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Investigation
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DATE: July 10, 2014

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

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

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

I. SUMMARY

In this final determination, the Department of Commerce (Department) finds that certain oil country tubular goods (OCTG) from the Republic of the Philippines (the Philippines) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the respondent in this case, HLD Clark Steel Pipe Co., Inc. (HLD Clark). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum.

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

1. Steel Grade Product Characteristic
2. Differential Pricing Analysis
3. Calculation of Short Term Borrowing Rate



II. BACKGROUND

On February 25, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of OCTG from the Philippines.¹ The Department conducted verifications of HLD Clark from March 24, 2014 to March 28, 2014, and from March 31, 2014, through April 3, 2014. On March 27, 2014, HLD Clark requested that the Department conduct a hearing in this investigation, which the Department conducted on June 2, 2014.²

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from the petitioners³ and HLD Clark in May 2014. Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, we changed the weighted-average margins from those presented in the *Preliminary Determination*.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁴ Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day. Thus, the revised deadline for the final determination in this investigation is July 10, 2014.

III. CRITICAL CIRCUMSTANCES

The Department preliminarily found,⁵ and continues to find, that critical circumstances do not exist for imports of OCTG from the Philippines. For the final determination we continue to find that there is no history of injurious dumping of OCTG from the Philippines pursuant to section 735(a)(3)(A) of the Act. Further, the final dumping margin of 9.88 percent that we calculated for HLD Clark, the only mandatory respondent in this investigation, does not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for export price sales). Therefore, we determine that there is no sufficient basis to find that importers should have known that the exporters were selling the merchandise under consideration at LTFV. Further, in the final determination we continue to apply the rate we calculated for HLD Clark to all other companies. Therefore, the record does not support imputing importer knowledge of sales at LTFV to imports of these exporters as well. Because the statutory criteria of section 735(a)(3)(A) of the Act have not been satisfied, we did not examine whether imports from HLD Clark or from all other companies were massive over a relatively short period pursuant to section 735(a)(3)(B) of the Act. Accordingly, we continue to find that the statutory criteria necessary for determining affirmative critical circumstances have not been met and, therefore, we determine that critical circumstances do not exist for imports of OCTG from the Philippines.

¹ See *Certain Oil Country Tubular Goods From the Republic of the Philippines: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 10491 (February 25, 2014) (*Preliminary Determination*).

² See hearing transcript, filed on the record June 12, 2014.

³ Boomerang Tube; Energex Tube, a division of JMC Steel Group; Northwest Pipe Company; Tejas Tubular Products; TMK IPSCO; Vallourec Star, L.P.; and Welded Tube USA Inc. (collectively, the petitioners).

⁴ See Memorandum for the Record, "Deadlines Affected by the Shutdown of the Federal Government," October 18, 2013.

⁵ See *Preliminary Determination*, 79 FR at 10492.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

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

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

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

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

V. MARGIN CALCULATIONS

We calculated export price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

We recalculated credit expenses for comparison market and U.S. sales to capture all HLD Clark's short term loans, the maturity for which overlapped the POI. We also recalculated direct material costs, scrap offset, general and administrative expenses, and financial expenses.

VI. DISCUSSION OF THE ISSUES

Steel Grade Product Characteristic

Comment 1: HLD Clark asserts that the Department, in identifying what OCTG constitute unique products, must recognize that OCTG made from what HLD Clark alleges are different grades of hot-rolled steel coil (HRC) are appropriately assigned respective unique control numbers (CONNUMs) based on 1) different physical characteristics of HRC grades and OCTG made from it, 2) different costs for HRC grades, and 3) different customer expectations for and requirements of OCTG made from different grades of HRC. Echoing the comments it made in its November 25, 2014, and January 28, 2014, filings (objecting to the Department's instructions to remove the distinction in HLD Clark's initial construct of CONNUMs reflecting separate grade designations for HRC), HLD Clark contends that it merely followed the instructions in the antidumping questionnaire in designating the grade product characteristic for reporting cost and sales data for OCTG.

Specifically, HLD Clark argues that a distinction is warranted between the grades designated by American Petroleum Institute (API) specification 5CT (9th Edition, June 2011) (hereinafter, API 5CT) and the API 5CT grades that also meet the supplementary requirements established by Energy Resources Conservation Board (ERCB), an agency in Alberta, Canada, under Directive 010 (June 2008) (hereinafter, ERCB Directive 010). HLD Clark argues that it explained in its original questionnaire response that for its sales to Canada, HLD Clark is required to comply with ERCB Directive 010, which provides for additional requirements not present in API 5CT. HLD Clark attests the ERCB's determination that API 5CT specifications cannot pass consistently sulfide stress cracking testing due to manufacturing differences and, in order to address this issue, ERCB implemented upgraded design factors and material specifications. Most notably, maximum amounts of phosphorus and sulfur that can be present in steel grades made to API 5CT under ERCB Directive 010 are considerably lower than in steel grades made to API 5CT, and the Charpy V-Notch test for toughness is required for steel grades made to API 5CT under ERCB Directive 010, whereas such testing is not required for steel grades made to API 5CT. HLD Clark asserts that the Department scrutinized mill certificates at the sales verification and verified these physical differences - all of the mill certificates associated with sales of OCTG to Canada included a test for toughness and did not exceed the maximum phosphorus and sulfur limits, whereas the mill certificates for sales to the United States did not necessarily indicate the toughness test. Similarly, argues HLD Clark, the apparent differences in steel properties of HRC for OCTG conforming to ERCB Directive 010 are certified by HLD Clark's suppliers as having passed impact toughness testing before it is sold to HLD Clark for the production of OCTG for sale to the Canadian market; the HRC sold to HLD Clark for the production of OCTG for sale to the U.S. market have no such requirement. HLD Clark contends that the Department scrutinized mill certificates for J55 and J55-D10 coil at the cost verification. Further, to underscore that J55 and J55-D10 coils are not interchangeable in the production of OCTG for the U.S. and Canadian markets, HLD Clark argues that that Department verified that J55-D10 coil is stored separately from J55 coil. HLD Clark argues that grades of steel that cannot pass a stress test for use in the specific climate conditions of Canada, proving worthless for the intended application, versus steel grades that can, is a meaningful distinction that provides

for a difference sufficient to establish distinct grades. HLD Clark contends that OCTG sold to the United States without ERCB Directive 010 requirements could not be sold into Canada.

HLD Clark asserts that the significance of distinction between the API 5CT and API 5CT-ERCB Directive 010 grades is also manifested in HLD Clark's obligation to list API 5CT-ERCB Directive 010 grades (i.e., "D10") in all sales documents for sales made to Canada, which is reflective of different market expectations for customers in Canada. HLD Clark argues that, in contrast, "D10" is not found in any of the commercial documents for the U.S. sales traces that the Department examined at verification. Accordingly, argues HLD Clark, the record is unequivocal that there is an expectation of Canadian customers that OCTG will meet ERCB Directive D 010 standards and there is no such expectation or requirement in the U.S. market. Citing *Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297 (CIT 2014), HLD Clark argues that the Department must recognize, in its product matching criteria, physical differences or requirements that have commercial significance in the marketplace. HLD Clark argues that a requirement for compliance under ERCB Directive 010 that exists in the Canadian market but not in the United States is commercially significant.

In addition, HLD Clark asserts that it demonstrated that it distinguishes between the two grades of HRC that it purchases for the production of OCTG intended for sales to the United States (designated as grade "J55") and to Canada (designated as grade "J55-D10"). HLD Clark asserts that its analysis of the monthly contemporaneous purchases of J55 and J55-D10 HRC reveals that the purchase costs for J55-D10 HRC are significantly and consistently higher than the purchase costs for J55 HRC during the POI. HLD Clark argues that this cost difference is taken into account in the determination of the selling pricing in the normal course of business; and thus this cost difference definitely warrants the assignment of different control numbers for OCTG incorporating these respective grades of HRC and a difference in merchandise adjustment ("difmer adjustment") when comparing similar products. To this end, HLD Clark contends that the Department cannot ignore the cost-difference factor because it informs the decision of whether differences in physical characteristics are commercially significant.

HLD Clark points to various model match comments submitted by interested parties in this investigation, which HLD Clark asserts resulted in the Department determining not to replace the suggested characteristic for "grade" with "PSI," or adding an additional grade variable, "API/Non-API," in favor of requiring respondents to simply report API grades with the opportunity to report separate codes for non-API grades. HLD Clark contends that it availed itself of the opportunity to demonstrate the distinction between steel grades J55 and J55-D10, prompting its assignment of separate CONNUMs for OCTG incorporating these respective HRC grades. HLD Clark argues that the physical characteristics that distinguish J55 and J55-D10 are elements of "grade" and requests only that the Department apply correctly the model matching criteria that it established.

HLD Clark argues that the Department is normally resolute in demanding from respondents exact steel grade specifications as product characteristics to include in the CONNUM construction. Moreover, argues HLD Clark, in non-market economy (NME) cases where the Department often uses import statistics to determine normal value for the NME respondent, the Department is particularly concerned with the specificity of the tariff definition regarding the

steel's type, grade, and finish.⁶ In these cases, HLD Clark asserts, fine distinctions between the carbon content of steels even within grades or of different finishes were enough to drive the comparison market selection by the Department. HLD Clark argues that the Department's decision to collapse different steel grades into the same CONNUM yields an incorrect and unreasonable comparison, i.e., treats the significantly different products as identical in the calculation of the antidumping duty margin. Citing *Shakeproof Assembly Components Division Of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (quoting *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed.Cir. 1994)), HLD Clark argues that recognizing real differences in the physical characteristics that also impact cost will lead to more accurate margins, whereas collapsing these differences will mask them and lead to cruder less accurate margin calculations. Accordingly, HLD Clark renews its request for the Department to acknowledge that the specifications of OCTG made to ERCB D010 supplemental requirements are distinct from OCTG made slowly to API 5 CT specifications and accept HLD Clark's original CONNUM construction.

In refuting HLD Clark's claim that H40-D10 and J55-D10 deserve CONNUM segregation from grades H40 and J55, respectively, on the basis of cost differences, the petitioners cite the Department's rationale in the *Preliminary Determination* explaining why the difference in cost is not the primary factor in establishing product characteristics. Petitioners argue that nothing during the verification of HLD Clark provided evidence warranting the Department's departure from its decision to make no distinction between grades H40 and H40-D10 and between J55 and J55-D10 in the Preliminary Determination. The petitioners assert that a comparison of mill certificates for HRC that the Department obtained at cost verification reveals that J55 HRC and J55-D10 HRC were both made from alloy steel and that all of the chemical elements as well as yield and tensile strengths listed for J55 HRC products are in the same range as those listed for J55-D10 HRC products for all mill certificates available on the record. On the basis of their analysis of mill certificates, the petitioners contend that there is no reason to have different CONNUM designations advocated by HLD Clark because the record shows no difference in HRC that HLD Clark designates as J55 and J55-D10.

Relying on the mill certificates for OCTG that the Department obtained at sales verification, the petitioners present an analysis comparing the average sulfur and phosphorus content for OCTG sold to Canada and to the United States. The petitioners assert that this analysis contradicts HLD Clark's claim that OCTG made to API 5CT ERCB Directive 10 requirements show lower maximum content for these impurities. Further, the petitioners refute HLD Clark's claim that OCTG made for the U.S. market do not undergo impact tests, as certain mill certificates on the record indicates otherwise. In conclusion, the petitioners assert that HLD Clark completely failed to demonstrate that there is any significant difference between the OCTG sold in the United States and the OCTG sold in Canada.

⁶ HLD Clark cites *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying Issues and Decision Memorandum at Comment 2, *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review*, 2011 - 2012, 78 FR 66330 (November 5, 2013) and accompanying Issues and Decision Memorandum at Comment 1, and *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and New Shipper Review*, 2011-2012, 78 FR 70271 (November 25, 2013) and accompanying Issues and Decision Memorandum at Comment 18.

Department's Position: We do not find HLD Clark's arguments persuasive and/or supported by record evidence. We find that the record evidence does not establish differences in physical characteristics between the OCTG sold in the United States and Canada sufficient to determine that grades, H40-D10 and J55-D10, are distinct and separate from H40 and J55, respectively.

The Alberta's ERCB Directive 010 narrates:

This revised edition of ERCB *Directive 010* (formerly *Guide 10*) was developed with input from a technical subcommittee of the Drilling and Completions Committee (DACC) and the ERCB, which reviewed various technical documents containing information on casing design for sweet, sour, and critical sour wells in the Western Canadian Sedimentary Basin (WCSB).

The technical review committee noted that conventional American Petroleum Institute (API) materials made to API Specification 5CT specifications cannot *consistently* pass National Association of Corrosion Engineers (NACE) TMO177 sulfide stress cracking (SSC) testing due to manufacturing differences. To address this issue, upgraded design factors and material specifications have been implemented that incorporate the criteria from NACE MR0175/International Association for Standardization (ISO) 15156 (see Appendix A for all references) (emphasis added).

Licensees must ensure the suitability of casing...for each specific application for the life of the well...Unless otherwise specified, any reference to casing includes the casing pipe body and the couplings. Anticipated current and future environments must be considered when selecting casing for use in wells that may encounter hydrogen sulfide (H₂S), or carbon dioxide (CO₂) with H₂S.⁷

The statements in ERCB Directive 010 make it clear that its supplementary requirements focus on OCTG casing with applications considered in sour well environments. The ERCB Directive 010 merely insures that OCTG made to API 5 CT specifications will consistently pass the sulfide stress cracking testing.

The specifications in API 5CT segregate OCTG grades into four groups, with grades H40 and J55 falling into the first group, being the lowest grades of OCTG. The API 5 CT distinguishes grades of OCTG on the basis of manufacturing process (*i.e.*, seamless or electro welded), heat treatment type, minimum tempering temperature, chemical composition, yield strength, tensile strength, hardness, minimum percentage elongation, absorbed energy requirements, *etc.*⁸ Most notably, the applicable API criteria for distinguishing OCTG grades in the first group, grades H40, J55, K55, and N80 (with the exception of the higher-quality grade R95 in that group) are heat treatment type, if applicable, yield strength, tensile strength, and minimum percentage elongation.⁹

⁷ See HLD Clark's September 18, 2013, Section A response at Exhibit A-11, pages 2 and 4.

⁸ *Id.*, at Exhibit A-10 (API 5CT tables C.3 through C-6 and C-16 through C-19).

⁹ *Id.*, at Exhibit A-10 (API 5CT tables C.3 through C-6).

With respect to heat treatment, HLD Clark reported the same heat treatment type for all its sales of OCTG to the United States and Canada.¹⁰ With respect to the mechanical properties of OCTG sold to Canada, we examined all mill certificates available on the record pertaining to sales of casing.¹¹ We found that on average (*i.e.*, across all heats of OCTG and across all products examined), the yield strength was within the range for this parameter established by API 5CT for grade J55; the minimum tensile strength was higher than the minimum tensile strength established by API 5CT for J55 and did not breach the next highest minimum tensile strength established by API 5CT for K55, the next higher grade of OCTG.¹² As such, concerning mechanical properties, we found nothing that distinguishes OCTG casing destined for Canada, *i.e.*, J55-D10, from grade J55 on the basis of API 5CT established grade demarcations.

We also observed that not all OCTG casing destined for Canada were impact tested.¹³ We then compared the average chemical content for phosphorus and sulfur between OCTG casing destined for Canada and the United States.¹⁴ We found that the weight percentages for these elements were nearly identical; the OCTG casing destined for the United States had phosphorus and sulfur maximum content sufficiently low to meet the requirements for these elements established in ERCB Directive 010.¹⁵

We also compared the average values for mechanical properties, yield strength, tensile strength, and minimum elongation percentages, between OCTG casing destined for Canada and the United States, and found that they were similar; we also observed that certain OCTG casing destined for the United States were impact tested.¹⁶ Moreover, we examined the mill certificates for J55 HRC and J55-D10 HRC and confirmed the petitioners' assertion that all of the chemical elements, with the exception of sulfur, as well as the yield and tensile strengths listed for J55 HRC products are in the same range as those listed for J55-D10 HRC products for all mill certificates available on the record.¹⁷ With respect to sulfur, although we observed that J55-D10 HRC displayed a lower content than J55 HRC, the weight percentage of sulfur for J55 HRC was sufficiently low to meet the maximum content weight requirement established in ERCB Directive 010.¹⁸

¹⁰ See HLD Clark's October 28, 2013, Sections B-D response.

¹¹ See HLD Clark's April 9, 2014, submission of sales verification exhibits, Exhibits SVE 13, SVE 14, SVE 15, and SVE 16 (all sales of J55 grade to Canada).

¹² Because our analysis involves the extensive use of business proprietary information, *see* memorandum to file, "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines - Analysis Memorandum for HLD Clark Steel Pipe Co., Inc." dated concurrently with this memorandum (Final Analysis Memo), at Attachment I.

¹³ *Id.*

¹⁴ See HLD Clark's April 9, 2014, submission of sales verification exhibits (compare mill certificates in Exhibits SVE 13, SVE 14, SVE 15, and SVE 16 for sales of J55-D10 grade casing to Canada with mill certificates in Exhibits SVE 9 and SVE 12 for sales of J55 grade casing to the United States); *see also* Final Analysis Memo at Attachment I.

¹⁵ See Final Analysis Memo at Attachment I.

¹⁶ *Id.*

¹⁷ See HLD Clark's April 9, 2014, submission of cost verification exhibits, Exhibit CVE 9 (compare mill certificates in pages 33-38 for J55 HRC with mill certificates in pages 40-41, 42-46, 47-78, 49-59); *see also* Final Analysis Memo at Attachment I.

¹⁸ See Final Analysis Memo at Attachment I.

Lastly, as noted correctly by the petitioners, we observed that the chemical content for phosphorus and sulfur as reflected in the mill certificate for J55 HRC for a certain heat number was higher than the chemical content for these elements in the mill certificate for OCTG J55 for the same heat number.¹⁹ This demonstrates that the J55-D10 HRC was used in the production of OCTG J55, because the chemical content for these impurities for J55 OCTG was identical to that of J55-D10, as discussed above.

In summary, 1) concerning chemical content for phosphorus and sulfur and mechanical properties, we found nothing that distinguishes OCTG casing destined for Canada, i.e., J55-D10, from OCTG casing destined for the United States, i.e., grade J55; 2) similarly we found no substantive differences in the chemical composition and mechanical properties in HRC that HLD Clark designates as J55-D10 and J55, such that both grades of HRC appear to satisfy the requirements of ERCB Directive 010; and 3) because the record does not offer an explanation for the decrease in the chemical weight for phosphorus and sulfur between what's stated in mill certificate for J55 HRC and in the mill certificate for J55 OCTG for the same heat number referenced in both, on the basis of (1) above, it is reasonable to conclude that J55-D10 HRC can be used in the production of J55 OCTG.

Therefore, on the basis of record evidence, we find no merit in HLD Clark's assertion that OCTG sold to the United States could not be sold to Canada. While there appears to be an additional impact testing requirement for the OCTG sold to the Canadian market, the absence of such a requirement for the OCTG sold to the United States, in itself, does not change the physical characteristics of the products being examined. As we explained above, our examination of chemical and mechanical properties of OCTG sold to Canada and to the United States do not indicate that the products at issue are separate and distinct but, instead, are physically the same. Accordingly, we see no validity in HLD Clark's argument that the impact testing requirement renders OCTG suitable for one market but not the other. Further, because the testing requirement is not a measurable characteristic, it is not informative to the issue of distinguishing products.

HLD Clark asserts that it followed the instructions in the original questionnaire for its proposition that H40-D10 and J55-D10 warrant grade designations separate from H40 and J55, respectively. The Department's original questionnaire stated:

If you sold grades of OCTG that are *proprietary/non-API grades that are not listed in the API Specification 5CT*, please report a separate reporting code for each of those other grades, provide complete technical documentation describing each of those additional grades, and describe how each of those additional grades compares to each other and to those listed above (emphasis added).²⁰

The questionnaire listed grades H40 and J55, among others, that are specifically identified in API 5CT.²¹ In asserting that it followed the questionnaire instructions (in initially segregating H40-

¹⁹ See the petitioners' May 27, 2014, rebuttal brief at page 6.

²⁰ See the antidumping questionnaire issued to HLD Clark, dated August 21, 2013 at pages B-9 and B-10 and C-8 and C-9.

²¹ *Id.*

D10 and J55-D10 from H40 and J55, respectively, in the CONNUM construction), HLD Clark is essentially purporting that the H40-D10 and J55-D10 grades are separate proprietary grades of OCTG. However, these products were made to API 5 CT specifications and meet the API 5CT specifications for H40 and J55 OCTG. Although HLD Clark notes that for these products the sulfur and phosphorus levels are lower than the API specifications, the lower levels are to be expected as the chemical requirements in the API specifications are maximums for these elements. What the Department contemplated in the questionnaire to constitute the proprietary grades of OCTG goes well beyond the differences that HLD Clark identifies between H40-D10 and H40 and J55-D10 and J55, respectively. For example, the information on the websites of Tenaris S.A. and United States Steel Corporation (USS), household names in the global OCTG market, indicates that each makes a complete range of proprietary steel grades with performance properties that surpass those indicated by the API.²² Of interest to the issue at hand, concerning its proprietary grades for sour well environments, Tenaris S.A and USS websites inform that the improved resistance to sulfide stress corrosion cracking is obtained by the specific design of the steel microstructure and tight control of the mechanical properties:

- Clean steel, with a very low level of residual elements and oxygen to minimize the quantity of inclusion and specifically oversize oxides.
- Chemistry design: a balanced chemical composition to ensure high hardenability. Together with adequate quenching, the chemistry ensures over 95% martensite.
- Fine-grained microstructure through rolling and heat treatment.
- Heat treatment ensuring a very fine microstructure and high final tempering temperature to promote a recovery process eliminating high-energy sites.²³

The information on Tenaris S.A. and USS websites indicates, for each proprietary sour service grade, minimum and maximum yield strength, minimum tensile strength, maximum hardness reading, *etc.*²⁴ We observed that the performance properties of these companies' proprietary grades appear to exceed those of comparable API grades. As discussed above, there is no such indication with respect to grades that HLD Clark designated as H40-D10 and J55-D10. As such, we do not find that HLD Clark provided sufficient evidence that these grades of OCTG can be construed as not made to API specifications or represent proprietary grades of OCTG.

HLD Clark asserts that the materials from the Tenaris S.A. and USS websites confirm that these companies distinguish certain grades of OCTG for the sour environments as proprietary grades, which is an indication of the existence of a distinct group of OCTG products recognized in these companies' commercial reality.²⁵ HLD Clark comments that these companies only sell proprietary OCTG grades for sour environments that correspond to higher API 5 CT grades of OCTG; however, the ERCB Directive 010 places additional constraints on materials and impact

²² See memorandum to file titled "Less than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines: Placement of Factual Information on the Record," dated June 27, 2014, at Attachment I for information from Tenaris S.A. website at

<http://www.tenaris.com/en/Products/OCTG/SteelGrades/SourService.aspx>, and USS website at <http://usstubular.com/octg-products-and-services/octg-steel-grades/proprietary-sour-service/>.

²³ *Id.*

²⁴ *Id.*

²⁵ See HLD Clark's July 1, 2014, submission titled "RE: OCTG from Philippines: Comments on New Information" (NFI Comments).

testing requirements for all grades of OCTG for sour environments. HLD Clark argues that it would be illogical to conclude that the requirements of different proprietary grades of OCTG for sour environments would not be recognized for J55 and H40 OCTG grades sold by HLD Clark to Canada for those applications.²⁶ In other words, HLD Clark argues, the Tenaris S.A. and USS website materials do not discredit HLD Clark's claim that the OCTG sour environment grades sold by HLD Clark to Canada were associated with the additional ERCB Directive 010 requirements and should be recognized as proprietary grades.²⁷

We agree with HLD Clark that the Tenaris S.A. and USS website materials do not suggest that the supplementary requirements of ERCB Directive 010 preclude the recognition of J55 and H40 OCTG grades as proprietary grades for sour service environment. As we discussed above, however, the Tenaris S.A. and USS website materials demonstrate that the performance properties for these companies' OCTG grades for sour service environment appear to exceed those of comparable API grades, while there is no such indication with respect to grades that HLD Clark designated as J55-D10 and H40-D10 (when compared to J55 and H40 OCTG grades made to API 5CT specifications).

Concerning HLD Clark's argument that the contemporaneous monthly purchase costs for J55-D10 HRC are significantly and consistently higher than the purchase costs for J55 HRC during the POI, we first note that any differences in cost not attributable to differences in physical characteristics is not a basis upon which to distinguish products.²⁸ For example over time, costs of various inputs may vary for many reasons. However, if over that same time period the product produced is physically identical, there is no basis upon which to create separate categories for the same product based on cost. It is the same product and it should not be segregated into sub categories based on cost differences alone. Second, the record does not support HLD Clark's assertions. In order to arrive at a figure that appears to show a cost difference, HLD Clark makes a comparison of monthly POI purchases of J55-D10 and J55 HRC across all suppliers.²⁹ When the analysis of purchases of HRC is made on a uniform, supplier-specific basis, in four POI months in which there were purchases of both J55-D10 and J55 HRC, the record evidence shows that 1) in two months, the average purchase price of J55 HRC from certain suppliers was actually higher than the average purchase price of J55-D10 HRC, with one month showing the magnitude of positive percentage difference (for one such supplier) comparable to the magnitude of negative percentage differences (for other supplies for which the purchase price of J55 HRC was lower), and 2) in two months (when controlling for differences in volumes quantities purchased between J55 and J55-D10 HRC), the purchase price of J55 HRC was higher than the purchase price of J55-D10 HRC for a greater number of suppliers than in item (1) above, with one month showing the magnitude of positive percentage difference (for such respective suppliers) comparable to or, in some cases, exceeding the magnitude of negative percentage differences (for other supplies for which the purchase price of J55 HRC was lower).³⁰

²⁶ *Id.*, at 2-3.

²⁷ *Id.*, at 3.

²⁸ We note that if there is a hyperinflationary situation in which input prices rise rapidly, the Department may divide the annual costs to cover shorter periods of time to mitigate the effect of hyperinflation on the calculations. However, there is no record evidence that there is hyperinflation in the Philippines.

²⁹ See HLD Clark's case brief at Attachment 2.

³⁰ Because our analysis involves the extensive use of business proprietary information, see Final Analysis Memo at Attachment II.

Finally, while the POI weighted-average percentage of the supplier-specific price differences in the purchase prices for J55-D10 and J55 HRC was not as significant as purported by HLD Clark, there was a difference but when put in the proper perspective as explained above, there was no consistent difference between the two grades that could be attributed to differences in physical characteristics.

On the basis of this analysis, we find that the record does not support HLD Clark's assertion that the purchase costs for J55-D10 HRC were either significantly or consistently higher than the purchase costs for J55 HRC during the POI. Moreover, as explained above, because we do not find physical differences between J55-D10 and J55 HRC or OCTG made from these respective HRCs, it is not appropriate to consider cost differences among products that we determine are not demarcated from the same category of a given product characteristic (in this case, J55 and J55-D10 comprise the same category, grade J55). In other words, because the record does not contain any information to demonstrate that the cost differences at issue are attributable to differences in chemical, mechanical, and physical characteristics, it would be inappropriate to separate costs for the same merchandise because of differences in labeling.

The model match hierarchy that we established in this investigation already sufficiently captures differences in cost attributable to any significant difference in physical characteristics. Nonetheless, as we repeatedly acknowledged in our proceedings:

While variations in cost may suggest the existence of variation in product characteristics, such variations in costs do not constitute differences in products in and of themselves...The Department has noted that for defining products and creating a model match hierarchy, "{t}he physical characteristics are used to distinguish the differences among products across the industry," that "{c}ost is not the primary factor for establishing these characteristics," and, in short, "{c}ost variations are not the determining factor in assigning product characteristics for model-matching purposes.³¹

In the *Preliminary Determination*, we stated that we are not modifying the hierarchy we proposed after the initiation of this investigation and included in its questionnaires.³² We find no reason to depart from this conclusion in the final determination of this investigation.

HLD Clark argues that the tangible environmental factors associated with Canada render OCTG made for the U.S. market unsuitable for application in Canada, which in turn guide the more demanding customer expectations in the Canadian market. However, as we found above, there

³¹ See *Preliminary Determination, and accompanying Decision Memorandum* (citing *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1 and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1 (the Department's "...selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess" and "differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences.")).

³² See *Preliminary Determination, and accompanying Decision Memorandum* at 12.

are no differences in chemical, mechanical, or physical characteristics for the OCTG that HLD Clark produces and sells to the United States and Canada.

With respect to certain information submitted to the Department by Chung Hung Steel Corp., a mandatory respondent in the companion investigation of certain oil country tubular goods from Taiwan (which we placed on record of this investigation),³³ HLD Clark argues that this information is ambiguous, irrelevant, and does not control whether the record of the instant investigation with respect to HLD Clark was sufficiently developed to warrant a consideration of the adjustment that HLD Clark is seeking.³⁴ We agree with HLD Clark. We do not have enough information on the record of this investigation to determine whether the circumstances in the companion investigation of OCTG from Taiwan for Chung Hung Steel Corp., are similar to the issue at hand as it pertains to HLD Clark. Accordingly, we determine not to rely on the limited information from the Taiwan investigation.

Lastly, HLD Clark renewed its arguments for the Department to recognize physical differences and supplementary requirements imposed by ERCB Directive 010 that have commercial significance.³⁵ These arguments echo the arguments which HLD Clark raised in its case brief. We addressed these arguments in the discussion above. As the record evidence demonstrates, there are no differences between the OCTG that HLD Clark sold to Canada and to the United States.

Differential Pricing Analysis

Comment 2: HLD Clark argues that if, in its final determination in this investigation, the Department determines that the alleged differences in HLD Clark's prices cannot be appropriately accounted for by the average-to-average (A-to-A) comparison method, under no circumstances would the application of the Department's current differential pricing methodology be lawful or supported by substantial evidence. HLD Clark argues that the Department's current methodology is not only inappropriate for unmasking targeted dumping within the meaning of section 777A(d) of the Act, it is also illegal.

HLD Clark argues that the Department's targeted dumping analysis does not conform to the operative regulation in effect for this investigation. Citing *Gold East (Jiangsu) Paper Co. v. United States*, 918 F. Supp. 2d 1317 (CIT 2013) (*Gold East*), HLD Clark argues that the Department's abrupt withdrawal of its targeted dumping regulations, *i.e.*, 19 CFR 351.414(f)(2008), was contrary to law absent appropriate proposal for notice and comment. HLD Clark asserts that while the Department subsequently took steps to withdraw the original

³³ See memorandum to file titled "Less than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines: Placement of Factual Information on the Record," dated June 27, 2014, at Attachment II for excerpts from Chung Hung's Section A response, dated September 18, 2013, at Exhibit A-11 (concerning a Canadian sale trace where sales contract states: "THE PIPES COVERED IN THE ABOVE CERTIFICATE COMPLY TO APPENDIX B, MATERIAL REQUIREMENTS FOR SOUR WELLS, OF DIRECTIVE D10 IN CANADA.")

³³ *Id.*, for excerpts from Chung Hung's Section B response, dated October 28, 2013, at page B-13 (all grades listed under GRADEH variable in the database were "reported as instructed.").

³⁴ See NFI Comments at 5-6.

³⁵ *Id.*, at 3-5.

targeted dumping methodology properly,³⁶ because this investigation was initiated before May 22, 2014, the effective date of the *Final Rule*, and in accordance with *Gold East*, the Department must apply its targeted dumping methodology as regulated in 19 CFR 351.414(f)(2008). HLD Clark argues that the Department's very request for comments concerning its new methodology in *Differential Pricing Analysis; Request for Comments*, 79 FR 26720, 26721 (May 9, 2014), demonstrates that the Department has not yet proceeded through all the necessary steps to replace the original methodology and applicable procedure. HLD Clark argues that because serious flaws mar the Department's new methodology, which it discusses below, the Department must treat the previously withdrawn regulations as if they were still in effect. HLD Clark argues that because the petitioners in this investigation did not file a timely allegation of targeted dumping, the Department should refrain entirely from engaging in any type of targeted dumping or differential pricing analysis in the final determination.

HLD Clark argues that the Department failed to properly or fully disclose its new differential pricing methodology. HLD Clark asserts that the Department's divulging of certain margin programming language is woefully deficient. HLD Clark asserts that the Department has not, to date, divulged the original source material for the test it is applying in that the Department has not disclosed the historical context and purpose of the test it has adopted; nor has the Department divulged the related mathematical formulas or justified how and where the Department's methodology diverges from such original formulas.

Further, HLD Clark argues that the Department's use of Cohen's d as a primary indicator in differential pricing analysis is methodologically unsound for the following reasons. First, HLD Clark argues that the way the Department calculates the pooled standard deviation for the Cohen's d statistic (*i.e.*, by adding together the sample variances of the test group and the base group, dividing this number by two, and then taking the square root) is fundamentally incorrect. This is so, HLD Clark argues, because the Department's formula is not weighting each sample variance by the number of observations (*i.e.*, the number of transactions) in each group and, as such, is missing a crucial aspect of the formula for calculating the pooled standard deviation.³⁷ HLD Clark argues that the more unequal the sample sizes, and the greater the difference in the sample's standard deviations, the more inaccurate the results of the Cohen's d test will be. HLD Clark argues that the use of the incorrect formula could return a Cohen's d coefficient that is over the Department's significance threshold of 0.8 percent. Second, HLD Clark takes issue with the Department conducting the Cohen's d test in cases where there are at least two observations in both the base and test groups. HLD Clark argues that this is methodologically unsound because the Cohen's d test is a biased estimator for the true effect size, and is relatively strongly biased when the total number of observations in the samples being compared is less than 20.³⁸ HLD Clark argues that this bias is positive, meaning that the absolute value of the calculated Cohen's d test coefficient will be larger than the absolute value of the true effect size;

³⁶ HLD Clark cites *Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Investigations*, 77 FR 22371, 22373 (April 22, 2014) (*Final Rule*) (describing *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping duty Investigations*, 73 FR 74930 (December 20, 2008) as an "interim final rule").

³⁷ HLD Clark cites *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*) and accompanying Issues and Decision Memorandum at 24-25 (describing calculation of "pooled" standard deviation and variance).

³⁸ HLD Clark cites *Xanthan Gum*, and accompanying Issues and Decision Memorandum at 18.

furthermore, the impact of this bias is magnified when the true effect size is relatively large, potentially leading to a situation where the Cohen's d test returns a coefficient over the significance threshold of 0.8 but the true effect size is less than 0.8. HLD Clark asserts that the application of the Cohen's d test in cases where the total number of transactions in both samples is less than 20 could lead the Department to falsely conclude that there is a significant difference between the means of a test group and a comparison group; accurately estimating effect size in such an instance would require using an alternative, unbiased estimator. Third, HLD Clark argues that the Cohen's d is simply a standardized measure of the difference between two means; it is not a test of statistical significance, and cannot be used as such. For example, HLD Clark argues, it is possible for the difference between the means of two groups to not be statistically significant, but for the Cohen's d coefficient to be greater than 0.8. As such, argues HLD Clark, it is unreasonable to conclude from the result of a Cohen's d test alone that there is a statistically-significant difference between the means of two groups; properly determining statistical significance requires the application of an appropriate test.

HLD Clark asserts that there are also certain other flaws in the Department's differential pricing methodology that deserve reconsideration. First, HLD Clark asserts, it is nonsensical to count sales above the mean as passing the test because the fundamental purpose of the "targeted dumping" regulation and statute was to unmask targeted dumped sales – sales at above average prices cannot reasonably be characterized as targeted. Second, HLD Clark argues, the Department should exclude targeted, i.e., below the mean, sales that are not dumped because there is no "unmasking" of dumping where none exists.

In conclusion, HLD Clark reiterates that, given the numerous legal, procedural and statistical flaws in the Department's differential pricing analysis, the Department should refrain from engaging in differential pricing analysis in the final results of this investigation.

The petitioners assert that these issues are moot in this investigation. The petitioner contend that in the Preliminary Determination the Department used the A-to-A comparison method because there was not a meaningful difference in the weighted-average dumping margins when calculated using this method and an alternative method based on the average-to-transaction (A-to-T) comparisons. In other words, the petitioners argue, the Department's differential pricing analysis had no impact on the outcome of this investigation. The petitioners argue that the Department should follow the approach in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 17503 (March 28, 2014) and the accompanying Issues and Decision Memorandum at Comment 4, where the Department noted that it applied the standard comparison methodology in the preliminary and final results of review and did not apply zeroing with respect to HYSCO, finding all arguments made by HYSCO and Nucor, concerning the denial of offsets with the A-to-T method, moot.

Department's Position: In the *Preliminary Determination*, although we found that there was an existence of a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods, we determined that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A comparison method and

an alternative method based on the A-to-T comparisons; we determined to use the A-to-A method to calculate the preliminary weighted-average dumping margin for HLD Clark.³⁹ In the final determination of this investigation, we continue to find that the A-to-A method can appropriately account for differences in prices and we used the A-to-A method to calculate the final weighted-average dumping margin for HLD Clark in this investigation.⁴⁰ Accordingly, we find all HLD Clark's comments on differential pricing analysis moot because the Department did not change its comparison methodology based on the results of the test so that it had no effect on the calculation of HLD Clark's weighted average margin in the final determination of this investigation.

Calculation of Short Term Borrowing Rate

Comment 3: HLD Clark argues that the Department, in recalculating HLD Clark's short term borrowing rate in the *Preliminary Determination*, incorrectly relied on short terms loan with duration more than 180 days but less than one year. HLD Clark asserts that the short term loans comprising the derivation of HLD Clark's borrowing rate should be commensurate with the number of credit days extended by the company for sales to the United States and Canada, which are generally less than 180 days. HLD Clark asserts that it makes no commercial sense to impute interests costs using loans with the duration of more than 180 days (and higher interest rates) when the company took out shorter term loans (and lower interest rates) that more closely matched the credit it extended on its sales.

The petitioners assert that, notwithstanding that HLD Clark offers no statutory or regulatory criterion, or case precedent to support its argument, HLD Clark's proposal defies logic and runs contrary to the regulations. The petitioners argue that because money is fungible, one cannot link specific loans to imputed opportunity costs; it is this reason why the Department uses a weighted average of all short term loans during the POI and applies the computed average borrowing rate to all reported sales to calculate credit expenses. The petitioners argue that 19 CFR 351.102(b)(48), define a short-term loan as one with terms of repayment of one year or less. The petitioners assert that in the instant investigation the record shows that all loans in Exhibit SQ3.1 of HLD Clark's January 16, 2014, submission are short-term and should be used in calculating HLD Clark's weighted-average short-term interest rate.

The petitioners argue that the Department should recalculate HLD Clark's short term borrowing rate in the final determination. The petitioners assert that the Department found at verification five additional loans for which the maturity overlapped the POI. The petitioners contend that these loans should be incorporated in the calculation of HLD Clark's weighted average short-term interest rate.

HLD Clark argues that the Department should not draw these five additional loans for which the maturity overlapped the POI into the credit expense calculation. HLD Clark asserts that, because the sales databases were defined by the invoice and/or shipment dates in the POI, HLD Clark reasonably would not have taken out loans prior to the POI to finance the imputed credit associated with POI sales, *i.e.*, for sales that were not yet made; rather, rolling credit at short term

³⁹ See *Preliminary Determination*, and accompanying Decision Memorandum at 11.

⁴⁰ See Final Analysis Memo at Attachment IV.

and low rates was available for that purpose. HLD Clark argues that if the Department were to take one-year term loan interest rates into consideration, the Department should use the simple average for all loans borrowed in the POI. HLD Clark argues that these loans more reasonably could be associated with POI sales activity; longer term loans, including one year loans, more reasonably are associated with business needs that require planning and execution over longer periods than payments outstanding to HLD Clark. Lastly, HLD Clark asserts that if the Department determines to capture all loans that overlapped in the POI, based on the method used in the *Preliminary Determination*, HLD Clark proffers a calculation of the borrowing rate that disagrees with that derived by the petitioners in their case brief.

Department's Position: We agree with the petitioners. The regulations at 19 CFR 351.102(b)(48) define short term loan as "the loan, the terms of repayment for which are one year or less," whereas the regulations at 19 CFR 351.102(b)(32) define long term loan as "the loan, the terms of repayment for which are greater than one year." Thus, the regulations use one year as the threshold for distinguishing short term from long term loans.

All loan documents that we examined at verification confirmed that the loans had a maturity of one year or less.⁴¹ In the *Preliminary Determination*, we determined that it was appropriate to include all short term loans that originated during the POI, including those exceeding 180 days in duration, in the calculation of HLD Clark's weighted average short term borrowing rate.⁴² At verification, we found that there were five additional one-year loans which originated prior to the POI but matured during the POI.⁴³

The Department's Policy Bulletin 98.2, "Imputed credit expenses and interest rates," dated February 23, 1998, states:

For the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction... In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.

⁴¹ See memorandum to file, "Verification of the Sales Response of HLD Clark Steel Pipe Co., Inc., in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines" dated April 10, 2014, at 16-17 and SVE-19.

⁴² See memorandum to file, "Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines - Analysis Memorandum for HLD Clark Steel Pipe Co., Inc." dated February 14, 2014, at 4, 5-6, and Attachment I.

⁴³ See memorandum to file, "Verification of the Sales Response of HLD Clark Steel Pipe Co., Inc., in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of the Philippines" dated April 10, 2014, at 2, 16-17 and SVE-19.

The Department requires the respondents to calculate the weighted-average short term rate based on the short term borrowing experience in the currency of the transaction. In the absence of such, the Department uses one year published rates (e.g., for U.S. dollar denominated loans, we use Federal Reserve's statistical release "E.2 - Survey of Terms of Business Lending" for commercial and industrial loans made by all commercial banks).⁴⁴ Specifically, we use line item "31 to 365 days" in release E.2. Irrespective of whether the short term rate is derived from a respondent's actual borrowing experience or from a published source, it is always reflective of all short term loans with maturities of one year or less. HLD Clark cites no precedent where the Department did not use all short term loans with the duration of one year or less that were effective during the POI for purposes of calculating imputed expenses.⁴⁵

Our practice makes clear that we impute credit expenses without regard to a company's actual working capital surplus or deficiency and, as the petitioners correctly point out, due to money being fungible, without ascertaining which short terms loans best measure the imputed opportunity cost of a given operating activity. In other words, in measuring the overall opportunity cost of loss of use of money, the Department assumes that all short term loans support equally the working capital requirements of a company because it is not possible to associate the specific borrowing with each unique opportunity cost – that is precisely the reason why we use the same short term borrowing rate to impute the cost for one activity, financing of accounts receivable, and the cost for another activity, financing of inventory. Accordingly, HLD Clark's proposition for matching the maturity of short term loans with the number of days the credit on sales is extended, finds no support in commercial reality because the short term loans are usually revolving and stand to support numerous overlapping operational activities and, thus, cannot be linked to a specific opportunity cost of each activity.

We find that all HLD Clark's short term loans in effect during the POI, whether they originated during the POI, or matured during the POI, supported the financing of accounts receivables for HLD Clark's sales made to Canada and the United States during the POI and thus, represent what we normally attempt to measure in imputing credit expenses, the opportunity cost of loss of use of money while the revenue was in collection. Accordingly, in the final determination we included short term loans that matured during the POI and recalculated HLD Clark's weighted average borrowing rate.⁴⁶

⁴⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34899 (May 16, 2002), and accompanying Issues and Decision Memorandum at Comment 16 ("we have calculated imputed U.S. credit expense using the prevailing average short-term interest rate, as published by the Federal Reserve, in effect during the POI. See Federal Reserve Statistical Release E.2; Survey of Terms of Business Lending, dated May 1-5, 2000, August 7-11, 2000, November 6-10, 2000, and February 5-9, 2001, available at www.federalreserve.gov/releases/E2.").

⁴⁵ See, e.g., *Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review*, 52 FR 17425 (May 8, 1987) at Comment 3 ("In calculating interest expense on U.S. sales, the Department considers all short-term loans... we do not consider loans with revolving balances that are outstanding for periods longer than one year... The rate used to calculate interest expense on U.S. sales should be taken from short-term loans, not from loans with short term rates.").

⁴⁶ See Final Analysis Memo at Attachment III.

VII. RECOMMENDATION

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

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 10, 2014

(Date)