section 232 duties should be deducted from the prices of U.S. sales of subject merchandise.

As noted above, the CIT upheld Commerce's interpretation that section 232 duties are "United States import duties" subject to deduction from the U.S. price for purposes of determining the margin of dumping. While Interpipe attempts to distinguish this investigation from *Borusan* because it appealed the application of section 232 duties to imports of its subject merchandise, the CIT's decision in *Borusan* is still applicable here. The CIT found that section 232 duties: (1) are import duties within the meaning of section 772(c)(2)(A) of the Act; (2) are distinguishable from section 201 duties; and (3) may be subtracted from the prices of U.S. sales of subject merchandise in calculating the margin of dumping. As explained above, we do not find possible subsequent events that have not yet occurred (and that may not occur) to be a compelling reason not to subtract section 232 duties from U.S. prices in calculating Interpipe's dumping margin.

Subtracting section 232 duties from U.S. prices is consistent with section 772(c)(2)(A) of the Act, which directs Commerce to adjust EP and CEP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties."[97] Therefore, for this final determination, consistent with the *Preliminary Determination*,

[92] *See* CQR at C-39.
[93] *See CWP from Turkey* IDM at 24.
[94] *See* Interpipe's Case Brief at 10-11 (citing *Mogul*).
[95] *See Proclamation 9705*, 83 FR 11625, 11626-11627.
[96] *Id.*
[97] *See* section 772(c)(2)(A) of the Act.

and for the reasons explained above, we have determined that section 232 duties constitute normal U.S. import duties that should be deducted from Interpipe's U.S. prices pursuant to section 772(c)(2)(A) of the Act.

Comment 4: Whether to Offset G&A Expenses by Certain Other Net Sales Revenue

Interpipe's Comments[98]

- Commerce should follow its normal practice and offset Interpipe's general and administrative (G&A) expenses by the net revenue earned on sales of current assets like raw materials and production scrap. Commerce's practice is to reflect gains and losses on the sales of assets in G&A expenses, including, for example, sales of raw materials inventory, since they represent a normal and necessary part of doing business.[99]
- Commerce's decision to not decrease G&A expenses by "the profit" on these sales introduces a "one-way ratchet," whereby only losses on sales of current assets and raw materials, which increase G&A expenses and, by extension, a respondent's dumping margin, are allowed. However, Commerce has explicitly rejected the argument that only such losses – and not gains – can be reflected in G&A expenses on the grounds that such a result would be arbitrary and illogical.[100]
- Commerce's practice is to consider other income to be related to a company's general operations and to offset selling, general and administrative (SG&A) expenses by other income unless the income: (1) has been reflected in production cost; (2) relates to a separate line of business; or (3) relates to the disposal of non-routine assets.[101] As explained below, none of these exceptions apply in this case; therefore, an offset to G&A expenses is warranted.
    - The sales recorded in other operating income and expenses do not relate to production costs. While a scrap offset was reported in the cost of manufacturing (COM), and in the cost of sales on the financial statements, the net profit on the scrap sales reported in other operating income and expenses has not been accounted for, and does not relate to the scrap offset reported, in production costs.
    - The sales recorded in other operating income and expenses do not relate to a separate line of business. Interpipe is simply not in the business of selling raw materials (like a trading company) and, as a result, such income is captured in other operating income and expenses on the financial statements, and not as part of the sales and costs of sales of Interpipe's main business.
    - The sales do not relate to the disposal of non-routine assets since they are sales of raw materials, like scrap.

[98] *See* Interpipe's Case Brief at 11-18.
[99] *Id.* at 13 (citing *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less than Fair Value*, 82 FR 29483 (June 29, 2017) (*Flanges from India*), and accompanying IDM at Comment 6; and *Polytetrafluoroethylene Resin from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 48594 (September 19, 2018) (*PTF Resin from India*), and accompanying IDM).
[100] *Id.* at 17 (citing Final Results of Redetermination Pursuant to Court Remand, *U.S. Steel Group, A Unit of USX Corporation, USS/Kobe Steel Co., and Koppel Steel Corp. v. United States*, Court No. 95-09-01144).
[101] *Id.* at 12 (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015) (*Boltless Steel Shelving from China*), and accompanying IDM at Comment 8).

- Commerce has found that income from sales of materials is properly characterized as other income.[102] Therefore, net revenue from sales of raw material and scrap should offset SG&A expenses rather than be reflected in direct material costs.[103]

Petitioner's Rebuttal Comments[104]

- Commerce should not reduce Interpipe's G&A expenses by the net profit that it earned on sales of raw materials and scrap.
- Normally, companies offset G&A expenses by the net profit earned on sales of fixed assets, like equipment formerly used in the production of goods.
- Buying and selling raw materials is not a part of the production of seamless pipe, nor is it a part of the general operations of the company that would appear in G&A expenses.
- Interpipe already offset the COM for scrap. Reducing G&A expenses and the COM by the net revenue earned on scrap sales is double counting.
- Commerce's statement that it was adjusting the G&A expense ratio "to exclude the profit earned on sales of raw materials and production scrap" does not imply that Commerce will only include the results of sales of current assets and raw materials in the G&A expense ratio if it increases the respondent's dumping margin.
- Interpipe was not forthcoming as to what raw materials were being bought and sold. Commerce's regulations state that, "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[105] As such, Commerce reasonably excluded the results of buying and selling raw materials from the calculation of Interpipe's G&A expenses.

Commerce Position:

We have continued to exclude the other income and expenses related to sales of raw materials and scrap from the calculation of G&A expenses. As an initial matter, we disagree with Interpipe's contention that Commerce's preliminary determination introduced a "one-way rachet" that allows only other operating items that increase a respondent's G&A expenses to be included in the calculation of those expenses. In our preliminary cost calculation memorandum, we stated our intention "to exclude the other income and expenses recognized on the sales of raw materials" from G&A expenses.[106] The net of those other income and expenses resulted in a profit. Therefore, in the PDM, we explained that we adjusted the reported G&A expense ratios "to exclude the profit earned on sales of raw materials and production scrap."[107] This statement led Interpipe to infer that we would disallow gains, but include losses, on the sales of raw materials in our calculation of G&A expenses. This is not accurate. Rather, Commerce has long

[102] *Id.* at 16 (citing *Boltless Steel Shelving from China* IDM at Comment 8).
[103] *Id.* at 16 (citing *Boltless Steel Shelving from China* IDM at Comment 8; and *Stainless Steel Bar from Japan: Final Results of Antidumping Duty Administrative Review*, 65 FR 13717 (March 14, 2000) (*SS Bar from Japan*), and accompanying IDM at Comment 7).
[104] *See* Petitioner's Rebuttal Brief at 11-12.
[105] *Id.* at 12 (citing 19 CFR 351.401(b)(1)).
[106] *See* Interpipe Preliminary Cost Calculation Memorandum at 2.
[107] *See Preliminary Determination* PDM at 14.

considered it inappropriate to include the profit *or loss* on the sale of raw material inputs in the cost of production.[108] The fact that a company sells some raw materials for a profit or loss does not mean that the cost of the raw materials that were consumed in production, or indeed that the total cost of producing the product, are any different. Further, regardless of where positioned on the company's income statement, we find the sale of raw materials is still akin to a line of business other than Interpipe's main business – the manufacture and sale of pipes.[109]

Citing *Boltless Steel Shelving from China*, Interpipe claims that Commerce's general practice is to include other income as an offset to SG&A expenses unless the income: (1) has been reflected in production cost; (2) relates to a separate line of business; or (3) relates to the disposal of non-routine assets.[110] Because Interpipe claims that the income from its raw materials sales does not fit into any of these categories, it concludes that income from such sales are allowable as an offset to G&A expenses. Yet, Interpipe omits a key word from its citation. When read in full, *Boltless Steel Shelving from China* states that these are non-exhaustive "examples" where such income may not be related to the respondent's general operations. Rather, to determine whether it is appropriate to include or exclude a particular income or expense item when calculating a company's net G&A expense, Commerce reviews the nature of each item and its relationship to the general operations of the company.[111] In this case, Commerce requested that Interpipe provide further information about the other operating income and expense general ledger accounts that were included in Interpipe's reported G&A expenses.[112] Specifically, Commerce requested that Interpipe provide schedules summarizing the transactions in each general ledger account identified, describe the income therein, and explain why it is appropriate to include the amounts in G&A expenses.[113] With regard to the asset sales, Interpipe merely responded that the general ledger accounts "sale of current assets" and "sale of other materials" reflect items such as raw materials sold from inventory. Interpipe provided a schedule that simply relisted the general ledger account and fiscal year total balance.[114] Therefore, based on the information provided, Commerce excluded the profit from raw material sales from the calculation of G&A expenses consistent with its past practice.

Next, citing *Flanges from India*, Interpipe proffers that it is Commerce's practice "to incorporate gains and losses on the sales of assets in G&A," and that such assets include "raw material inventory."[115] However, on the first point, Interpipe misstates Commerce practice by dropping

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[108] *See, e.g., 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 IDM at Comment 4; *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia*, 66 FR 36754 (July 13, 2001) (*Mushrooms from Indonesia*), and accompanying IDM at Comment 8.
[109] *Id*.
[110] *See* Interpipe's Case Brief at 12 (citing *Boltless Steel Shelving from China* IDM at Comment 8).
[111] *See, e.g., Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018), and accompanying IDM at Comment 7; *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006), and accompanying IDM at Comment 9.
[112] *See* SDQR at 21-25.
[113] *Id*.
[114] *Id* at 21-25 and Exhibit SD-27.
[115] *See* Interpipe's Case Brief at 13 (citing *Flanges from India* IDM at Comment 8 and *PTF Resin from India* IDM "Changes Since the Preliminary Determination")).

the word "fixed" from the language cited. Commerce stated in *Flanges from India* that "{i}t is {Commerce's} practice to include losses and gains on the routine sales of *fixed* assets in the G&A expense ratio calculation" (emphasis added).[116] On the second point, there is again a key word missing. In *PTF Resin from India*, Commerce included a loss on the sale of "obsolete" raw materials inventory in G&A expenses.[117] However, in the instant case, although afforded the opportunity to provide additional details, Interpipe failed to demonstrate, or even claim, that its asset sales were related to obsolete raw materials.[118] Thus, while there may have been a component of Interpipe's raw materials sales that Commerce considers a normal and necessary part of doing business, *e.g.*, disposal of obsolete raw materials that can no longer be used in production, Interpipe failed to avail itself of the opportunity to provide the additional details requested to demonstrate this was the case. Commerce's regulations stipulate that "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[119]

In a final point regarding the raw material sales, Interpipe again cites *Boltless Steel Shelving from China* as evidence that Commerce includes raw material sales as offsets to SG&A expenses.[120] However, the issue in that case was the proper classification of each income and expense line item from a surrogate company's public financial statements in order to calculate financial ratios. In such circumstances, Commerce cannot request additional information from the surrogate company, but must instead rely only on, and often make assumptions regarding, the public financial statements from available information. Thus, while Commerce strives for consistency, the G&A calculations in a market economy case and the SG&A calculations in a non-market economy case are not always analogous. Our consistent practice in market economy cases is to consider the buying and reselling of raw materials as a separate line of business that is not an appropriate offset to the cost of production.[121]

Regarding the sales of production scrap, when a company's production of the merchandise under consideration generates scrap that is shown to have commercial value, Commerce's practice is to allow an offset to production costs for the value of the scrap *generated* from production *during the cost reporting period*.[122] In this case, Interpipe does not dispute that its production costs have been offset by the value of the scrap generated during the POI. Rather, Interpipe essentially contends that the estimated market prices used to value the scrap at the time generated differ from the market prices actually charged in the subsequent sales of the scrap.[123] Consequently, Interpipe argues that the amount from the scrap sales above or below the value that was assigned

[116] *See Flanges from India* IDM at Comment 6, emphasis added.
[117] *See PTF Resin from India* IDM "Changes Since the Preliminary Determination."
[118] *See* SDQR at 21-25.
[119] *See* 19 CFR 351.401(b)(1).
[120] *See* Interpipe's Case Brief at 16 (citing *Boltless Steel Shelving from China* IDM at Comment 8)
[121] *See, e.g.*, *Lumber from Canada* IDM at Comment 4; *Mushrooms from Indonesia* IDM at Comment 8.
[122] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 9 (emphasis added); *Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value*, 84 FR 29168 (June 21, 2019), and accompanying IDM at Comment 10.
[123] *See* DQR at 6 explaining that generated steel scrap "is credited to the cost of steel consumed in production at market value"; and Interpipe's Case Brief at 15-16.

to the scrap when produced, was not accounted for in production and should be reflected in G&A expenses.

We have continued to exclude the other income and expenses related to scrap sales from G&A expenses. Commerce's practice is to allow a scrap offset that is based on the quantity of scrap generated during POI production.[124] While we agree with Interpipe that the claimed offset should reflect the market value of the scrap, in this case, Interpipe attempts to adjust the offset calculated on the quantity of scrap *generated during the POI* by claiming the net profit on the quantity of scrap *sold during the fiscal year*. This presents a mismatch in both the time period (POI versus fiscal year) and in the quantities (sold versus generated). Parties requesting a scrap offset have the burden of presenting to Commerce all information necessary for Commerce to incorporate such offsets into the dumping margin calculation.[125] Thus, where Interpipe found that the estimated market prices used to value the scrap generated during production resulted in an understated scrap offset, Interpipe is in possession of the necessary information needed for such an adjustment and should have therefore proposed an adjustment to the scrap quantities generated using the scrap sales prices actually charged during the POI.

Comment 5: Whether to Adjust Niko Tube and NTRP's Depreciation Expenses

Interpipe's Comments[126]

- In the *Preliminary Determination,* Commerce adjusted the manufacturing costs reported by Niko Tube and NTRP (the producers of the merchandise under consideration) to account for the additional depreciation expenses associated with the fixed asset revaluations in Interpipe's consolidated financial statements that were not in the non-consolidated individual financial statements of Niko Tube and NTRP.[127] Commerce should not make these adjustments for the following reasons.
- Niko Tube and NTRP's auditors explicitly rejected such an adjustment and instead rendered qualified audit opinions.
- Niko Tube and NTRP have not revalued their fixed assets since 2012.
- Commerce did not make a revaluation adjustment to Interpipe's costs when faced with the same fact pattern in the 2014 investigation of *OCTG from Ukraine*.[128]
- The revaluation at the consolidated level was performed for purposes of the group's debt restructuring, but this does not mean that a revaluation at Niko Tube and NTRP's level is warranted. Fixed asset revaluations could lead to significant, short-term, unjustified fluctuations in financial statement figures based on discounted cash estimates and assumptions about future operations. Such estimates and assumptions are nearly impossible to make given the economic impact of the Russia-Ukraine conflict. Thus, the revaluation of Niko Tube and NTRP's fixed assets could result in large swings in the cost of production in subsequent reviews that will in turn increase or decrease Interpipe's

[124] *See Certain Lined Paper Products from India*, 84 FR 23017 (May 21, 2019), and accompanying IDM at Comment 3.
[125] *Id.* at Comment 3.
[126] *See* Interpipe's Case Brief at 18-25.
[127] *See* Interpipe Preliminary Cost Calculation Memorandum at 1-2.
[128] *See* Interpipe's Case Brief at 19 (citing *OCTG from Ukraine*).

dumping margin based on the geo-strategic threat that Russia poses rather than based on Interpipe's actual pricing and production decisions. Indeed, with Commerce's adjustment, this is what has happened in the current investigation. Commerce's depreciation adjustment has drastically altered the results of the investigation.

- Interpipe has diligently worked at managing its dumping liability in the U.S. market, but unforeseen changes in the calculations such as Commerce's depreciation and section 232 adjustments make it exceedingly difficult for companies to manage their dumping margins. This situation is anathema to Commerce, given Commerce's desire to have respondents self-regulate their market behavior by monitoring their sales prices and costs of production.
- If Commerce continues to adjust Interpipe's depreciation expenses, Commerce's calculation of the adjustment should be corrected: (1) to take into account intercompany transfers; (2) to allocate the amount to overhead based on the relative amount of per-CONNUM depreciation expense (allocated based on the fixed overhead (FOH) field rather than total costs of manufacturing (TOTCOM)); (3) to avoid double counting some of the revaluations that were, in fact, already in NTRP's books and records; and (4) to recognize the fact that the seamless pipe production assets of NTRP should not be allocated any additional depreciation expense.

Petitioner's Rebuttal Comments[129]

- Commerce should continue to adjust Interpipe's costs for the additional depreciation expense that was recognized on the consolidated financial statements but not recognized on the individual standalone financial statements of Niko Tube and NTRP.
- The auditors' unwillingness to quantify the depreciation expenses at the consolidated level that are related to Niko Tube and NTRP is not a reason for Commerce to avoid making the adjustment.
- Interpipe's continued reliance on the economic turmoil caused by the conflict between Russia and Ukraine as support for not making the adjustment is contradicted by Interpipe's own financial statements. In those statements, the company notes the 2018 increase in its fixed asset values is related to the progress in the Ukrainian business environment and the improved situation in the global markets.
- Interpipe's main complaint is that making this adjustment results in a larger number of sales failing the cost test and a higher dumping margin. This is not a reason to refrain from making the adjustment.
- All four of Interpipe's proposed corrections to the depreciation expense adjustment should be rejected because: (1) there is no reason to increase the denominator to include intercompany transfers; (2) Interpipe argues to make the adjustment on the basis of FOH rather than TOTCOM (which is the equivalent of cost of goods sold (COGS)), but there is no compelling reason to make the adjustment one way or the other and Commerce's use of TOTCOM has the benefit of simplicity; (3) there is no evidence that NTRP's individual financial statements already account for a portion of the revalued depreciation expenses; and (4) Interpipe recognized revalued depreciation expenses in multiple years; thus, there is no reason to believe that a snapshot of NTRP's 2018 fixed asset values

[129] *See* Petitioner's Rebuttal Brief at 13-15.

demonstrates that adequate depreciation expenses have already been recognized in NTRP's standalone financial statements.

Commerce's Position:

We have continued to adjust the costs reported by the Interpipe producers, NTRP and Niko Tube, to account for the additional depreciation expenses related to the revaluation of fixed assets that was performed at the consolidated level, but not recognized at the individual producer level. However, as detailed below, we have incorporated certain changes in our adjustment.[130]

In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based a company's normal books and records, if such records are kept in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sale of merchandise. In this case, both Interpipe producers, NTRP and Niko Tube, received qualified opinions on their audited financial statements for failing to determine the fair value of their fixed assets as required by their home country GAAP, *i.e.*, International Financial Reporting Standards (IFRS).[131] For example, the auditor's report regarding NTRP's financial statements provides the following basis for the qualified opinion.

> The Company has not determined the fair value of its fixed assets in accordance with its accounting policies as of 31.12.2018 that is incompliance {sic} with the IFRS requirements. The last revaluation was carried out as of 01.01.2013. In addition, the Company has not applied the testing procedures for detecting the signs of depreciation of the fixed assets as of December 31, 2019, which is a violation of the IFRS requirements. During the audit, we have not received sufficient and adequate audit evidence related to the fair value of the fixed assets and the possible amount of their depreciation as of December 31, 2019. Substantial economic changes that have occurred since that date are the factors of potential material changes in the fair value of property, plant, and equipment. In the absence of ongoing independent evaluation and testing to identify signs of impairment of property, plant and equipment, we were unable to obtain sufficient and appropriate audit evidence regarding the impact of the issue on the Company's fixed assets with a carrying amount of UAH 3,075,457 thousand and UAH 3,446,147 thousand as of 01.01.2019 and 31.12.2019 respectively. In this regard, we were unable to determine what adjustments to {sic} the items included in the Balance sheet (Statement of financial position) as of December 31, 2019, the Income statement (Statement of comprehensive income) and the Statement of owner's equity required capital for the year ended in December 31, 2019.[132]

Interpipe does not dispute that its producers' normal books and records fail to reflect GAAP in this regard. Rather, Interpipe claims that Commerce should not attempt to make the adjustment where the companies' own auditors could not make the adjustment. Contrary to Interpipe's assertions, it is not the auditor's responsibility to compile financial statements. Rather the

[130] *See* Interpipe Final Cost Calculation Memorandum at 1.
[131] *See* AQR at Exhibits A-10-E and A-10-F.
[132] *Id.* at Exhibit A-10-E.

auditor is retained to assess whether there are material misstatements in the financial statements prepared by company management.[133] In fact, this clear delineation between the responsibility of company management and the responsibility of the auditor is a standard feature in every auditor's opinion letter – the "management personnel bear the responsibility for execution and faithful presentation of the financial statements to the International Financial Reporting Standards," while the auditor's "objectives are to obtain the reasonable assurance about whether the financial statements as a whole are free from {a} material misstatement due to either fraud or error, and to issue an Auditor's Report that includes {the auditor's} opinion."[134] Interpipe did not evaluate the fair value of NTRP and Niko Tube's fixed assets as required by GAAP. Thus, in accordance with their responsibilities, NTRP and Niko Tube's auditors determined that such GAAP departures necessitated qualified opinions. We disagree with the premise that the auditor's qualified opinion implies that the auditor was unable to make an adjustment. Rather the auditors were noting that no fixed asset evaluation was performed at December 31, 2019. Therefore, they could not analyze whether depreciation expenses were appropriately reported. Again, the role of the auditor is to ascertain whether the financial statements are free from material misstatements. The auditor does not to compile the financial statements. Further, we do not find that this precludes Commerce from adjusting the respondent's reported costs to correct the underlying basis of the qualified opinion that resulted in a misstatement of reported costs using the information that is available, *i.e.*, the December 31, 2018, revaluation of consolidated fixed assets.

Interpipe next proffers that the depreciation expense adjustment would be inconsistent with Commerce's findings, or rather, lack of findings, in *OCTG from Ukraine*. Specifically, Interpipe argues that Commerce made no mention of adjusting Interpipe's producers' depreciation expenses in the 2014 LTFV investigation of OCTG from Ukraine. While we agree that this depreciation expense issue was not raised in *OCTG from Ukraine*, we find it was unnecessary to contemplate such an adjustment in that case since the previous fixed asset revaluation was performed in 2012 which is contemporaneous with the July 1, 2012, through June 30, 2013, POI in that investigation.[135] Thus, we do not find that *OCTG from Ukraine* suggests a history of Commerce disregarding such adjustments.

Finally, Interpipe contends that following Ukrainian GAAP would result in large swings in the cost of production in subsequent reviews that would, in turn, increase or decrease Interpipe's dumping margin based on geo-strategic events, rather than based on Interpipe's actual pricing and production decisions. We disagree. Similar to our high inflation or alternative cost methodologies, we are merely seeking to place all manufacturing costs on a comparable and meaningful basis.[136] By raising concerns regarding the impact of geo-strategic issues on only its fixed asset values, Interpipe attempts to segregate the costs associated with its fixed assets from all other costs, which logically, would likewise be impacted by the same economic events. Thus, while all other cost and pricing decisions are fluctuating under the current climate, Interpipe

[133] *Id.* at Exhibit A-10-E, Exhibit A-10-F, A-10-B.
[134] *Id.*
[135] *See OCTG from Ukraine.*
[136] *See, e.g., Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying IDM at Comment 6; *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying IDM at Comment 2.

seeks to hold in place the costs associated with its plant, property, and equipment. We do not find that appropriate.

Based on the foregoing discussion, we have continued to adjust Interpipe's reported costs to account for the impact of the fixed asset revaluations that were recognized at the consolidated level but not at the individual producer level. However, in doing so, we have considered Interpipe's comments regarding our calculation methodology and have made certain changes to that methodology. Interpipe contends that Commerce must: (1) account for intercompany transfers in the denominator; (2) allocate total company-specific additional depreciation expenses based on relative CONNUM-specific depreciation expenses; (3) reduce the numerator by the revaluation-related depreciation expenses that were, in fact, already in NTRP's books and records; and (4) recognize that no additional depreciation expenses should be allocated to any of the seamless pipe production assets of NTRP. For the *Preliminary Determination*, we calculated the adjustment by dividing the total revalued depreciation expenses on the consolidated financial statements by the consolidated COGS and then applied the result to the per-unit TOTCOM reported for each CONNUM.[137] For the final determination, we have: (1) revised our calculation to exclude NTRP's depreciation expenses that were recognized in relation to prior fixed asset revaluations (*e.g.*, from 2012); (2) calculated the adjustment as a percentage of consolidated depreciation expenses net of the amount related to fixed asset revaluations that have already been recognized at the standalone financial statement level; and (3) applied the adjustment percentage to the reported FOH cost field which consists solely of depreciation expenses incurred at NTRP and Niko Tube's facilities.[138] Below, we discuss each of Interpipe's requested corrections and our rationale for the changes applied in the final determination.

We disagree that the consolidated COGS denominator should be revised to includeintercompany transfers that are part of the standalone companies' financial statements. There are two parts to Interpipe's argument. First, Interpipe argues that using consolidated COGS incorrectly assumes that Interpipe only sells finished goods and fails to recognize that intermediate products, such as billets, are transferred among Interpipe's companies and would absorb some of the additional depreciation expense. Second, Interpipe argues that the transfer prices charged to NTRP and Niko Tube for billets are higher than the affiliate's cost of producing the billets. Thus, allocating depreciation expenses using consolidated COGS, which reflects actual costs rather than intercompany transfer prices, would result in an artificial inflation of NTRP and Niko Tube's costs.

On the first point, we disagree that intercompany transfers should be included in the denominator. This proposed methodology essentially double counts the costs of all intermediate or finished products that were sold by one consolidated group company to another consolidated group company. For example, in the case of billets, the billet producer recognizes the costs of the billets on its standalone financial statements, while NTRP and Niko Tube, in turn recognize the transfer prices of the billets consumed in production as part of the cost of the finished pipes sold on their standalone financial statements. Thus, including each group company's costs from its individual standalone financial statements would result in double-counting the costs related to inputs obtained from other companies within the consolidated group.

[137] *See* Interpipe Preliminary Cost Calculation Memorandum.
[138] *See* Interpipe Final Cost Calculation Memorandum.

On the second point related to the denominator of the adjustment, Interpipe states that due to the elimination of intercompany transfers, the consolidated COGS denominator reflects the cost of producing the billets, while the reported costs reflect the billet transfer prices paid to the affiliated supplier. According to Interpipe, the billet producer's actual costs were lower than the transfer prices charged to its affiliates, thus, the use of the consolidated COGS in the denominator overstates the depreciation adjustment. We find this argument has merit. Therefore, to eliminate this potential overstatement of costs, we have revised our adjustment to reflect a percentage of consolidated depreciation expense, net of revalued depreciation expense, rather than consolidated COGS. Accordingly, and at the same time resolving Interpipe's third calculation concern, we have applied the revised adjustment percentage to the per-unit depreciation expense (cost field FOH), reported for each CONNUM. In doing so, we have not adjusted the depreciation expenses that are embedded in the transfer prices for the billets supplied by affiliates since, as Interpipe noted, the profit margin in the billet transfer price is more than any proposed adjustment for depreciation expense related to revaluation, *i.e.*, the transfer price is higher than the affiliated producer's COP with the additional depreciation expenses.[139]

Regarding the proposed change to the numerator used in the calculation, we agree with Interpipe. We find that based on a review of the balance sheetin conjunction with the statementof equity capital from NTRP's 2019 audited financial statements, we can identify the current year depreciation expense that is related to the revaluation reserve, *i.e.*, the prior year fixed asset revaluations that were accounted for in NTRP's normal books and records.[140] Therefore, for the final determination we have excluded this amount from the numerator in the adjustment calculation.

Finally, we disagree with Interpipe that the additional depreciation expense from the fixed asset revaluation is unrelated to NTRP's seamless pipe production. As support, Interpipe references a schedule provided in its SDQR. While the schedule summarizes the December 31, 2018, fixed asset revaluation results for NTRP by comparing the company's fixed asset balances in its standalone financial statements to the balances based on the revaluation performed for purposes of the consolidated financial statements, there is no calculation of the impact on the company's depreciation expenses.[141] Furthermore, and most importantly, the schedule shows the impact on three NTRP asset groups – seamless pipe production assets, railway wheels production assets and other production assets.[142] Based on the impact of the revaluation on the uncategorized "other production assets" we continue to find that the net additional depreciation expenses are related to all products produced by NTRP.

[139] *Id.* at Attachment 1.
[140] *See* AQR at Exhibit A-10-E.
[141] *See* SDQR at Exhibit SD-3.
[142] *Id*.

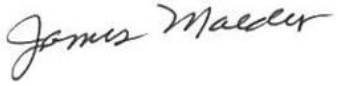
VII. RECOMMENDATION

We recommend approving the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒ ☐

Agree Disagree

6/25/2021

X 

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations