



A-580-909
Investigation
Public Document
E&C/OVI: JAD

June 25, 2021

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

FROM: Dana Mermelstein
Director, Office VI
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 the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) determines that seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from the Republic of Korea (Korea) is being, or is 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). One company, ILJIN Steel Corporation (ILJIN), was individually examined. The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of the comments submitted by the interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Continue to Adjust U.S. Commission Expenses
Comment 2: Whether Commerce Should Revise the Methodology for Warranty Expenses in the U.S. Price Calculations

¹ See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 8887 (February 10, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); see also Memorandum, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Post Preliminary Analysis of Particular Market Situation Allegations,” dated March 25, 2021 (*Post-Preliminary Determination*).



Comment 3: Whether Commerce's Adjustment to ILJIN's Costs of Defective Merchandise is Warranted

Comment 4: Whether Commerce Should Continue to Adjust ILJIN's General and Administrative (G&A) Expenses

II. BACKGROUND

On February 10, 2021, Commerce published the *Preliminary Determination*. In the *Preliminary Determination*, Commerce stated that it intended to issue an analysis and determination of the particular market situation (PMS) allegation in this investigation.² On March 25, 2021, Commerce issued its *Post-Preliminary Determination*, in which it found that record evidence did not demonstrate that a PMS concerning the main input of production (*i.e.*, steel billet) existed during the period of investigation (POI). On April 9, 2021, we issued a verification questionnaire in-lieu-of-onsite-verification to ILJIN.³ We received a timely response to this verification questionnaire on April 19, 2021.⁴

In accordance with 19 CFR 351.309(c), we invited parties to comment on our determinations.⁵ On April 27, 2021, ILJIN submitted a case brief,⁶ and on May 4, 2021, Vallourec Star L.P. (the petitioner) submitted a rebuttal brief.⁷ On May 26, 2021, ILJIN withdrew its March 12, 2021 request for a hearing.⁸ As ILJIN was the only party to request a hearing, no hearing was held.

Based on our analysis of the comments received, we revised the weighted-average dumping margin for ILJIN from that calculated in the *Preliminary Determination*.

III. PERIOD OF INVESTIGATION

The 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.

IV. ADJUSTMENT FOR COUNTERVAILABLE EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export

² See *Preliminary Determination* PDM at 4.

³ See Commerce's Letter, Questionnaire In-Lieu-of-Onsite-Verification, dated April 9, 2021.

⁴ See ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: In Lieu of On-Site Verification Questionnaire Response," dated April 19, 2021.

⁵ See Memorandum, "Less-Than-Fair-Value Investigation of Seamless Pipe from Korea: Briefing Schedule," dated April 20, 2021.

⁶ See ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea – Case Brief," dated April 27, 2021 (ILJIN's Case Brief).

⁷ See Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: Petitioner's Rebuttal Brief," dated May 4, 2021 (Petitioner's Rebuttal Brief).

⁸ See ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Request for Public Hearing," dated March 12, 2021; and ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Withdrawal of Hearing Request," dated May 26, 2021.

subsidies, if any, found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price shall be increased by “the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy.”⁹

Commerce determined in the final determination of the concurrent CVD investigation that ILJIN benefitted from export subsidies.¹⁰ Accordingly, if a CVD order is issued, we find that an export subsidy adjustment of 0.04 percent to the estimated weighted-average dumping margin is warranted to establish ILJIN’s cash deposit rate.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the comments received from parties, we made certain changes to the margin calculations since the *Preliminary Determination*. Specifically, we made the following change:

- Disregarded the adjustment to ILJIN’s costs of defective merchandise related to total cost of manufacturing.

VI. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Continue to Adjust U.S. Commission Expenses

*ILJIN’s Comments*¹¹

- ILJIN reported the actual commission expenses paid to its wholly-owned U.S. subsidiary, ILJIN Steel America, and demonstrated the arm’s-length nature of the commission expenses, based on an analysis of ILJIN Steel America’s profitability.¹²
- Because ILJIN Steel America does not track expenses related specifically to its commission agent activities, ILJIN calculated an estimate of ILJIN Steel America’s actual per-unit expenses.¹³
- In the *Preliminary Determination*, Commerce deducted the estimated commission expenses, inclusive of the professional fees. ILJIN maintains that Commerce should use the actual commission expenses paid to ILJIN Steel America, which were at arm’s length.¹⁴
- Further, Commerce treated “professional fees” as commission expenses. If Commerce chooses to use estimated per-unit expenses, Commerce should reverse the increase of

⁹ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁰ See unpublished *Federal Register* notice titled “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination,” dated concurrently with this notice, and accompanying IDM.

¹¹ See ILJIN’s Case Brief at 3-4.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

commission-related expenses, because the professional fees do not relate to ILJIN Steel America's selling agent activities.¹⁵

*Petitioner's Comments*¹⁶

- Commerce specifically instructed ILJIN not to report commissions paid to affiliated selling agents unless there was a compelling reason that ILJIN was unable to report an affiliated agent's actual expenses.¹⁷
- Furthermore, Commerce instructed that if ILJIN reported any commission payments to an affiliated selling agent in lieu of actual expenses, it must provide an explanation of why it was unable to report those actual expenses, consistent with Commerce's long-established practice, as upheld by the courts.¹⁸
- After ILJIN stated it was unable to report actual expenses, Commerce instructed ILJIN to report ILJIN Steel America's actual expenses. ILJIN reported that it had estimated ILJIN Steel America's actual expenses, exclusive of certain "professional fees."¹⁹
- Commerce should continue to make its adjustment, because ILJIN failed to demonstrate that its commissions were at arm's length because ILJIN, instead, provided a "profitability analysis" based on ILJIN Steel America's audited financial statements.²⁰
- The fact that ILJIN Steel America may have been profitable on an overall basis does not mean that it earned a profit on its individual commission sales. Further, an affiliated selling agent earning a profit on a commissioned sale does not mean the charged fee is at arm's length.²¹ Commerce has rejected the use of profitability analyses as a method of determining that transactions are at arm's length.²²
- Regarding Commerce's treatment of professional fees as commission expenses, ILJIN provided no description of the fees involved.²³ The burden of establishing whether a particular adjustment is appropriate rests with the respondent.²⁴ Therefore, Commerce should continue to include the professional fees in the final determination.²⁵

Commerce's Position: ILJIN asserts that Commerce should deduct the actual commission fees that ILJIN paid to its U.S. affiliate, ILJIN Steel America, because these fees are at arm's length.²⁶ Alternatively, ILJIN argues that if Commerce chooses to use the estimated per-unit

¹⁵ *Id.*

¹⁶ See Petitioner's Rebuttal Brief at 1-4.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 3-4 (citing *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 51375, 51377 (October 9, 2001) unchanged in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review*, 67 FR 2192 (January 16, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24349 (May 6, 1999)).

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See ILJIN's Case Brief at 3.

expenses, Commerce should not include the professional fees, because these fees do not relate to ILJIN Steel America's selling agent activities.²⁷ We disagree with ILJIN. As discussed below, ILJIN has not established that the commission fees were at arm's length in the manner instructed by Commerce and has not demonstrated that the professional fees incurred by ILJIN Steel America should not be included in the calculation of the commission expenses.

A respondent bears the burden to build the record by reporting accurate and complete responses to Commerce's initial and supplemental questionnaires.²⁸ Further, as the petitioner noted, a respondent also bears the burden of establishing that a particular adjustment is appropriate.²⁹ For commission adjustments, Commerce instructs that if a respondent reports any commission payment to an affiliated selling agent instead of the agent's actual expenses, the respondent must "provide an explanation of why {the respondent} is unable to report those actual expenses."³⁰ Commerce also instructs respondents to indicate whether the commissions it paid to an affiliated party were arm's length "by reference to payments to unaffiliated parties in the United States, the foreign market, and other markets" and to submit evidence demonstrating the arm's-length nature of the commissions.³¹

ILJIN initially reported commission expenses paid to ILJIN Steel America and alleged that the expenses were arm's length in nature, based on an analysis of ILJIN Steel America's profitability.³² However, ILJIN failed to demonstrate that its commission payments were at arm's length in accordance with our instructions (*i.e.*, by reference to payments to unaffiliated parties in the United States, the home market, and other markets). Commerce has rejected the use of profitability analyses, whether conducted on the basis of individual sales or of the overall profitability of an affiliated company, as a method of determining whether or not transactions are at arm's length.³³ In *Hot-Rolled Steel from Japan*, for example, Commerce rejected a comparative return on asset analysis as a demonstration that transactions between affiliates occurred at market prices.³⁴ As the petitioner noted, the fact that ILJIN Steel America is profitable overall, and may have earned a profit on commissioned sales, does not demonstrate that the commission fee charged was at arm's length.³⁵

²⁷ *Id.* at 4.

²⁸ See *Fujian Lianfu Forestry Co. Ltd. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) ("A respondent has a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.") (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001)).

²⁹ See 19 CFR 351.401(b)(1) ("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.").

³⁰ See Commerce's Letter, Initial AD Questionnaire, dated August 14, 2020 at Field C.39.

³¹ *Id.*

³² See ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Section B and C Questionnaire Response," dated October 16, 2020 at C-37 and Exhibit C-16; and ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Questionnaire Response," dated October 29, 2020 at S-16 to S-17 and Exhibit S-3.

³³ See, *e.g.*, *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 51375, 51377 (October 9, 2001) unchanged in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review*, 67 FR 2192 (January 16, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24349 (May 6, 1999) (*Hot-Rolled Steel from Japan*).

³⁴ See, generally, *Hot-Rolled Steel from Japan*.

³⁵ See Petitioner's Rebuttal Brief at 3.

In its response, ILJIN also stated it “cannot report its actual expenses because they consist of the salaries for ILJIN Steel America’s salespersons, in addition to company-wide expenses that support these salespersons.”³⁶ After Commerce requested ILJIN to report actual expenses incurred in the selling of subject merchandise, ILJIN stated it had estimated the actual expenses to ILJIN Steel America.³⁷ However, ILJIN had excluded certain “professional fees” incurred by ILJIN Steel America.³⁸ ILJIN did not provide a description of the excluded “professional fees,” of what they involved, or why they should not be included in ILJIN Steel America’s commission expenses.³⁹ As noted above, the burden of establishing that a particular adjustment is appropriate rests with the respondent.⁴⁰ In this case, ILJIN has not met this burden.

Thus, as a result of ILJIN’s failure to establish that the commission fees were at arm’s length in the manner instructed by Commerce and its failure to demonstrate that the “professional fees” should not be included in the estimate of ILJIN Steel America’s expenses, Commerce continues to deduct the commission expenses, inclusive of the professional fees, for this final determination.

Comment 2: Whether Commerce Should Revise the Methodology for Warranty Expenses in the U.S. Price Calculations

*ILJIN’s Comments*⁴¹

- ILJIN reported that it did not incur any direct U.S. warranty expenses during the POI.⁴² Subsequently, ILJIN clarified that while no warranty expenses were incurred during the POI relating to U.S. sales of subject merchandise, ILJIN did incur small amounts of claim expenses during the most recent three fiscal years relating to U.S. sales of subject merchandise.⁴³
- In the *Preliminary Determination*, Commerce deducted the “historical” warranty expense amount in the net U.S. price calculation. Commerce should reverse this adjustment.⁴⁴
- Commerce will resort to a company’s three-year warranty expenses where the expenses incurred in the period examined is not typical of the expenses normally incurred.⁴⁵

³⁶ See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Questionnaire Response,” dated October 29, 2020 at S-17.

³⁷ See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Sections B-D Questionnaire Response,” dated December 14, 2020 at S2-4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 19 CFR 351.401(b)(1).

⁴¹ See ILJIN’s Case Brief at 4-6.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*; see also, e.g., *Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006), and accompanying IDM at Comment 1; *Stainless Steel Plate in Coils from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 66 FR 64017 (December 11, 2001), and accompanying IDM at Comment 7; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM at Comment 22.

- The reported amounts are minuscule, but 2018 involved atypically high claim expenses. The warranty expenses incurred in 2018, thus, were not representative of the company's historical experience.⁴⁶
- Under normal circumstances, ILJIN would expect to incur no warranty expenses. Therefore, Commerce should reverse its preliminary adjustment to deduct warranty expenses in the net U.S. price calculation.⁴⁷

*Petitioner's Comments*⁴⁸

- Commerce should reject ILJIN's argument that Commerce should revise warranty expenses because these expenses are somehow not reflective of the company's historical experience.⁴⁹
- After Commerce asked ILJIN where it records warranty expenses, ILJIN discovered a small amount of claim expenses during the most recent three fiscal years.⁵⁰
- Commerce has recognized that "the nature of a warranty expense is that it is unknown and unforeseeable at the time of sale." Thus, in evaluating a respondent's reported warranty expenses, Commerce "relies on foreseeable expenses that can be reasonably anticipated based on the historical experience of a company."⁵¹
- Commerce will use warranty expenses during a single period of review or investigation only if the expenses are representative of the company's historical experience.⁵²
- When a single period of review or investigation is not reflective of the company's historical experience, Commerce will use the respondent's three-year average of warranty expenses instead.⁵³
- There is no reason to believe that 2017 and 2019 were not abnormally low compared to 2018, which may be more typical of ILJIN's warranty experience.⁵⁴
- The fact that ILJIN had no warranty claims for its sales during the POI does not mean that it will not incur warranty claims on those sales in the future. As such, relying on a company's historical experience in these circumstances is more appropriate.⁵⁵
- Thus, Commerce should continue to use ILJIN's three-year average of warranty expenses, because it would be consistent with Commerce's established practice and would most accurately reflect ILJIN's historical experience of warranty expenses for sales of subject merchandise.⁵⁶

Commerce's Position: Commerce continues to find that the use of ILJIN's three-year historical experience of warranty expenses for U.S. sales is the best estimate of ILJIN's U.S. warranty

⁴⁶ *Id.* at 4.

⁴⁷ *Id.*

⁴⁸ See Petitioner's Rebuttal Brief 4-7.

⁴⁹ *Id.* at 5.

⁵⁰ *Id.*

⁵¹ *Id.*; see also *Honey from Argentina*.

⁵² *Id.* at 6.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 7.

⁵⁶ *Id.*

expenses. This finding is consistent with Commerce’s practice and most accurately reflects the U.S. warranty expenses incurred by ILJIN.

As noted above, Commerce has recognized that the nature of warranty expenses is that such expenses are unknown and unforeseeable at the time of a sale.⁵⁷ Further, Commerce “relies on foreseeable expenses that can be reasonably anticipated based on the historical experience of a company” when analyzing a respondent’s reported warranty expenses.⁵⁸ Commerce will use the warranty expenses incurred during the POI only if those expenses are representative of the respondent’s historical experience.⁵⁹ In cases where a respondent’s reported warranty expenses for the POI are not reflective of the respondent’s historical experience, Commerce will use the respondent’s three-year average of warranty expenses, instead.⁶⁰

In this instance, ILJIN’s three-year warranty average is more representative of its historical experience. ILJIN incurred warranty expenses in the three years prior to the POI, after initially reporting that it had not incurred any warranty expenses.⁶¹ Further, although ILJIN incurred higher warranty expenses in 2018 compared to 2017 and 2019, there is no indication that 2018 expenses were abnormally high, especially when all reported expenses are minuscule, as ILJIN concedes.⁶² Additionally, the fact that ILJIN had no warranty claims during the POI does not mean it will not incur warranty claims on those sales at some point in the future; this possibility is demonstrated by the fact that ILJIN has incurred warranty expenses in each of the three years prior to the POI. As Commerce has recognized, the nature of warranty expenses is that such expenses are unknown and unforeseeable at the time of a sale.⁶³ Therefore, the three-year average best represents ILJIN’s historical experience with respect to warranty expenses.

As a result, Commerce continues to apply ILJIN’s historical experience of warranty expenses as the best estimate of its U.S. warranty expenses because it is consistent with Commerce’s established practice and most accurately reflects ILJIN’s warranty expenses for sales of subject merchandise during the POI.

Comment 3: Whether Commerce’s Adjustment to ILJIN’s Costs of Defective Merchandise is Warranted

*ILJIN’s Comments*⁶⁴

- Commerce should not increase ILJIN’s reported costs to recover cost related to the sales of defective pipe.⁶⁵
- The adjustment for defective pipes overlooks the fact that defective pipe is not considered

⁵⁷ See *Honey from Argentina*.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See ILJIN’s Case Brief at 6.

⁶² See ILJIN’s Case Brief at 4.

⁶³ See *Honey from Argentina*.

⁶⁴ See ILJIN’s Case Brief at 7-8.

⁶⁵ *Id.*

merchandise under consideration in the normal course of business.⁶⁶

- Commerce should reduce ILJIN's total cost of manufacturing, similar to a scrap offset, due to the defective pipe being more similar to scrap.⁶⁷
- ILJIN classifies sales related to defective pipes as "other sales" in its records, rather than as finished goods sales. ILJIN also transfers costs related to defective pipes to an inventory ledger separate from finished goods, which includes no information on item codes.⁶⁸
- Defective pipes are not considered merchandise under consideration because the pipes contain no markings identifying specification, size, or outside diameter.⁶⁹

*Petitioner's Comments*⁷⁰

- Commerce should continue to make the same adjustment to recover the costs related to the sales of defective pipes for the final determination.⁷¹
- ILJIN acknowledges that all costs incurred from the raw material input stage to the process where the defect is discovered are allocated to defective pipe.⁷²
- ILJIN sold defective pipe for substantial losses, but did not report any of the cost associated with defective pipes in its cost database.⁷³
- The defective products do not remain in the scope of this proceeding, because they do not meet any of the specifications established by Commerce in the scope of the investigation.⁷⁴
- There is no evidence that defective pipe products are used in the same application as prime pipe. ILJIN Steel's customers use defective pipes as supports or parts at construction sites, or for piping by cutting off parts of the pipes, and are sold at a loss.⁷⁵
- In the past, Commerce has increased the cost of a respondent's prime merchandise by the difference between the cost allocated to the non-prime and defective merchandise and the non-prime and defective sales revenue.⁷⁶
- With respect to assigning cost to non-prime or defective products, it is Commerce's practice to analyze the products on a case-by-case basis to determine how the product is recorded in a respondent's normal books and records, whether the products remain in scope, and if they are

⁶⁶ *Id* at 7.

⁶⁷ *Id.*

⁶⁸ *Id* at 8.

⁶⁹ *Id* at 7 and ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Second Supplemental Section D Questionnaire Response," dated January 7, 2021 (ILJIN's Supplemental Questionnaire Response) at S3-6.

⁷⁰ See Petitioner's Rebuttal Brief at 7-10.

⁷¹ *Id.*

⁷² *Id* at 7.

⁷³ *Id* at 8 and ILJIN's Supplemental Questionnaire Response at S3-6 and S3-8.

⁷⁴ *Id* at 9 and ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Sections B and C Questionnaire Response," dated October 19, 2020 at B-11.

⁷⁵ See ILJIN Case Brief at 8; and ILJIN's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Sections B-D Questionnaire Response," dated December 14, 2020 at S2-20.

⁷⁶ See Petitioner's Rebuttal Brief at 7-10 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014), and accompanying PDM at 21, unchanged in *Certain Oil Country Tubular Goods Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM).

used in the same application as prime merchandise under consideration.⁷⁷

Commerce's Position: We agree with ILJIN Steel that no cost adjustment is warranted for defective pipes. Commerce's practice with respect to non-prime products has been to analyze the products sold as non-prime on a case-by-case basis to determine how such products are treated in the respondent's normal books and records,⁷⁸ and to consider their ability to be used in applications similar to prime products. However, in light of the recent decision by the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Dillinger* concerning *CTL Plate from France*, we are reconsidering the treatment of sales labeled as non-prime sales.⁷⁹ The CAFC in *Dillinger* explained that Commerce should rely on a producer or exporter's books and records if they are in accordance with generally accepted accounting principles (GAAP) and reasonably reflect the actual costs of production pursuant to section 773(f)(1)(A) of the Act.⁸⁰ In this case, ILJIN Steel maintains its financial records in accordance with the GAAP of the Korea. ILJIN also assigns the actual cost of production to the products identified as "non-prime" product sales in its normal books and records and, therefore, such costs may be relied upon under section 773(f)(1)(A).⁸¹ Further, because the products are not reportable scope products and the sales were not reported for these products, there is no need to include them in the cost file. Therefore, the cost incurred for defective pipes, net of sales revenue of defective pipes, should not be considered as cost for production of prime pipe in this investigation. Thus, we have reversed the adjustment we made at the preliminary determination.⁸²

Comment 4: Whether Commerce Should Continue to Adjust ILJIN's G&A Expenses

*ILJIN's Comments*⁸³

- Commerce did not provide any explanation as to why it made certain adjustments to ILJIN's G&A expense ratio for the *Preliminary Determination*.⁸⁴
- The payments were miscellaneous gains in the form of an offset from general operations of the company during the POI.⁸⁵
- The payments were not related to research and development (R&D) but, rather, an accounting reversal for prior period fees which does not relate to ILJIN's operations during

⁷⁷ See Petitioner's Rebuttal Brief at 8.

⁷⁸ See, e.g., *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020), and accompanying IDM at Comment 5; *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017), and accompanying IDM at Comment 3; and *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 9.

⁷⁹ See *Dillinger France S.A. v. United States*, 981 F.3d 1318 (Fed. Cir. 2020) (*Dillinger*); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017), and accompanying IDM at Comment 11 (*CTL Plate from France*).

⁸⁰ See *Dillinger*, 981 F.3d at 1322-23.

⁸¹ *Id.* at D-19.

⁸² See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – ILJIN Steel," dated concurrently with this memorandum.

⁸³ See ILJIN Steel's Case Brief at 8-9.

⁸⁴ *Id.*

⁸⁵ *Id.* at 9.

the POI.⁸⁶

- Commerce did not ask any follow up questions about the items it included in the G&A expense ratio and nothing on the record justifies the inclusion of the items in the ratio calculation.⁸⁷

*Petitioner's Comments*⁸⁸

- Commerce should continue with the revision to ILJIN's reported G&A expense ratio to exclude the offsets claimed by ILJIN for payment and reversal of previous period certain expenses.⁸⁹
- The payments are properly classified as part of sales revenue and should not be treated as an offset to ILJIN's G&A expenses.⁹⁰
- ILJIN admits that the royalty expense offset with regard to R&D expenses does not relate to expenditures for the current period but, rather, was an accounting reversal for prior period fees. Since the reversal had nothing to do with operations, Commerce should not allow the offset.⁹¹
- Commerce's established practice is to exclude from G&A items such as reversals that relate to expenses incurred in a prior time period.⁹²#

Commerce's Position: As we did in the *Preliminary Determination*, we have continued to exclude offsets related to customer payment and R&D expenses for this final determination. In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole.⁹³ Customer-related payments are generally considered a function of the selling activity of a company and not part of the general operations or G&A expenses of a company which provide a supportive role to a company's selling activities.

Further, Commerce's established practice in calculating the G&A expense rate is not to include income items that are associated with provisions from prior years as offsets to G&A expenses.⁹⁴ By ILJIN's own admission, the R&D items in question were not associated with expenditures for the current period, but were an accounting reversal for prior period fees.⁹⁵ Therefore, consistent with Commerce's practice regarding offsets to G&A expenses which relate to losses incurred and expensed prior to the POI, we have continued to disallow ILJIN's claimed offset for reversal of R&D related provisional expenses from prior years.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Petitioner's Rebuttal Brief at 10-11.

⁸⁹ *Id.*

⁹⁰ *Id.* at 11.

⁹¹ See Respondent's Case Brief at 9.

⁹² See Petitioner's Rebuttal Brief at ii.

⁹³ See *Hot-Rolled Steel from Japan*.

⁹⁴ *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017), and accompanying IDM at Comment 3.

⁹⁵ See ILJIN Steel's Case Brief at 9.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the *Federal Register* and inform the International Trade Commission of our determination.

☒

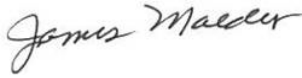
☐

Agree

Disagree

6/25/2021

X



Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations