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

A-517-804
Investigation
**Public Document**
E&C/Office VII: JPR

DATE: July 10, 2014

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

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

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

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## I. SUMMARY

In this final determination, the Department of Commerce (Department) finds that certain oil country tubular goods (OCTG) from Saudi Arabia 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, Jubail Energy Services Company (JESCO). 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. JESCO's Affiliations in Saudi Arabia
2. The Department's use of Third Country Sales Data for Calculation of Normal Value
3. The Department's use of Differential Pricing (DP) in this Investigation
4. The Department's Calculation of Constructed Value (CV) Profit
5. The Department's Application of a Scrap Offset to JESCO's Sales Data

## II. BACKGROUND

On February 25, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of OCTG from Saudi Arabia.[1] The Department conducted cost verification on February 23, 2014 through February 27, 2014, sales verification of JESCO from March 17 through March 20, 2014, and of JESCO's affiliated U.S. importer on March 5 and 6, 2014. JESCO and the petitioners,[2] respectively, requested that the Department conduct a hearing in this investigation, which the Department conducted on June 12, 2014.[3]

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from the petitioners and JESCO in May and June 2014. Based on our analysis of the comments received, as well as our findings at verification, 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. 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,

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[1] *See Certain Oil Country Tubular Goods from Saudi Arabia: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination,* 79 FR 10489 (February 25, 2014) (*Preliminary Determination*).
[2] Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, United States Steel Corporation, and Welded Tube USA Inc. (collectively, the petitioners).
[3] *See* "Public Hearing Transcript in the matter of the Antidumping Duty Less Than Fair Value Investigation on Certain Oil Country Tubular Goods from the Kingdom of Saudi Arabia," (June 25, 2014).
[4] *See* Memorandum for the Record, "Deadlines Affected by the Shutdown of the Federal Government," October 18, 2013.

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.

## IV. MARGIN CALCULATIONS

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

*JESCO*

- As discussed below in response to Comment 4, we have revised our calculation of CV profit for this final determination. The Department is now relying on third country sales data reported by JESCO to calculate CV profit.

## V. DISCUSSION OF THE ISSUES

### 1. JESCO's Affiliation with its Saudi Arabian Customer:

<u>JESCO's Comments</u>

- Neither the statute nor evidence on the record support the Department's finding that JESCO is affiliated with its home market customer through the common control of the government of Saudi Arabia (KSA).
    - There is no direct affiliation between JESCO and its customer.
    - In finding JESCO and its home market customer to be "affiliated persons," the Department relied on section 771(33)(F) Tariff Act of 1930 (the Act). However, that section applies only if the two companies are found to be controlled by another "person," and a government cannot be a "person."
    - The Department failed to show that the KSA's ownership interests in JESCO amount to control of JESCO or the ability to influence pricing, production decisions, or cost of materials involved in producing OCTG.

- Loan documents referred to by the petitioners as evidence of control, do not, in fact, indicate control.
- There are only a few shared directors and officers among JESCO, its customer, and the companies that own JESCO, directly or indirectly.
- Neither the financial statements of JESCO nor its parent list its customer as an affiliated party.

Petitioners' Comments

- The Department's equity analysis in the *Preliminary Determination* was sufficient to find affiliation through the common control of the KSA.
- JESCO's arguments that a government cannot be considered a "Person" under section 771(33) of the Act are flawed.
- The record supports a finding that the KSA affects decisions concerning production, pricing, and cost of subject merchandise.

Department's Position

The Department continues to find that JESCO and its home market customer are affiliated as defined by section 771(33)(F) of the Act, under which affiliated persons are "{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person."[5]

JESCO argues that KSA cannot be considered a "person" under this statutory provision. JESCO argues that the Department's regulation at 19 CFR 351.102(b)(3), defining "affiliated persons; affiliated parties," states that the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. Therefore, affiliation through a foreign government is unsupported by the statute or regulations.

The Department disagrees. First, the statute is silent as to the definition of "person." Therefore, the Department defined "person" in its regulations as "any interested party as well as any other individual, enterprise, or entity, as appropriate."[6] KSA qualifies as an "interested party" because it is "the government of a country in which subject merchandise is produced or manufactured or from which such merchandise is exported."[7] This section of the regulations accurately encompasses KSA because a government may be described as an entity, and in this case, as an interested party. Thus, KSA's common control over JESCO and its home market customer establishes affiliation of the two parties under section 771(33)(F) of the Act.

Aside from constituting an "entity" within the meaning of 19 CFR 351.102(b)(37), we see no reason why, functionally, KSA's common control over JESCO and its home market customer should be distinguished from the common control of other "entities" or "persons," just because the KSA is a government. Just like a corporate parent might exercise its control over two subsidiaries in a manner that might affect prices between them, the KSA's control over JESCO and its customer might similarly lead to distorted prices. In fact, the Department finds that the

[5] JESCO has more than one home market customer, but almost all home market sales are to the customer at issue in this discussion. For the sake of simplicity, the Department refers to that customer as "the" home market customer.
[6] 19 CFR 351.102(b)(37).
[7] 19 CFR 351.102(b)(29).

prices between JESCO and its customer do not meet its arm's length test. The common control of either a corporate or government parent may provide sufficient reason to question the validity of prices between subsidiaries as a source of NV. As discussed in more detail below, KSA appears to be an active participant in the operation of the two companies and has the capacity for further involvement. This is not a passive government investor with no interest in the pricing, production, or cost decisions of JESCO and its customer. While the motive of a private sector, corporate parent to coordinate the activities of its subsidiaries might be profit, KSA has an interest in coordinating the activities of JESCO (an OCTG producer) and its customer (an oil field explorer) for the development of its oil field production. In addition, KSA's equity interests are held and exercised through its own investment vehicles and state-owned enterprises. While ultimately it is KSA that is the single "entity" or "person" at issue, at the operational level it is the KSA's subsidiary "entities" (including corporate entities) that control JESCO and its customer. Thus, in this context, KSA is no different than a corporate parent with commercial interests.

We also continue to find such common control is established through KSA's significant direct and indirect equity interest in both companies and its actual and *potential* operational control of each company's decisions concerning the production, pricing, and cost of the subject merchandise. In this regard, we note that 19 CFR 351.102(b)(3) states:

> In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the *potential* to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. {Emphasis added.}

KSA owns JESCO's home market customer completely and its control over that company is not in dispute. KSA does not directly own JESCO, but the record evidence is clear that it has the ability (or potential) to control JESCO directly itself and indirectly through its parent. We determine KSA holds significant direct ownership in JESCO's parent, The Industrialization & Energy Services Company (TAQA).[8] Additionally, KSA holds additional indirect ownership of TAQA. The combined amount is consistent with what the Department finds to constitute control in past decisions and JESCO has not argued otherwise.[9] TAQA's control over JESCO is demonstrated through majority direct equity ownership.[10] Moreover, KSA's direct ownership in TAQA is held through its own investment vehicles, which are directed by a number of officials

[8] The exact ownership figures are business proprietary information (BPI). *See* Memo to the File "Antidumping Duty Investigation of Oil Country Tubular Goods (OCTG) from the Kingdom of Saudi Arabia, Duferco SA Preliminary Determination Analysis Memoranda," (February 14, 2014)(Preliminary Analysis Memo).
[9] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 10.
[10] *See* Preliminary Analysis Memo.

from within KSA.[11] We also note that the record evidence establishes that KSA invested significant amounts in JESCO through direct financing.[12] Our analysis of this financing indicates additional, direct control over JESCO. In particular, the lending includes covenants that explicitly provide a degree of control over JESCO's management and absolute control over changes in JESCO's corporate form and the composition of its shareholders.[13] The BPI analysis found in the Final Analysis Memorandum discusses in further detail the ability of the KSA to exercise control over JESCO.

JESCO is correct that neither TAQA's nor JESCO's audited financial statements list JESCO's customer as an affiliated party. However, for the reasons stated above, the Department concludes that JESCO and its customer are affiliated in accordance with the Act, and the Department's regulations, regardless of whether they are considered affiliated according to Saudi Arabian accounting practices or law.

In response to JESCO's claim that the three companies at issue share no overlapping board members or officers, we note that record evidence shows that companies holding equity in TAQA have board members in positions of leadership with JESCO's home market customer. Because the facts are BPI, the full analysis of this argument is included in the Final Analysis Memorandum. In addition, as with JESCO's argument concerning which companies are listed as affiliates in financial statements, we must look at the totality of the circumstances. While shared board members are one indicia of control, they are not a prerequisite for finding control, and there are several other facts leading to the conclusion that KSA controls both JESCO and its home market customer, as discussed above.

**2. The Department's non-use of JESCO's Third Country Sales Data:**

<u>JESCO's Comments</u>

- The Department should have relied upon JESCO's third country sales given that nearly all home market sales were sales that failed the arm's length test. The home market is therefore no longer viable.
- Regardless of viability, the "Particular Market Situation" in the home market warrants use of the third country sales.
- The Department failed to analyze whether there is a "Particular Market Situation" in the *Preliminary Determination*.

<u>Petitioners' Comments</u>

- Viability and affiliation are separate and mutually exclusive determinations. A determination of affiliation does not lead to a re-visitation of market viability.
- No formal "Particular Market Situation" allegation has been filed in this proceeding.

[11] The full BPI analysis is contained within the Memorandum to the File "Jubail Energy Services Company, Ltd.: Final Determination Analysis Memoranda" (Final Analysis Memorandum)," dated concurrently with this memorandum.
[12] *Id*.
[13] *Id*.

Department's Position
The Department continues to find that using CV for NV is the most appropriate method in this investigation. Early in the investigation, the Department correctly identified the Saudi Arabian market as viable through analysis of JESCO's Section A questionnaire response. In this analysis, we concluded that the Saudi Arabian market had sufficient volume pursuant to the 5 percent threshold established in 19 CFR 351.404(b)(2). After further development of the record and additional analysis we determined – in the *Preliminary Determination* – that very few sales were at arm's length (nearly all sales were to the home market customer found to be affiliated and discussed in response to the comment above) and those that were at arm's length were found to be below the cost of production. Therefore, we determined that no home market sales were appropriate to use as the basis for NV.

The regulations define viability in terms of the size of the home market relative to the U.S. market.[14] A market is "viable" regardless of whether some, all, or no sales are subsequently determined to fail the arm's length test or to be below cost. Whether a given sale is ultimately determined to be made outside the ordinary course of trade or whether a customer is ultimately determined to be an affiliated party, are decisions made apart from and later in time than the market viability question. This practice is consistent with the law and also necessary from an administrative perspective. It would be extremely difficult for the Department to conduct the investigation within the statutory time limits if it waited until after all decisions have been made concerning affiliation and the arm's length test, cost and the sales-below-cost test, before determining whether the home market is viable. Since these decisions often are not made until the preliminary determination, this would mean, in many instances, having to request a different comparison market database at a very late point in the proceeding. While we already have the third country database in this investigation, that fact does not justify making an exception to the practice in this case.

In any event, the Department does not believe the Act compels the use of third country sales:

> If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, *notwithstanding paragraph (1)(B)(ii)*, the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).[15]

Thus, the Department's practice of relying on CV in this situation, for the reasons outlined above, is consistent with the Act itself, which allows the Department the discretion to rely on CV. Section 773(a)(1)(B)(ii) does not require the use of third country sales, but rather states when the use of third country sales is a permissible option for NV.

[14] *See* 19 CFR 351.404(b).
[15] Section 773(a)(4) of the Act states (emphasis added).

Both the petitioners and JESCO indicated that, if the Department found affiliation in this case, there was the possibility of finding a particular market situation in the home market.[16] However, neither party submitted a formal allegation with supporting evidence within the time limits detailed in the regulations.[17] The Act states that a particular market situation may exist when "the particular market situation in the exporting country does not permit a proper comparison {of home market sales} with the export price or constructed export price."[18] Section 351.301 (c)(2)(i) establishes the time limits for raising allegations of market viability, including particular market situation allegations, stating "{a}llegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in §351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit."

The first mention of a possible particular market situation came in the petitioners' November 21, 2013 response to JESCO's B and C questionnaire responses,[19] a full fifty-five days after JESCO submitted its Section A questionnaire response, and thirteen days after JESCO submitted its Sections B and C questionnaire response. The Section A response was the submission that placed the petitioner on notice that JESCO is affiliated with its home market customer, which in turn led to the exclusion of nearly all of JESCO's home market sales. Thus, the petitioner should have made a particular market situation allegation based on affiliation in response to JESCO's submission of the Section A response. JESCO did not submit its own allegation nor provide any of the facts the Department would need to analyze the particular market situation, but simply argued shortly before the *Preliminary Determination* that the Department should reconsider the petitioners' allegation. Accordingly, no allegation regarding the choice of market was raised within the time limits established in our regulations. The Department established these deadlines, because, as indicated above, the basis of NV must be settled at the outset of an investigation to avoid having to request a different comparison market database (or CV database) late in the proceeding.

**3. The Department's use of Differential Pricing in this Investigation:**

<u>JESCO's Comments</u>

- The Department's differential pricing analysis in the *Preliminary Determination* was unlawful and unreasonable
  - o The Department misapplied the statute and regulations by calculating the margin based on a comparison of EPs of all individual transactions to the weighted-average NV.
  - o The average-to-transaction (A-to-T) method should only be applied to sales that pass the Cohen's d test.

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[16] *See* "Oil Country Tubular Good from Saudi Arabia: Comments on JESCO Sections B & C Responses," (November 21, 2013); *see also* "Oil Country Tubular Goods from Saudi Arabia: Request for Verification of Third Country Sales Response," (February 25, 2014).
[17] *See, e.g., Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 77 FR 40857 (July 11, 2012), and accompanying Issues and Decision Memorandum, at Comment 10, (July 2, 2012).
[18] See section 773(a)(1)(C)(iii) of the Act.
[19] *See* "Oil Country Tubular Good from Saudi Arabia: Comments on JESCO Sections B & C Responses," (November 21, 2013).

    - The Department applied regulations that did not take effect until May 22, 2014; because this investigation was initiated after that date, it should continue to apply the "limiting rule" described in 19CFR 351.414(f) which states that the Secretary will limit the application of the A-to-T method to those sales that constitute targeted dumping.
    - The Department must only compare the EPs of those individual transactions it has found to be dumped with the weighted-average NV. It must then adjust its statistical method to allow for such effect.
  - The Department did not adequately explain why the A-to-T method was a more appropriate method than the customary average-to-average (A-to-A) method and thus, did not satisfy the statutory criteria for using the A-to-T method.
  - The Department employed an unreasonable and flawed test (*i.e.,* the Cohen's *d* test) to determine whether a pattern of significant price differences existed, and did not take into consideration legitimate commercial reasons as to why some of JESCO's U.S. sales varied by time period.
    - If the Department continues to use the Cohen's *d* test, it should modify it to account for directionality and control for differences in time.

<u>Petitioners' Comments</u>

- Petitioners support the Department's finding that JESCO's U.S. sales exhibited differential pricing.
- The Department properly determined that sufficient sales passed the Cohen's *d* test, and that the difference was significant, so that it was appropriate to use the A-to-T method to calculate JESCO's dumping margin.

<u>Department's Position</u>

The Department disagrees with JESCO that the differential pricing analysis, including the Cohen's *d* test, is unreasonable or unlawful. To the contrary, and as explained in the *Preliminary Determination*, the Department continues to develop its approach pursuant to its authority to address potential masked dumping. In carrying out this statutory objective, the Department determines whether "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differs significantly among purchasers, regions, or periods of time, and…. why such differences cannot be taken into account using {the A-to-A or transaction-to-transaction (T-to-T) comparison method}."[20] With the statutory language in mind, the Department relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[21]

*A-to-T method should only be applied to sales passing the Cohen's d test:*

We disagree with JESCO's argument that the Department should only apply the A-to-T methodology to sales passing the Cohen's *d* test. We note that this issue has been addressed in *Hardwood Plywood from the PRC* where we found that:

> When the Department finds that 66 percent or more of the value of the sales pass the Cohen's d test, the Department considers that the pattern of prices that differ

[20] *See* section 777A(d)(1)(B) of the Act (emphasis added).

[21] *See* 19 CFR 351.414(c)(1).

> significantly is so pervasive in the reported prices that application of the average-to-transaction method **to all sales** is appropriate to address all masked dumping that may result from such differences. The Department finds that the thresholds employed in the Cohen's *d* test are a reasonable way of determining whether and how to apply the average-to-transaction method as an alternative comparison methodology. [22]

We note that here, as in the plywood case, more than 66 percent of all sales passed the Cohen's *d* test, thus applying the A-to-T methodology to all sales is the most appropriate method to account for the pattern of price differences. We further note that the statute does not preclude the Department's application of the A-to-T method to either all of the respondent's transactions or to a subset of those transactions, and the Department explained its reasons for doing so above.

The Department disagrees with JESCO's claim that it applied regulations that had yet to take effect when this investigation was initiated. The final rule JESCO references simply states that the Department will not reinstate previously withdrawn regulations regarding targeted dumping. The notice states that the Department determined to continue not to apply the withdrawn regulations.[23] This rule does not require the Department to readopt the withdrawn regulations.

*Average to Transaction vs. Average to Average:*
As to the argument that the Department did not adequately explain why the A-to-T method was more appropriate than the A-to-A method, we disagree. As explained in the *Preliminary Determination*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate. The Department determined that a difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method when both margins are above *de minimis*; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold. Here, such a meaningful difference exists for JESCO because when comparing JESCO's weight-averaged dumping margin calculated pursuant to the A-to-A method and an alternative comparison method based on applying the A-to-T method to all U.S. sales, JESCO's weighted-average dumping margin moves across the *de minimis* threshold. This threshold is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. Therefore, for these final results, the Department continues to find that the A-to-A method cannot take into account the observed differences, and to apply the A-to-T method for all U.S. sales to calculate JESCO's weighted-average dumping margin.

[22] *See Hardwood and Decorative Plywood from the People's Republic of China Final Determination of Sales at Less than Fair Value,* 78 FR 58273(September 23, 2013) (*Hardwood Plywood from the PRC*).
[23] *See Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 79 FR 22371 (April 22, 2014).

*The Cohen's d test is an unreasonable method to determine whether a pattern of significant price differences existed, and did not take into consideration commercial reasons as to why U.S. sales varied by time period:*

With respect to the Cohen's *d* test, the Cohen's *d* coefficient is a statistical measure which gauges the extent (or "effect size") of the difference between the means of two groups. In the final determination for *Xanthan Gum from the PRC,*[24] the Department stated "{e}ffect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[25] In addressing Deosen's comment in *Xanthan Gum from the PRC*, the Department continued:

> Effect size is the measurement that is derived from the Cohen's d test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of the significance of the difference." The article points out the precise purpose for which the Department relies on Cohen's d test to satisfy the statutory language, to measure whether a difference is significant.[26]

Accordingly, the Department disagrees with JESCO's claim that the Cohen's *d* test is not an appropriate and reasonable approach to examine whether there exists a pattern of prices that differ significantly.

Additionally, the statute does not include a requirement that the Department must account for some kind of causality for any observed pattern of prices that differ significantly, such as increasing market share, changes in raw material costs, prices of natural gas, or fluctuations in exchange rates.[27] Congress did not speak to the intent of the producers or exporters in setting EPs that exhibit a pattern of significant price differences.[28] Nor is an intent-based analysis consistent with the purpose of the provision, as noted above, which is to determine whether averaging is a meaningful tool to measure whether, and if so, to what extent, dumping is occurring. Consistent with the statute and the SAA, the Department determined whether a pattern of significant price differences exists. Neither the statute nor the SAA requires the Department to conduct an additional analysis to account for potential reasons for the observed pattern of prices that differ significantly.

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[24] *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 from the PRC*).

[25] *See Xanthan Gum from the PRC,* and accompanying Issues and Decision Memorandum at 24 (quoting Coe, Robert, "It's The Effects Size, Stupid: What effect size is and why it is important," paper presented at the Annual Conference of British Educational Research Association (September 12-14, 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.)

[26] *Id.*

[27] *See Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, Slip Op. 14-71 (Ct. Int'l Trade June 25, 2014).

[28] *See* 777A(d)(1)(B) of the Act

## 4. The Department's Calculation of Constructed Value (CV) Profit:

JESCO's Comments

- JESCO argues that if the Department continues to use CV to determine NV, it should use the profit rate based on the financial statements of Saudi Steel Pipes Company, as was done for the preliminary determination, because it is consistent with the statute, case precedent, and the evidence on the record.
- According to JESCO, section 773(e)(2)(B)(i) through (iii) of the Act states that the Department can construct a profit (and selling expenses) using any one of the three alternatives.
- JESCO claims that the regulations define the term "foreign country" to mean the country in which the merchandise was produced, thus the CV profit should be based on the profit experience of a Saudi OCTG producer.
- JESCO thus argues that CV profit should be based on the experience of home market producers of identical or comparable merchandise if the Department resorts to CV.
- According to JESCO, the Court of International Trade ("CIT") ruled on the point that there is a strong preference expressed in section 773(e)(2)(B)(i)-(iii) of the Act for the calculation of CV profit using data on sales in the home country market.[29] JESCO states that the CIT explained that the purpose and goal in calculating CV profit is for the Department to "approximate the home market profit experience."[30] JESCO claims that it doesn't make sense to use the profitability of a company such as Tenaris S.A. ("Tenaris"), or any other non-Saudi company, as a proxy for home market profit for a Saudi company.
- According to JESCO, the Department indicated a preference for home market profit versus the rate earned on merchandise in the same general category produced in a foreign country.[31]
- JESCO argues that the Department should use CV profit based on JESCO's own sales of the merchandise under consideration. According to JESCO, because the Department requested JESCO to provide a third country sales database, the Department can calculate profit on JESCO's sales of OCTG to Colombia, which it claims is exactly the type of OCTG sold in the home market.
- According to JESCO, the Department stated that the financial data from companies that manufacture products worldwide, including subject merchandise in the respondent's country, may not reflect the home market profit experience of the respondent.[32]

[29] *See Thai I-Mei Frozen Foods Co. v. United States*, 477 F. Supp. 2d 1332, 1349 (Ct. Int'l Trade 2007).
[30] *See Geum Poong Corp. v. United States*, 193 F. Supp. 2d 1363, 1370 (Ct. Int'l Trade 2002).
[31] *See Certain Steel Nails from the United Arab Emirates*, 77 FR 17029 (March 23, 2012) (*Nails from the UAE*), and accompanying Issues and Decision Memorandum at 6, (where the Department specifically rejected the financial statements of two producers located outside of the United Arab Emirates (UAE)).

- According to JESCO, the Department's preference to use financial statements comparable to the respondent's production process has been upheld by the Court of International Trade (*i.e.*, in *Down-hole Pipe & Equip., LP v. United States*, the Court of International Trade upheld the Department's choice to not include financial statements from a company {Jindal Saw} that the Department decided was "too vertically integrated to be comparable to DP–Master").[33]
- JESCO argues that as an alternative, the Department could use the Arabian Pipes Company's financial statements, or even the profit rate of the U.S. producers. JESCO notes that it submitted the financial statements covering the POI for Saudi Steel Pipes and Arabian Pipes, and also notes that both of these companies were listed in the petition as Saudi producers of OCTG. As an alternative, JESCO argues that if the Department decides to use U.S. OCTG profit rates, it should use the rates calculated for the period most contemporaneous with the POI.
- JESCO believes that because Saudi Steel Pipes Company is a producer of pipe and tube in Saudi Arabia, its profit rate is a reasonable proxy for JESCO's profit on its home market sales.
- JESCO claims that the business operations of the other Saudi Arabian companies are similar to JESCO, (*i.e.*, they have similar production capacity and sell to some of the same customers in the home market). According to JESCO, Saudi Steel Pipes, like JESCO, produces grade API 5CT, as well as API 5L pipe and tube, and Arabian Pipes' website confirms sales of pipe and tube for the oil and gas industry.
- In addition, JESCO argues that the petitioners' assertion that OCTG is more profitable than line pipe rests entirely upon a citation to a 2001 OCTG investigation that did not even involve Saudi Arabia. JESCO argues that that proceeding provides no possible substantial evidence that would support such an assertion.
- JESCO argues that the profit rate should not be calculated based on Tenaris' 2012 financial statements.
- According to JESCO, the Department specifically stated in the preamble to its regulations that sales used as the basis for CV profit should not lead to "irrational or unrepresentative results."[34] JESCO argues that the use of Tenaris' worldwide profits as a surrogate for JESCO's home market profit would lead to "irrational or unrepresentative results." JESCO claims that Tenaris' product mix focuses on the premium sections of the market, which can command the highest prices and claims that Tenaris' extraordinary profits are due in part to protected markets including its Argentine and Mexican operations.

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[32] *See Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*), and accompanying Issues and Decision Memorandum at 26. In that case, the Department stated: "we have on the record financial data for eleven companies from which to select a CV profit rate. Seven of the companies are multinational companies that produce a variety of products worldwide, including CTVs in Malaysia (Sony, Hitachi, Matsushita, Samsung, Philips, Sanyo, and Sharp). The financial data on the record for these seven companies reflect the results of each company's worldwide operations. Although each of these company's business operations and products may be considered comparable to Funai Malaysia's consolidated parent, Funai Electric, they bear little similarity to the respondent company. Moreover, there is no evidence that the profit experience from the consolidated results of these multi-international companies reflects the Malaysian profit experience for the sale of merchandise that is in the same general category in accordance with section 773(e)(2)(B) of the Act."

[33] *See Down-hole Pipe & Equip. LP v. United States*, 887 F. Supp. 2d 1311, 1322-1323 (Ct. Int'l Trade 2012)

[34] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27360 (May 19, 1997) (Final Rule).

- According to JESCO, Tenaris is the company least similar to JESCO of all possible surrogate companies. JESCO notes that the Tenaris financial statements are from a multinational company with no production of OCTG pipe and tube in Saudi Arabia. JESCO argues that the Department should reject Tenaris' financial statements because Tenaris and JESCO do not have comparable levels of production processes. According to JESCO, it is not an integrated producer, but instead purchases its billets produced by unaffiliated steel mills. In contrast, JESCO claims that Tenaris' mills are highly integrated and produce a complete range of seamless and welded steel tubular products.
- JESCO argues that unlike Tenaris, Saudi producers such as JESCO face competition from many countries and the prices they charge reflect full and fair competition in their home market.
- JESCO notes that petitioners did not choose to submit the Tenaris financial statements on the record of this proceeding, but the Department did so, which JESCO believes is unfair to JESCO.
- JESCO argues that there are multiple profit ratios on the record that are evidence that the 2012 Tenaris profit rate is clearly an outlier, including the profit rate calculated on the audited financial statements of Vallourec S.A.
- According to JESCO, Tenaris' profit rate of over 25 percent is extraordinary and aberrational when compared to the profit rates of Saudi Steel Pipes, Arabian Pipe, the U.S. OCTG producers and Vallourec S.A. Because of this lack of similarity, JESCO argues that Tenaris' profit experience cannot be correlated to JESCO's profit experience in its home market.
- In its rebuttal briefs, JESCO claims that petitioners haven't provided any evidence in support of their statement that Tenaris' profit experience represents the typical experience of an OCTG producer selling into one or more viable markets.
- JESCO believes that the U.S. OCTG manufacturers' profit rates on the record demonstrate the extraordinary and aberrational nature of Tenaris' profits.
- While JESCO states that it remains mystified by the Department's last minute decision to include Tenaris' financial statements, JESCO argues that the financial statements from other pipe and tube producers were readily available to the Department including those of Vallourec S.A.
- JESCO argues that if the goal is to find financial statements for a company that produces a large percentage of OCTG, then Vallourec S.A. is certainly as viable as Tenaris. JESCO notes that it placed Vallourec S.A.'s financial statements on the record in response to the Department's placement of Tenaris' financial statement on the record.
- According to JESCO, Vallourec S.A.'s products and production process are more similar to JESCO's, Vallourec S.A. is almost exclusively a seamless producer while welded pipe accounted for a significant percentage of Tenaris' total production. Further it argues that both JESCO and Vallourec S.A. are not fully integrated producers, but instead purchase billets as the primary material input in its production of seamless pipe. According to JESCO, in its list of product characteristics that define OCTG, the Department identified seamless versus welded as the most important product characteristic out of 10 other product characteristics in determining the sales price and cost of production of the pipe.
- JESCO notes that its primary customer for OCTG products in Saudi Arabia was ARAMCO and that ARAMCO was listed as one of Vallourec S.A.'s top 20 customers in 2012.

Petitioner's Comments

- The petitioners argue that the Department should calculate CV profit using "any other reasonable method" under the statute. The petitioners argue that CV profit should be calculated based on Tenaris' financial statements because those financial statements yield the most accurate assessment of the profits of an OCTG producer.
- According to the petitioners:

  > The statute (19 U.S.C. § 1677b(e)(2)(B)) provides three alternatives for the calculation of CV profit. However, petitioners argue that The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) emphasizes that the statute "does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.

  As a result, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[35]
- Petitioners rebut JESCO's argument that the term "foreign country" in section 773(e)(2)(B) of the Act means that the CV profit should be based solely on the home market profit experience of the Saudi producer. Petitions argue that the mention of "foreign country" does not apply to the "any other reasonable method" part of the provision, except for the "profit cap" exception. Therefore, petitioners contend that nothing in the statute directly limits the "any other reasonable method" to the country in which the subject merchandise is produced.
- The petitioners argue that there is nothing wrong with using surrogate CV profit from another country as such use is common in non-market economy country cases.
- According to petitioners, Tenaris is by far the largest OCTG producer in the world and produces both welded and seamless OCTG products, and sells OCTG in significant quantities in virtually every market in which OCTG is sold worldwide. Thus, its profit experience is representative of sales of OCTG across a broad range of different geographic markets.
- Petitioners argue that line pipe is typically less profitable than OCTG.[36]
- Petitioners also believe that Tenaris is a better source for CV profits because, like JESCO, it is mainly an OCTG producer. Petitioner argue that it is more accurate to calculate CV profit using a company in another country that sells mainly the identical product, than it is to calculate CV profit using a company that mainly sells a different product with a different profit experience just because it produces products in the foreign country.
- If the Department decides not to use Tenaris' financial statement for CV profit, as an alternative the petitioners argue that the Department should use the operating profits of the U.S. OCTG industry because the experience of the U.S. OCTG industry is typical of the experience of the industry worldwide.

[35] Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994) at 822; reprinted in 1994 U.S.C.C.A.N. 4040, 4176.

[36] *See e.g. Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, USITC Pub. 3434, Inv. Nos. 701-TA-364 and 731-TA-711 and 713-716 (Review) (June 2001) at 16 and 19 ("Of all the tubular products that can be produced in {pipe production} facilities, OCTG commands the highest price in the market" and generates "among the highest profit margins.").

- Petitioners believe that it is more accurate to use an OCTG producer from another country to calculate CV profit than it is to use a Saudi line pipe producer such as Saudi Steel Pipes Company or Arabian Pipes Company that incidentally produces some OCTG.
- Petitioners argue that the Department should not use a profit rate based on the financial statements for Saudi Steel Pipes because it appears that the company is more of a line pipe producer than an OCTG producer, which is typically less profitable than OCTG.
- Petitioners argue that the Department should not use a profit rate based on the financial statements of Arabian Pipes Company because it appears that it is even more of a line pipe producer than Saudi Steel Pipes.

Department's Position:
For the Preliminary Determination, in calculating JESCO's CV profit under section 773(e)(2)(B)(iii) of the Act, we used the profit from Saudi Pipe Company's 2012 audited financial statements. However, after considering the record evidence and the arguments in the parties' briefs and rebuttal briefs, for the final determination we recalculated JESCO's CV profit based on JESCO's sales of OCTG to Colombia under section 773(e)(2)(B)(iii) of the Act.

Even though JESCO's home market was determined to be viable, it has no home market sales in the ordinary course of trade available for matching purposes during the POI. Because JESCO had no home market sales to serve as a basis for NV, we are basing NV on CV.[37] Likewise, absent ordinary course of trade sales in the home market, we are unable to calculate a CV profit using the preferred method under section 773(e)(2)(A) of the Act.[38] When the preferred method is unavailable, section 773(e)(2)(B) of the Act establishes three alternatives for determining CV profit. They are:

> "(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review {…} for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) {…} for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or (iii) the amounts incurred and realized {…} for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise {(*i.e.,* the "profit cap")}.

[37] *See* Preliminary Analysis Memo at Comment IV, where the Department found that JESCO's home market was viable and instructed JESCO to report such sales. Subsequently a portion of JESCO's home market sales were found to be to an affiliated party and failed the arm's length test. The remaining home market sales were found to be below cost. At the time when the Department was looking at JESCO's relationship with the affiliated home market customer, we requested that JESCO report its sales to the Colombian market.
[38] Statement of Administrative Action –full cite at 840 ("where the method described in section 773(e)(2)(A) cannot be used { . . . } because there are no home market sales of the foreign like product . . . ").

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit.[39] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[40] Thus, the Department has discretion to select from any of the three alternative methods, depending on the information available on the record.

The specific language of both the preferred and alternative methods appears to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) production and sales of the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit from available record evidence, we may not be able to find a source that reflects both of these factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, will provide guidance in determining which profit source to rely upon.

In *Pure Magnesium from Israel,*[41] the Department set out three criteria for choosing among surrogate data under section 773(e)(2)(B)(iii): 1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; 2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; and, 3) the contemporaneity of the data to the POI. In the *CTVs from Malaysia*, we added a 4th criterion of the extent to which the customer base of the surrogate and the respondent were similar (*e.g.*, original equipment manufacturer vs retailers). These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case under subsection (iii).

In this case, based on available data, the Department is faced with several imperfect options for CV profit, each of which reflects at least one of the criteria noted above. We must therefore weigh the value of the available data and, in particular, determine which competing requirement is more relevant for this case based upon the record before us. With each of the statutory alternatives in mind, we evaluated the data available and weighed each of the alternatives to determine which surrogate data source most closely fulfils the aim of the statute. We do not have information on JESCO's non-OCTG products sold in Saudi Arabia and thus cannot

[39] SAA, at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.")

[40] *Id.*

[41] *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Pure Magnesium from Israel*) and accompanying Issues and Decision Memorandum at Comment 8.

calculate a profit under alternative (i). We also find that the Department cannot rely on alternative (ii), *i.e.*, profit for other exporters or producers subject to the investigation, because there were no other respondents subject to the investigation. Therefore, for JESCO, the Department had to consider all of the options under alternative (iii), *i.e.*, any other reasonable method, to determine the appropriate data to use to calculate CV profit.

In weighing the available information and determining which source to use, we first determine which products fit within "the same general category of products as the subject merchandise." Although the term "same general category of products as the subject merchandise" is not used in alternative (iii) (except with respect to the profit cap), determining which products are sufficiently similar to OCTG to be considered within the same general category of product is important, because it helps in evaluating the surrogate financial information of the Saudi Steel Pipe Company, Arabian Pipes Company, Tenaris and Vallourec S.A. The similarity of the potential surrogate companies' products to the respondent's products is also one of the factors set forth in *Pure Magnesium from Israel* and *CTVs from Malaysia*. The term "general category of products" is not defined in the statute. However, the SAA provides that the term "encompasses a category of merchandise broader than the 'foreign like product.'" In that regard, we considered whether OCTG and other pipe products such as line pipe, structural pipe and standard pipe are similar enough to OCTG to be considered within the same general category of product.

In assessing whether a given product is in the same general category of products as the subject merchandise for purposes of calculating a CV profit, we evaluated the products in question from both a production and sales perspective since profit is a function of both cost and price. Differences between the physical characteristics of products, differences in production processes, quality, testing and certification requirements, how the products will be used, and the market conditions associated with the industries and customers who purchase and use the different products all materially impact the profit earned on the different products. We considered all of these points, and after careful consideration, we find that line, structural and standard pipe products are not in the same general category of products as OCTG. While we recognize that non-OCTG pipe products and OCTG oil casing and tubing are all tubular products of circular cross section that can be made by either the welded or seamless process and can be made in the same pipe making mill, the chemical, physical and mechanical characteristics of each product can differ significantly.[42] Likewise, even though certain non-OCTG pipe (*i.e.,* line pipe), can be used in the oil and gas industry, the line pipe is used for transport of oil and gas from facility to facility, while OCTG is used down-hole for oil and gas exploration and production.[43]

Regarding the differences, OCTG casing and tubing performance requirements differ significantly from those for non-OCTG products, because OCTG pipes are subjected to external collapse pressures, internal pressures, and tension strength requirements when used in vertical oil

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[42] *See* "Antidumping Duty Investigations of Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Characteristics and Product Matching," (August 12, 2013). *See Specification for Casting and Tubing – API SPECIFICATION 5CT,* Ninth Edition, July 2011, Effective Date: January 1, 2012, Copyright American Petroleum Institute; *see also Steel Products Manual – Carbon Steel Pipe, Structural Tubing, Line Pipe, Oil Country Tubular Goods,* Published by the American Iron and Steel Institute, (April 1982).
[43] *Id.*

wells.[44] Standard pipe and line pipe products, on the other hand, are primarily intended for the conveyance of fluids and gases, following their extraction.[45] Moreover casing, which is the overwhelming majority of OCTG consumed, is used as a structural support in an oil well to protect the hole that has been vertically drilled.[46] It must be sufficiently strong in collapse strength to resist pressures from the outside of the well, and also must resist pressures that can exist from inside the well.[47] In addition, it must have sufficient joint strength to support its own weight and threading sufficient to resist well pressure. Tubes must have sufficient tension strength to carry its own weight, the weight of a tubing string (*i.e.*, the series pipes attached together forming the entire string), and any oil within the tubing.[48] To obtain these performance requirements specific grades of input steel possessing different characteristics are used.[49] While OCTG may be made on the same "lines" or in the same production cost centers as non-OCTG pipes it use different grades of steel to fulfill different performance requirements.

Comparing these differences further, the destructive and non-destructive testing requirements are much greater for OCTG casing and tubing because of the stresses to which those products are subjected.[50] Indeed, the quality standards, testing and certification for OCTG are substantially different from those of line pipe and standard pipes.[51] These differences are so significant that they fundamentally change how the pipes are connected to each other. Line pipe is connected by welding pipes together while OCTG casing and tubing are connected in different ways (*e.g.*, inset ends and couplings) because of the stresses that are placed on the joint connections.[52] For casing, the ends are threaded and subsequently connected by an assortment of couplings, depending on the environmental requirements of the application.[53] For tubing, the ends usually will be upset, which is a hot-forging process used to increase the metal thickness of the ends, and which will be subsequently threaded. Hence, they will possess mechanical and physical characteristics unlike those of the other products and will be subjected to more demanding testing requirements. The performance measures, production processes, alloys, and physical and mechanical characteristics of OCTG casing and tubing products differ in such significant ways from those of standard pipe and line pipe that these products should not be considered the same general category of products as OCTG for purposes of section 773(e)(2)(B) of the Act. In summary, OCTG casing and tubing are subjected to extreme pressures not characteristic of standard pipe and line pipe applications. Merchandise that we might consider to be within the same general category of products would include tubular products that go into exploration and production. It would include subject OCTG, non-scope OCTG, such as stainless OCTG products, and drill pipe products. These products would exhibit the same fundamental characteristics for down-hole applications. However, we do not have CV profit data on the record pertaining to any of these products.

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[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*

The record shows that OCTG and non-OCTG are sold to different end users for use in different applications, and that these different end users have distinct forces which drive prices, demand, and profitability. OCTG demand is driven by oil and gas exploration and production, which has been strong globally over the past few years, while demand for non-OCTG pipe products has been stagnant over the past few years. Strong demand, all other things being equal, generally translates into higher prices and higher profits. Vallourec S.A.'s financial statements indicate that for "Non-Energy markets (Mechanical Engineering, Automotive, Construction and so on), sales reached €1.091 billion over the full year (20% of total sales), 21% down compared with 2011 (26% of total sales). Throughout the year, sales suffered from the global economy's weakness and, more precisely, the drop in industrial production in Europe and Brazil."[54] We note from Vallourec S.A.'s 2012 financial statements that market demand has been extremely high during 2012 for OCTG.[55] In 2012, they report that global operations and production expenditures amounted to 604 billion U.S. dollars, an increase of nine percent over 2012.[56] We also noted that in Tenaris' 2012 financial statements the company stated that "in 2012, our sales of premium casing and tubing products rose 27% year on year."[57]

According to Tenaris:

> {h}istorically, most of Projects sales were of line pipe for onshore pipelines and equipment for petrochemical and mining applications, but now, we are positioning ourselves as a supplier of mainly OCTG and offshore line pipe, very similar to the rest of the Tubes segment.[58] In the Middle East and Africa, sales decreased mainly due to lower shipments of line pipe products and lower selling prices.[59]

As stated above, we have on the record financial data for four companies from which to select a CV profit, as well as JESCO's third country sales to Colombia and the aggregate profit rate for the U.S. producers. Two of the companies, Tenaris and Vallourec S.A., are multinational companies that produce and sell OCTG worldwide. Saudi Steel Pipes and Arabian Pipes Company primarily produce line and standard pipes but also produce OCTG in Saudi Arabia. We believe that using the aggregate profit rate of the US producers would create a circularity problem by using profit for the US market when petitioners have alleged the market was affected by significant dumping during the period. Below we analyze each of the financial statements and the third country sales to Colombia in accordance with the criteria established in *CTVs from Malaysia*.

Based on the Saudi Steel Pipes financial statements,[60] it appears it produces similar products to JESCO. Record evidence indicates that Saudi Steel Pipe Company "manufactures casing pipes (OCTG) for oil and gas wells and has recently supplied large quantities of this product to Saudi

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[54] *See* "Oil Country Tubular Goods from Saudi Arabia; Rebuttal Factual Information" at Exhibit 9 (page 48 of Vallourec S.A.'s 2012 financial statements) (JESCO's Rebuttal Information) (May 16, 2014).
[55] *See* JESCO's Rebuttal Information at Exhibit 9 (page 259).
[56] *Id.*
[57] *See* "Memorandum to the file: Placing Tenaris S.A. Financial Statements on the Record," at page 6 of Tenaris S.A.'s 2012 annual report (Tenaris Statement) (May 9, 2014).
[58] *Id.* at page 11 of Tenaris S.A.'s 2012 annual report.
[59] *Id.* at page 27 of Tenaris S.A.'s 2012 annual report.
[60] The record of this case contains both the 2012 and 2013 audited Saudi Pipe financial statements that are contemporaneous with the POI. *See* JESCO's Rebuttal Information at Exhibit 5.

Aramco."[61] It appears Saudi Steel Pipes sold goods to customers in Kuwait, Oman, Qatar and the UAE, as well as, other companies operating in the Gulf region and North Africa.[62] However OCTG products do not appear to be its main focus and, we are unable to determine what percentage of its production and sales activities are from OCTG, versus other non OCTG pipe products[63]. Saudi Steel Pipes' financial statements show the principal activities of the company are the manufacturing of black and galvanized steel pipes, production of ERWIHFI galvanized and threaded steel pipes and seamless pipes, pipes with three layer external coating by Polyethylene and Polypropylene in different diameters, pipes with epoxy coating inside, bended pipes in different diameters, space frame, and submerged arc welded pipes.[64] Thus, while it is a domestic producer of OCTG, we are not able to establish that the profit figure from its financial statements relates predominantly to OCTG products.

Based on pages from the Arabian Pipes Company's website, it appears that it produces some OCTG.[65] The record evidence indicates, that it produces grade API 5L (up to X-70); API 5CT (H40/J55/K55) and ASTM As3 grades A & B which are OCTG grades.[66] We are unable to determine what percentage of its production and sales activities are from OCTG versus other non OCTG pipe products.[67] Record evidence appears to indicate that Arabian Pipes Company supplied products to the same customer base as JESCO in the home market.[68] The Arabian Pipes Company's financial statements[69] indicate that the company sold merchandise to Gulf States and other Middle Eastern countries in addition to selling goods in the home market.[70] While it is a domestic producer of OCTG, we are not able to establish that the profit figure from its financial statements relates predominantly to OCTG products.

Based on Vallourec S.A.'s financial statements, Vallourec S.A. is a very large international producer of OCTG. [71] We have the financial statements for both 2012 and 2013. Record evidence shows its principal products are: OCTG tubes (VAM threaded casing and tubing), drilling pipes, pipe for thermal power and nuclear power plants, line pipes, and mechanical tubing and construction tubing.[72] On November 2011 it finalized the acquisition of Saudi Seamless Pipe Factory Company Limited (Zamil Piles), the leading processing and finishing company for seamless OCTG tubes in Saudi Arabia.[73] Vallourec S.A.'s sales of OCTG are spread across Africa, Asia, Europe, the Middle East, and North, and South America.[74] It appears

[61] *Id.* at Exhibit 7.
[62] *Id*.
[63] *Id*. at Exhibit 5.
[64] *Id*. at Exhibit 5 (page 5).
[65] *See* JESCO's Rebuttal Information at Exhibit 3.
[66] *Id.*
[67] *Id.* at Exhibit 2.
[68] *Id.* at Exhibit 3.
[69] The record of this case contains both the 2012 and 2013 audited Arabian Pipe financial statements that are contemporaneous with the POI. *Id*. at Exhibit 2.
[70] *Id*. at Exhibit 2.
[71] The record of this case contains the 2012 audited Vallourec S.A. financial statements that are contemporaneous with the POI. *Id*. at exhibit 9.
[72] *Id.* at Exhibit 9 (page 2).
[73] *Id*. at Exhibit 9(page 34).
[74] *Id.* at Exhibit 9 (page 50).

that 61 percent of their sales are to the oil and gas industry.[75] However, both OCTG and line pipe are sold to the oil and gas industry, (*i.e.*, OCTG is used in oil and gas drilling and extraction, while line pipe is used to transport gas from the well to other locations). We are not able to determine what percentage relates to each product. We are unable to determine what percentage of its production and sales activities are from OCTG versus other non OCTG pipe products, however it does appears that at least 40 percent of its sales are of non-OCTG products, which are not in the same general category of products as OCTG.[76] We are not able to establish that the profit figure from its financial statements relates predominantly to OCTG products.

Tenaris S.A. has OCTG manufacturing plants in many countries around the world. Tenaris' consolidated financial statements are for 2012,[77] which overlaps with half of the POI and predominantly reflects production and sales of OCTG.[78] Approximately 50 percent of its sales were to the North American market,[79] which includes Canada, Mexico and the United States. Thus, over 50 percent of its sales were to non-US customers. The financial statements indicate that Tenaris' sales are generally made to end users, with export sales transacted through a centrally managed global distribution network.[80] Tenaris is an international producer serving many markets around the world. Tenaris' financial statements indicate that it has some integrated steel making, and also purchase steel coils and plate products for fabrication into its end products.[81] Approximately 70 percent of Tenaris' OCTG production was seamless while the remainder was welded.[82]

JESCO's sales to Colombia were placed on the record at the request of the Department. While the Department subsequently decided not to use JESCO's Colombian market sales for purposes of NV, the information is on the record and can potentially be used to calculate CV profit under section 773(e)(2)(B)(iii) of the Act. The Colombian sales of JESCO are sales of OCTG products, a significant portion of which are identical to the products sold by JESCO in the home market and the United States, and the related costs have been verified by the Department.

In weighing the above options against the criterion set out in the statute and in *CTVs from Malaysia*, we consider JESCO's third country sales to Colombia the best available option for determining CV profit in this case. These sales meet all of the requirements for CV profit set out under the preferred method except for the fact that they were not sold in the foreign country. They are sales of the foreign like product and were produced by the respondent in the foreign country. In using these third country sales we consider it appropriate to perform a sales-below

[75] *Id*. at Exhibit 9(page 52).
[76] *Id.*
[77] The record of this case contains the 2012 audited Tenaris S.A. consolidation financial statements that are contemporaneous with the POI. *See* Tenaris S.A.'s 2012 annual report.
[78] *Id.* at pages 12 and 15 of Tenaris S.A.'s 2012 annual report.
[79] *Id.* at page 15 of Tenaris S.A.'s 2012 annual report.
[80] *Id.* at page 80 of Tenaris S.A.'s 2012 annual report.
[81] *Id*. at page 21 of Tenaris S.A.'s 2012 annual report.
[82] *Id.* at page 5 of Tenaris S.A.'s annual report.

cost test to ensure that they were made in the ordinary course of trade, consistent with the preferred method.[83]

Regarding the profit cap as stipulated under section 773(e)(2)(B)(iii), the SAA recognizes that situations may exist in which the Department, due to the absence of data, is unable to use clauses (i) and (ii) and also is unable to calculate a profit cap.[84] The SAA states that {t}he Administration also recognizes that where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (1) and (2) or a "profit cap" under alternative (3), it might have to apply alternative (3) on the basis of the facts available. This ensures that the Department can use alternative (3) when it cannot calculate the profit normally realized by other companies on sales of the same general category of products. In the instant case, the profit cap cannot be calculated because, as we noted above, we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category. Therefore, as facts available we are applying option (iii), without quantifying a profit cap. This decision is consistent with the Department's decision in previous cases involving similar circumstances.[85]

**5. The Department's Application of a Scrap Offset to JESCO's Sales Data:**

<u>JESCO's Comments</u>

- According to JESCO, the Department limited JESCO' scrap offset for the *Preliminary Determination*.
- JESCO argues that the scrap offset should not be limited because the scrap offset reported by JESCO was supported by the quantity of scrap generated during the POI and the scrap produced during the POI exceeded the amount sold.

<u>Petitioners Comments</u>

- According to petitioners, the Department's practice is to allow for a scrap offset related to the quantity scrap generated during the POI.
- The petitioners argue the scrap offset should reflect the amounts verified.

<u>Department's Position</u>

We agree with JESCO. It is the Department's practice to limit the scrap offset to the amount of scrap generated during the POI or period of review (POR).[86] At verification we found that the

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[83] *See MITSUBISHI HEAVY INDUSTRIES, LTD., Plaintiff, v. UNITED STATES* 22 C.I.T. 541; 15 F. Supp. 2d 807; 20 Int'l Trade Rep. (BNA) 1629; 1998 Ct. Intl. Trade LEXIS 92; SLIP OP. 98-82, where the Department performed a sales below cost test in the absence of a formal allegation stating "Commerce was not required to initiate a formal below-cost sales investigation in order to exclude below-cost sales from its profit and SG&A calculations."

[84] *See* SAA at 841, as reprinted in 1994 U.S.C.C.A.N. at 4177.

[85] *See, e.g., Pure Magnesium from Israel; Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008 (October 5, 2001) and accompanying Issues and Decision Memorandum at Comment 3.

[86] *See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review* 77 FR 61738 (October 11, 2012), and the accompanying Issues and Decision Memorandum at Comment 7, (where we stated "The Department's practice is to allow for a scrap offset related to the quantity of such scrap generated in the POR.")

scrap generated during the POI exceeded the scrap sold during the POI.[87] Therefore, no adjustment to the scrap offset reported is necessary for the final determination.

## VI. 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)

[87] *See* Memorandum to the file "Verification of the Cost Response of Jubail Energy Services Company ("JESCO") in the Antidumping Duty Investigation of Oil Country Tubular Goods from Saudi Arabia," (May 6, 2014) at page 14.