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

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Investigation
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DATE: October 21, 2016

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 Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates

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I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE). As a result of our analysis, and based on our findings at verification, we made certain changes to the margin calculations for Ajmal Steel Tubes & Pipes Industries LLC (Ajmal Steel) and Universal Tube and Plastic Industries, Ltd. – Jebel Ali Branch (UTP), Universal Tube and Pipe Industries, LLC (DIP), and KHK Scaffolding and Framework Limited LLC (KHK) (collectively Universal), the mandatory respondents in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General Issues

1. Management Fees

Company-Specific Issues

2. Weight Basis for Ajmal Steel
3. Ajmal Steel's Rebate Adjustment
4. Depreciation on Revalued Assets for Ajmal Steel
5. General and Administrative (G&A) and Financial Expenses for Ajmal Steel
6. Revision of Ajmal Steel's POI Depreciation Analysis
7. Universal's Level of Trade (LOT) Adjustment

8. Credit Expenses for one of Universal's U.S. Customers
9. U.S. Packing Costs for Universal
10. Sales to Universal's Affiliated Reseller Al Zaher Building Materials LLC (Al Zaher)

II. Background

On June 8, 2016, the Department of Commerce (the Department) published the Preliminary Determination of sales of CWP from the UAE at LTFV.[1] We invited parties to comment on the Preliminary Determination. The period of investigation (POI) is October 1, 2014, through September 30, 2015.

From June to August 2016, we conducted verification of the sales and cost of production (COP) information submitted by Ajmal Steel and Universal, in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act).[2] In September 2016, we requested that Universal submit revised home market and U.S. sales databases and a revised COP database. We received these databases in the same month.

We invited parties to comment on the Preliminary Determination. In September 2016, the petitioners,[3] Ajmal Steel and Universal submitted case and rebuttal briefs. Based on our analysis of the comments received and our verification findings, we revised the weighted-average dumping margins for Ajmal Steel and Universal from those calculated in the Preliminary Determination.

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[1] See Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 36881 (June 8, 2016) (Preliminary Determination).

[2] For discussion of our verification findings, see the following memoranda: Memorandum to the File from Blaine Wiltse and Whitley Herndon, entitled "Verification of UTP Pipe USA Corp. and Prime Metal Corp. in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 17, 2016 (UTP CEP Verification Report); see also Memorandum to the File from Blaine Wiltse and E. Whitley Herndon, entitled "Verification of the Sales Response of Universal Tube and Plastic Industries, Ltd. - Jebel Ali Branch in the Antidumping Investigation of Circular Welded Carbon Steel Pipe from United Arab Emirates," dated August 16, 2016 (UTP Sales Verification Report); Memorandum to the File from Blaine Wiltse and E. Whitley Herndon, entitled "Verification of the Sales Response of Dayal Steel Suppliers LLC in the Antidumping Investigation of Circular Welded Carbon Steel Pipe from the United Arab Emirates," dated August 22, 2016 (DSS Sales Verification Report); Memorandum to the File from Dennis McClure and Manuel Rey, entitled "Verification of the Sales Response of Ajmal Steel Tubes & Pipes Ind. L.L.C. in the Antidumping Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 22, 2016 (Ajmal Sales Verification Report); Memorandum to the File from Michael Martin and Christopher Zimpo, entitled "Verification of the Cost Response of Universal in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 24, 2016 (Universal Cost Verification Report); and Memorandum to the File from Christopher J. Zimpo, entitled "Verification of the Cost Response of Ajmal Steel Tubes & Pipes Ind. L.L.C. in the Antidumping Duty Investigation of Circular Welded Carbon Steel Pipe from the United Arab Emirates," dated August 25, 2016 (Ajmal Steel Cost Verification Report).

[3] The petitioners in this investigation are Bull Moose Tube Company; EXLTUBE; Wheatland Tube, a division of JMC Steel Group; and Western Tube and Conduit.

III. Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which:

- (a) iron predominates, by weight, over each of the other contained elements;
- (b) the carbon content is 2 percent or less, by weight; and
- (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

  - (i) 1.80 percent of manganese;
  - (ii) 2.25 percent of silicon;
  - (iii) 1.00 percent of copper;
  - (iv) 0.50 percent of aluminum;
  - (v) 1.25 percent of chromium;
  - (vi) 0.30 percent of cobalt;
  - (vii) 0.40 percent of lead;
  - (viii) 1.25 percent of nickel;
  - (ix) 0.30 percent of tungsten;
  - (x) 0.15 percent of molybdenum;
  - (xi) 0.10 percent of niobium;
  - (xii) 0.41 percent of titanium;
  - (xiii) 0.15 percent of vanadium; or
  - (xiv) 0.15 percent of zirconium.

Covered products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (API) API-5L specification, may also be covered by the scope of this investigation. In particular, such multi-stenciled merchandise is covered when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (e.g., polyester coated) surface finish; or has a threaded and/or coupled end finish.

Standard pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications.

Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications.

Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Products that meet the physical description set forth above but are made to the following nominal outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, are included despite being certified to ASTM mechanical tubing specifications:

O.D. in inches (nominal)	Wall thickness in inches (nominal)	Gauge
1.315	0.035	20
1.315	0.047	18
1.315	0.055	17
1.315	0.065	16
1.315	0.072	15
1.315	0.083	14
1.315	0.095	13
1.660	0.055	17
1.660	0.065	16
1.660	0.083	14
1.660	0.095	13
1.660	0.109	12
1.900	0.047	18
1.900	0.055	17
1.900	0.065	16
1.900	0.072	15
1.900	0.095	13
1.900	0.109	12
2.375	0.047	18
2.375	0.055	17
2.375	0.065	16
2.375	0.072	15
2.375	0.095	13
2.375	0.109	12
2.375	0.120	11
2.875	0.109	12
2.875	0.165	8
3.500	0.109	12
3.500	0.165	8
4.000	0.148	9
4.000	0.165	8
4.500	0.203	7

The scope of this investigation does not include:

(a) pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn, which are defined by standards such as ASTM A178 or ASTM A192;

(b) finished electrical conduit, i.e., Electrical Rigid Steel Conduit (also known as Electrical Rigid Metal Conduit and Electrical Rigid Metal Steel Conduit), Finished Electrical Metallic Tubing, and Electrical Intermediate Metal Conduit, which are defined by specifications such as American National Standard (ANSI) C80.1-2005, ANSI C80.3-2005, or ANSI C80.6-2005, and Underwriters Laboratories Inc. (UL) UL-6, UL-797, or UL-1242;

(c) finished scaffolding, i.e., component parts of final, finished scaffolding that enter the United States unassembled as a "kit." A kit is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble final, finished scaffolding;

(d) tube and pipe hollows for redrawing;

(e) oil country tubular goods produced to API specifications;

(f) line pipe produced to only API specifications, such as API 5L, and not multi-stenciled; and

(g) mechanical tubing, whether or not cold-drawn, other than what is included in the above paragraphs.

The products subject to this investigation are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

IV. Margin Calculations

For Ajmal Steel and Universal, we calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology as stated in the Preliminary Determination,[4] except as follows:[5]

1. We revised the respondents' margin calculations to take into account our findings from the sales and cost verifications.

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[4] See Preliminary Determination and accompanying Preliminary Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates" (Preliminary Decision Memorandum).

[5] See Memorandum to the File from Manuel Rey, Analyst, entitled "Final Determination Calculations for Ajmal Steel Tubes & Pipes Industries LLC," dated October 21, 2016 (Ajmal Final Calculation Memo) and Memorandum to Neal M. Halper, Director, Office of Accounting, from Sheikh Hannan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Ajmal Steel Tubes & Pipes Ind. L.L.C.," dated October 21, 2016 (Ajmal Final Cost Calculation Memorandum).

2. We used theoretical weight exclusive of the weight of zinc and couplings to calculate Ajmal Steel's final dumping margin. See "Discussion of the Issues" section at Comment 2.

3. We revised the general and administrative expense (G&A) ratio for Ajmal Steel to include depreciation expenses on revalued assets in the denominator of the ratio.[6] See "Discussion of the Issues" section at Comment 5.

4. We found that Universal made sales in the home market at two LOTs. See "Discussion of the Issues" section at Comment 7.

5. We recalculated Universal's U.S. credit expenses to take into account a revised credit period during the POI. See "Discussion of the Issues" section at Comment 8.

6. We relied on Universal's reported production quantities to calculate its costs of production (COP) because at verification the Department found that these quantities were supported by production records.[7] For further discussion, see the Universal Final Cost Calculation Memorandum.[8]

V. Discussion of Issues

General Comments

Comment 1: *Management Fees*

Universal is a combined entity consisting of three separate legal entities: UTP, DIP, and KHK.[9] UTP is located in the free trade zone in the UAE, while DIP and KHK are not. During the POI, DIP and KHK incurred "management fees," while UTP did not. Universal did not include the management fees in the reported costs. For the Preliminary Determination, the Department included the management fees incurred by DIP and KHK in the respective companies' G&A expenses because these management fees were recorded as expenses in the respective companies' normal books and records and relate to the general operations of the company as a

[6] See Ajmal Final Cost Calculation Memorandum.

[7] See the Memorandum to Neal M. Halper, Director, Office of Accounting, from Michael P. Martin, Supervisor Accountant, titled "Verification of the Cost Response of Universal Tube and Plastic Industries, Ltd. in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates" dated August 24, 2016, at 11 and Cost Verification Exhibits 8, 9, and 10.

[8] See Memorandum to Neal M. Halper, Director, Office of Accounting, from Christopher Zimpo, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Universal Tube and Plastic Industries, Ltd.," dated October 21, 2016 (Universal Final Cost Calculation Memorandum).

[9] See Memorandum to Melissa Skinner, Director, Office II, entitled "Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Determination of Affiliation/Single Entity Treatment of Universal Tube and Plastic Industries, Ltd. – Jebel Ali Branch (UTP), Universal Tube and Pipe Industries, LLC (DIP), and KHK Scaffolding and Framework Limited LLC (KHK)," dated May 19, 2016.

whole.[10]

The other respondent, Ajmal Steel, is a stand-alone company not located in the free trade zone. During the POI, Ajmal Steel incurred "management fees," but, like Universal, did not include them in the reported costs. For the Preliminary Determination, the Department also included the management fees incurred by Ajmal Steel in the company's G&A expenses because these management fees were recorded as expenses in the company's normal books and records and relate to the general operations of the company as a whole.[11]

Universal argues that the management fees at issue are actually distribution of profits to its minority non-UAE national shareholders and should not be included in the G&A expenses. Universal explains that, in accordance with the UAE laws, the majority shareholder (usually 51 percent) must be a UAE national while the minority shareholders (usually 49 percent) are non-UAE nationals for all companies incorporated outside a free trade zone. Universal admits that the profit of the company will be shared proportionately among the local and foreign shareholders.

Universal maintains that per the Memorandum of Association agreed to among the local and foreign shareholders, the majority local shareholder of each company provides no capital upon establishment of the company, is not liable for any losses or payments to the third companies, does not interfere in the operations of the company, surrenders control of the company to the minority foreign shareholders, and is paid a sponsorship fee at the end of each year, regardless of whether the company makes a profit or loss; in return, the foreign shareholders provide all the equities, make all the investments, control and operate the company, and assume all risks.

According to Universal, the term "management fees" is a misnomer because these fees are not associated with any services performed by the recipients; rather, they are a mechanism to distribute the profit only to the minority foreign shareholders because the UAE laws require that the profit of the company should be shared proportionately among the local and foreign shareholders. Universal points out that the only way the rewards of the company may be reaped solely by the minority foreign shareholders is per this accounting. Universal claims that the amount of management fee as a ratio of sales varied significantly by year, which would not be the case if the management fee were compensation for services performed. Universal notes that, instead, the amount of the management fee is directly correlated to the company's profit before deduction of the management fee, indicating that it is a distribution.

Universal maintains that the record in this investigation is more complete than the earlier

[10] See Memorandum to Neal M. Halper, Director, Office of Accounting, from Sheikh M. Hannan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Universal Tube and Plastic Industries, Ltd.," dated May 31, 2016 (Universal's Preliminary Cost Memo), at 2 and Attachment 2.

[11] See the Memorandum to Neal M. Halper, Director, Office of Accounting, from Christopher J. Zimpo, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Ajmal Steel Tubes & Pipes Industries LLC," dated May 31, 2016 (Ajmal's Preliminary Cost Memo), at 2 and Attachment 2.

investigation when this issue first arose.[12] Universal points out that, in the 2012 CWCQSP from UAE, the Department based its decision to deny Universal's argument in that case -- that the management fee should be excluded from the G&A expenses -- on the terminology used in the financial statements and the fact that the characterization would convey a certain meaning to the users of the financial statements. Universal notes that the method of accounting for the management fee at the consolidated level has been modified since the 2012 investigation. According to Universal, the current audited consolidated financial statements more accurately reflect Universal's claim that the management fees at issue are distributions and not expenses.

Universal argues that the record of this investigation provides a more complete picture of the management fee and the role it plays in corporate and accounting decisions in the UAE. Universal contends that the current record makes clear that such a mechanism is to divert profit to the foreign shareholders and is an outgrowth of the legally-imposed local partner requirement under the UAE law and that the local partner agreed to forego dividends through this arrangement. For the foregoing reasons, Universal requests that the Department not include the management fees in the G&A expenses for the final determination.

Ajmal Steel states that its majority shareholder is a local UAE sponsor and the minority shareholder is a foreigner, who is also the managing director of the company. According to Ajmal Steel, the local partner is only a sponsor and is not involved in the business, management, or operations of the company. Thus, Ajmal Steel maintains that, in reality and for all practical purposes, the minority shareholder is the owner of the company. Citing to the U.S. Department of State website, Ajmal Steel claims that it is a common practice in the UAE to apportion profits to the shareholders differently than their share holdings and profits are often negotiated at fixed amounts.

Ajmal Steel claims that companies in the UAE have devised this management fee mechanism to avoid sharing the profit with local shareholders and this mechanism has nothing to do with fee for services performed or compensation. Ajmal Steel asserts that the management fee is a distribution of dividend to the minority shareholder, who is also the managing director, while the "Director's Remuneration" (i.e., compensation to the managing director for the services performed) has properly been included in the G&A expenses. Ajmal Steel points out that in its audited income statement, "profit before management fee" is calculated, and, thereafter, the "management fee" is appropriated from this profit; ultimately the amount is credited to the minority shareholder's account in stockholders' equity. Ajmal Steel argues that, despite being called a fee, this amount is equivalent to a dividend, and, as such, it is not a cost and should not be included in G&A expenses.

The petitioners contend that the Department should reject the respondents' arguments because neither Universal nor Ajmal Steel cited any provision of the Act, regulations, or case precedent in support of their claimed treatment of these management fees. The petitioners further assert that neither company has provided evidence that the fees are anything other than compensation for managing. The petitioners point out that, in 2012 CWCQSP from UAE, the Department

[12] See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates, 77 FR 64,475 (October 22, 2012) (2012 CWCQSP from UAE), and accompanying Issues and Decision Memorandum at Comment 10.

included Universal's management fees in G&A expenses because: 1) these fees are recorded in its audited financial statements as expenses; 2) the audited financial statements are prepared in accordance with UAE generally accepted accounting principles (GAAP) which are based on International Reporting Financial Standards (IFRS); 3) independent auditors reviewed, tested, and expressed unqualified opinions; 4) the Department relies on the unqualified audit opinion in each of the respondent's audited financial statements; and (5) the Department considers the classification of management fee payment in the respondent's financial statements to be accurate and reliable.

The petitioners argue that the management fees at issue in this investigation are no different than those considered in the 2012 investigation of CWCQSP, and the Department should continue to include management fees in G&A expenses for the final determination.

Department's Position:

The Department will continue to include the management fees in the respective companies' G&A expenses. Section 773(f)(1)(A) of the Act directs the Department to rely upon a company's normal books and records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflect the cost of producing and selling the subject merchandise.[13] The record evidence demonstrates that DIP, KHK, and Ajmal Steel incurred the management fees and recognized these fees as expenses in their audited stand-alone (i.e., unconsolidated) financial statements prepared in accordance with UAE GAAP which are based on IFRS.[14]

Universal and Ajmal Steel have acknowledged that the foreign minority shareholders manage, control, and operate the companies.[15] Thus, we find that the minority shareholders operate as active managers, and, therefore, management fees, as recorded in the companies' normal books and records, reasonably reflect a form of compensation paid to the active managers for their activities. It is not unusual or unreasonable for managers to receive a fixed remuneration in addition to profit-sharing as compensation. Independent auditors review, test, and express an audit opinion on a company's financial statements so that users can rely on the audited financial statements. In the context of an AD proceeding, the Department generally relies on the unqualified audit opinion in each of the respondent's audited financial statements. Therefore, the classification of the management fee payment as an expense in DIP's, KHK's, and Ajmal Steel's respective financial statements is deemed to be accurate and reliable unless record evidence shows them to be in error or their treatment is unreasonable. And, as explained earlier, section 773(f)(1)(A) of the Act directs the Department to rely upon a company's normal books and

[13] See Notice of Final Results of Antidumping Duty Administrative Review: Narrow Woven Ribbon with Woven Selvedge from Taiwan, 80 FR 19635 (April 13, 2015), and accompanying Issues and Decision Memorandum at Comment 8.

[14] See Ajmal Steel's 2014 fiscal year financial statements, at Section A Exhibit A-9(b); and Universal's 2015 fiscal year financial statements at Section A Exhibit A23-A24.

[15] Universal case brief at page 24 and Ajmal case brief at page 2.

records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflect the cost of producing and selling the subject merchandise.[16]

With respect to the argument that the management fees are dividends, UAE laws specifically require that dividends are to be distributed to the owners in proportion to their shareholdings.[17] However, the management fees were not paid to the shareholders in proportion to their shareholdings, and, therefore, do not qualify as dividends (i.e., distribution of profits).[18] The management fees were only paid to the minority shareholders who functioned as active managers and appear to be legitimate management expenses benefitting the company as a whole.

Finally, we disagree with Universal that the Department should rely on its consolidated financial statements and that these financial statements support its claim that the management fees are distributions of profit. First, it is the Department's practice to calculate the G&A expense ratio from the amounts reported in the respondent's unconsolidated financial statements and not from the amounts reported in the respondent's consolidated financial statements.[19] Moreover, we find the treatment at the consolidated level unpersuasive. From Universal's position the "management fees" are still owed to the managing shareholders and the agreement at the consolidated level does not change this fact. Consistent with the 2012 CWCQSP from UAE decision, we continued to include the management fees incurred by Universal and Ajmal Steel in the respective companies' G&A expenses for the final determination.

Company-Specific Comments

Comment 2: *Weight Basis for Ajmal Steel*

For the preliminary determination, we based all per-unit prices, expenses, and costs on a theoretical weight-basis for both respondents. Ajmal Steel argues that, for the final determination, the Department should use actual weight instead because Ajmal Steel records information in its accounting system on this basis. Specifically Ajmal Steel notes that it enters the actual weight of each sale in its sales register, and it also records actual weight data on certain shipping documents.[20] Ajmal Steel states that, although the Department cited potential errors in the reported information as a reason for rejecting it in preliminary determination, the Department did not discover any errors in its reported actual weight data during verification.

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[16] See Notice of Final Results of Antidumping Duty Administrative Review: Narrow Woven Ribbon with Woven Selvedge from Taiwan, 80 FR 19635 (April 13, 2015), and accompanying Issues and Decision Memorandum at Comment 8.

[17] See Universal Cost Verification Report, at Cost Verification Exhibit 23, Memorandum of Association 17.4 at 18.

[18] See Universal case brief, at 25 and Ajmal Steel's Case Brief, at 2.

[19] See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 30. In this case, the Department rejected the respondent's request to use the respondent's consolidated financial statements for the purposes of the G&A ratio calculation.

[20] See Ajmal Steel's Case Brief, at 4.

According to Ajmal Steel, the Department has accepted reporting on an actual weight basis in past cases. As support for this argument, Ajmal Steel cites the Department's recent decisions involving heavy walled rectangular pipes and tubes (HWR) from Korea, Mexico, and Turkey,[21] where the Department: 1) stated that it bases price comparison on theoretical and actual weight depending on the facts of each case; and 2) chose to use actual weight for one respondent in the HWR Mexico investigation that, like Ajmal Steel, kept its books on that basis.[22]

The petitioners argue that the Department should continue to rely on theoretical weight for the final determination. According to the petitioners, it is the Department's practice to make its sales comparisons on the same basis as subject merchandise is sold in the United States,[23] and CWP, like other pipe and tube products, is sold here by theoretical weight (or its equivalent). Specifically, the petitioners note that Ajmal Steel sold CWP by the foot[24] and Universal sold it by the piece, and both of these are theoretical measures from a conceptual perspective.[25]

The petitioners state that, because the relationship between length and theoretical weight is connected, the ratio between theoretical weight and length remains constant regardless of the unit in which CWP is sold (i.e., length, theoretical weight, or pieces). The petitioners assert that this relationship does not hold for quantities stated on an actual-weight basis because there is no fixed conversion factor for length or pieces. Thus, the petitioners claim that the Department should base its price comparisons on theoretical weight to provide more accuracy and reliability.

With respect to actual weight, the petitioners claim that scale weights are inherently inaccurate because of a number of factors, including but not limited to mechanical inaccuracy, scale tolerance and resolution, calibration issues, human error, and environmental conditions. According to the petitioners, these inaccuracies are compounded by the allocation methodology employed by Ajmal Steel, in which it: 1) determines the total net weight of the truck; then 2)

[21] See Ajmal Steel's Case Brief, at 5 (citing Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, 81 FR 47347 (July 21, 2016), and accompanying Issues and Decision Memorandum at Comment 2 (HWR Korea), Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico, 81 FR 47352 (July 21, 2016), and accompanying Issues and Decision Memorandum at Comment 1 (HWR Mexico); Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey, 81 FR 47355 (July 21, 2016), and accompanying Issues and Decisions Memo at Comment 2) (HWR Turkey)).

[22] Id.

[23] See Petitioners' Rebuttal Brief at 22 (citing, e.g., Certain Welded Stainless Steel Pipe from Korea: Final Determination of Sales at Less than Fair Value, 57 FR 53,693 (November 12, 1992), and accompanying Issues and Decision Memorandum at Comment 3 (WLP Korea); HWR Korea, and accompanying Issues and Decision Memorandum at Comment 2, HWR Mexico, and accompanying Issues and Decision Memorandum at Comment 1; HWR Turkey, 81 FR 47355 and accompanying Issues and Decision Memorandum at Comment 2; and Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less than Fair Value, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 16.

[24] The petitioners note that the Department's questionnaire instructs respondents to report unit prices as they appear on the invoice, and, following this rule, Ajmal Steel should have reported its U.S. prices on a length basis, and its home market prices on a piece basis, along with a length/piece conversion factor. Because Ajmal Steel did not do so, the petitioners contend that it impeded the investigation.

[25] The petitioners assert that length and theoretical weight are "two sides of the same coin," joined together by the theoretical mass/length ratio. According to the petitioners, this mass/length constant is integral to the manner in which the subject merchandise is priced, as can be seen by certain of Ajmal Steel's sales documents.

allocates that weight to each item in the shipment using the theoretical weight of each item.[26] The petitioners contend that Ajmal Steel's methodology is flawed because it spreads out the differences resulting from the scale tolerances among all items in a shipment, while failing to capture the true scale weight on a per-item basis.

The petitioners contend that the inaccuracies are further magnified in this case, given that Ajmal Steel: 1) admitted that the weight data its accounting system contains clerical errors; and 2) declined an opportunity to correct these errors when asked. According to the petitioners, the fact that the Department found no errors in particular sales at verification does not erase Ajmal Steel's admission that errors exist.

The petitioners request that the Department rely upon Ajmal Steel's theoretical weight data submitted after the preliminary determination because these data are exclusive of the weight of zinc (i.e., the theoretical weight basis understood in the industry). The petitioners assert that any price premium associated with zinc-coated (i.e., galvanized) pipe has already been captured by the model match, and, thus, the Department would effectively be double counting this difference if it included the weight difference of zinc in the theoretical weight.

Finally, the petitioners request that the Department define what it means when it refers to "actual" weight, given that this term has been used differently in different proceedings.

Department's Position:

For the final determination, we are basing our margin calculations for both companies on theoretical weight. In previous proceedings involving pipe products, the Department based price comparisons on theoretical or actual (i.e., scale) weight, depending on the particular facts of each case.[27] In this case, we disagree with Ajmal Steel that actual weight is appropriate. Ajmal Steel sells CWP to U.S. customers on the basis of length (i.e., in feet) or pieces, and it sells CWP in the home market in either pieces or theoretical weight.[28] While Ajmal Steel may record the actual weight of the products on certain shipping documents and in its sales register for tracking purposes, it does not price any sales of these products in actual weight or reflect the actual weight on the commercial invoices issued to the customer. Therefore, because Ajmal Steel does not price its products in actual weight in either market, but it does price certain products in theoretical weight, we have based our sales and cost comparisons on theoretical weight. This

[26] See Ajmal Steel's February 10, 2016, Section B-D Response, at 22-23.

[27] For instances in which we used theoretical weight, see e.g., WLP Korea, and accompanying Issues and Decision Memorandum at Comment 3, and HWR Korea, and accompanying Issues and Decision Memorandum at Comment 2; for instances in which we used actual weights, see, e.g., Welded Carbon Steel Pipe and Tube Products from Turkey: Final Results of Antidumping Administrative Review and Final Determination of No Shipments, 2013-2014, 80 FR 76674 (December 10, 2015), and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Results of Antidumping Administrative Review, 75 FR 61127 (October 4, 2010).

[28] See Memorandum to the File from Dennis McClure and Manuel Rey, Analysts, entitled, "Verification of the Sales Response of Ajmal Steel Tubes & Pipes Ind. L.L.C. in the Antidumping Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 22, 2016 (Ajmal Steel Verification Report), at Verification Exhibits 39 (at 4) and 50 (at 9).

ensures that all prices, costs, and expenses in the U.S. and home markets are stated on an equivalent basis.

Further, Ajmal Steel acknowledged that the actual weight data in its accounting system may contain errors. In response to a question by the Department regarding apparent discrepancies in its reported data, Ajmal Steel stated that:

> The staff has not been very careful in making these allocations because in the normal course of business, the allocation of the actual weight is done only for the purpose of accounting line items wise weight {sic}
>
> Ajmal Steel would like to clarify that similar minor errors could still be there in the actual weight reported directly from the Quick Books. . .
>
> the only way to rectify any other instance of such errors is manually review each & every Accounting invoice vis-à-vis the Goods Dispatch Report vis-à-vis weight slip and identify the correct allocation based on the correct theoretical weight reported as QTY2H. However, due to the large volume of sales with numerous invoices, it is not possible to scrutinize and review each and every Accounting invoice, GDR and weigh slips manually and then correct the actual weight in QTYH, particularly given the Department's deadlines for this investigation… Further, Ajmal Steel would emphasize that the theoretical weight calculated and reported in field QTY2H are correct for each line item.[29]

Thus, in light of the above statements, we have little confidence in the accuracy of Ajmal Steel's reported actual weight data. To the extent that Ajmal Steel contends that the Department did not find any errors in these data at verification, verification is merely a spot-check and is not intended to scrutinize and review each and every accounting invoice. As Ajmal Steel itself explained to the Department, Ajmal Steel's staff "has not been very careful in making these allocations," and "errors could still be there in the actual weight reported directly from the Quick Books."

Finally, we disagree with Ajmal Steel that <u>HWR from Mexico</u> is on point. In that case, the respondent, unlike Ajmal Steel, maintained its sales and cost records exclusively on an actual weight basis,[30] and it invoiced its customers using actual weight. In contrast, here, Ajmal Steel invoices its customers per foot, per piece, or by the theoretical metric ton.

Therefore, we based Ajmal Steel's calculations on theoretical weight, exclusive of zinc and couplings, for the final margin calculation. This decision is consistent with our treatment of the other respondent in this case, Universal, and it comports with the weight basis that Ajmal Steel itself uses to sell in the home market.[31] Furthermore, it enables us to make price comparisons on

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[29] <u>See</u> Ajmal Steel's April 27, 2016, 2nd Supplemental A-C Response, at 15 - 16.

[30] <u>See</u> <u>HWR Mexico</u>, and accompanying Issues and Decision Memorandum at Comment 1.

[31] <u>See</u>, <u>e.g.</u>, Ajmal Steel Verification Report, at Verification Exhibits 39 (at 5) and 53 (at 12 and 14). These exhibits contain examples of Ajmal Steel's Goods Despatch Reports, which show both the total actual weight of the

equal basis (i.e., theoretical weight both in the U.S. and home markets). Therefore, we find it reasonable to use this weight basis for purposes of the final determination.

Comment 3: *Ajmal Steel's Rebate Adjustment*

Ajmal Steel reported that it granted rebates to certain home market customers during the POI, and we allowed an adjustment for these rebates in our preliminary determination. The petitioners argue that the Department should reconsider this decision in the final determination because: 1) Ajmal Steel did not establish the rebate program until the third quarter of 2015; 2) its home market customers were unaware of the rebate program at the time of sale; and 3) Ajmal Steel first paid these rebates after the filing of the petition.

According to the petitioners, the Department's practice is to disregard rebates unknown to the customer at the time of sale, and this practice stems from statements made in the preamble to the Department's regulations.[32] While the petitioners acknowledge that the Court of International Trade (CIT) recently held in Koehler[33] that the Department's practice is inconsistent with the regulations themselves, they note that the Department strongly disagreed with this ruling, and it shortly thereafter proposed a modification to the regulations, stating that it would not consider price adjustments that reduce or eliminate a dumping margin "unless the party claiming such price adjustment demonstrates, to the satisfaction of the Secretary, through documentation that the terms and conditions of the adjustment were established and known to the customer at the time of sale."[34] According to the petitioners, in promulgating the Proposed Regulation, the Department stated that this proposal was "merely a continuation of the Department's practice based on its interpretation of the {then} current regulation."[35]

The petitioners maintain that the Department continued to follow its practice after Koehler,[36] given that it was not bound to follow it in the absence of a final ruling by the Court of Appeals

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shipments in question as well as the theoretical weights used to allocate the total weight to individual products. According to this documentation, the theoretical weights for the invoiced products matches the theoretical quantities reported in the home market and U.S. sales listings exclusive of the weight of zinc and couplings.

[32] See Petitioners' Case Brief, at 7 (citing Antidumping Duties, Countervailing Duties; Final rule, 62 FR 27296, 27344 (May 19, 1997) (Preamble); Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review, 77 FR 21082 (April 9, 2012), and accompanying Issues and Decision Memorandum at Comments 1 and 2) (Lightweight Thermal Paper from Germany), and Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part, 81 FR 35313 (June 2, 2016), accompanying Issues and Decision Memorandum at Comment 2) (CORE from Taiwan).

[33] See Petitioners' Case Brief, at 8 (citing Papierfabrik August Koehler AG v. United States, 971 F. Supp. 2d 1246 (CIT 2014) (Koehler)).

[34] See Petitioners' Case Brief, at 8 (citing Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings, 79 FR 78742, 78744 (December 31, 2014)) (Proposed Modification).

[35] Id. (citing Proposed Modification, 79 FR at 78744).

[36] See Petitioners' Case Brief, at 9 (citing Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 17034 (March 31, 2015), and accompanying Issues and Decision Memorandum at Comment 12 (LPTs from Korea), and Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value, 79 FR 41979 (July 18, 2014), accompanying Issues and Decision Memorandum at Comment 3 (OCTG from Taiwan)).

for the Federal Circuit (CAFC) on this issue. Further, the petitioners note that the Department promulgated a final rebate rule in March of this year;[37] while the language in this regulation differs slightly from that in the Proposed Modification, the petitioners note that it only applies to cases initiated after April 25, 2016. Thus, the petitioners argue that, because the decisions in this case are governed by the pre-existing 1997 regulations, the Department should disallow Ajmal Steel's rebates for the final determination.

Ajmal Steel agrees that any rebate decisions in this proceeding are governed by the 1997 regulations. However, it maintains that, under these regulations, the Department is required to accept "any price adjustment that is reasonably attributable to the foreign like product, without regard to whether the adjustment is a legitimate one or not."[38] Ajmal Steel asserts that, because the Department did not appeal Koehler at the CAFC, it remains a binding decision.

Ajmal Steel contends that the petitioners' reliance on LPTs from Korea and OCTG from Taiwan is misplaced. According to Ajmal Steel, the Department allowed rebates in the former case, while the Koehler ruling was still pending at the time of the latter one. Ajmal Steel finds CORE from Taiwan similarly inapplicable, because the Department found in that case, unlike here, that the respondent had reason to believe that a proceeding was likely before the filing of the petition (and, thus, that it had issued certain post-sale rebates with antidumping liability in mind).

Ajmal Steel asserts that it established its own sales policy well before the filing of the petition[39] to encourage the processing of a certain type of pipe,[40] rather than to mitigate antidumping liability. Ajmal Steel contends that the petitioners misinterpreted various information on the record, and it fully explained the timing of the rebate payments in its questionnaire responses. Therefore, Ajmal Steel contends that the Department must continue to grant a rebate adjustment in the final determination.

Department's Position:

The Department's regulations, at 19 CFR 351.401(c), direct the Department to "use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product…" Under 19 CFR 351.102(b), the term "price adjustments" is defined to include rebates. The Department interprets these regulations as requiring the Department to deduct rebates from the starting price, where those rebates are known to the customer prior to the sale and are customer-specific.[41]

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[37] See Petitioners' Case Brief, at 8 (citing Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings, 81 FR 15641, 15645 (March 24, 2016)) (Final Modification)).

[38] See Ajmal Steel's Rebuttal Brief, at 1- 2 (citing Koehler and Papierfabrik August Koehler AG v. United States, 37 F. Supp. 3d 1378 (CIT 2014)).

[39] See Ajmal Steel's Supplemental Section A-C Questionnaire Response, at Exhibit S1-11(a) and Verification Exhibit 46.

[40] See Ajmal Steel Verification Report, at page 12 and Verification Exhibit 46.

[41] See, e.g., CORE from Taiwan, and accompanying Issues and Decision Memorandum at Comment 2.

In this case, Ajmal Steel initially stated that it offered volume rebates to certain customers "{b}ecause of expansion of the galvanizing facility at its affiliate Noble Steel (performing galvanizing process on tolling basis for Ajmal Steel), in order to achieve higher sale of galvanized products, from financial year 2015 . . ."[42] On March 31, 2016, Ajmal Steel responded to supplemental questions raised by the Department concerning the rebates offered to its customers. In the supplemental response, Ajmal Steel provided the sales policy concerning its reported rebates,[43] and it further discussed this sales policy with Department officials at verification.[44] This policy shows that Ajmal Steel established the rebate program during the POI, before the petition was filed in this investigation. However, Ajmal Steel provided no evidence to show that its customers knew of the rebate before the sales policy was established. As a result, we disallowed Ajmal Steel's rebates prior to the establishment of the rebate program, in accordance with our practice.[45] However, with respect to the rebates that were made after the sales policy was established, because these customers were aware of the program after its establishment and could have taken into account the rebates in making their purchasing decisions, and because there is no information on the record demonstrating that these rebates were not legitimate, we allowed any rebates granted after that time.

The Department's rebate practice is discussed in the Final Modification, which stated that, since enacting the 1997 regulations:

> the Department has consistently applied its practice of not granting price adjustments where the terms and conditions were not established and known to the customer at the time of sale (sometimes referred to as determining the "legitimacy" of a price adjustment) because of the potential for manipulation of the dumping margins through so-called "after-the-fact", or post-sale, adjustments.[46]

While the Final Modification itself does not apply to this investigation, it is relevant to the extent that it clarified the Department's pre-existing practice concerning price adjustments, such as rebates. In the Final Modification, we stated, in determining whether a party has demonstrated its entitlement to a rebate adjustment, the Department may consider a number of factors including, among other thing, whether the terms and conditions of the adjustment were

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[42] See Ajmal's Section B response, dated February 10, 2016, at 26.

[43] See Ajmal's Section A-C supplemental response, dated March 31, 2016, at Exhibit S1-11(a).

[44] See Ajmal Sales Verification Report, at 11.

[45] See Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 70948 (December 7, 2006), and accompanying Issues and Decision Memorandum at Comment 1; 19 CFR 351.401(b)(1); Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 71 FR 40064 (July 14, 2006), (AFBs 16) and accompanying Issues and Decision Memorandum at Comment 19 (explaining that "{i}t is the Department's practice to adjust normal value to account for rebates when the terms and conditions are known to the customer prior to the sale and the claimed rebates are customer-specific"); and CORE from Taiwan and accompanying Issues and Decision Memorandum at Comment 2.

[46] See Final Modification, 81 FR at 15642.

established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation.[47]

Finally, we disagree with Ajmal Steel that Koehler is a binding decision. While we recognize that the CIT's decision in Koehler stated that the Department is required under its regulations to accept "any price adjustment" that is reasonably attributable to the foreign like product, without judging whether the adjustment is a legitimate one or not, [48] we note that Koehler conflicts with other CIT decisions that affirmed the Department's positions to reject claims for price adjustments.[49] In fact, the Department regularly examines the legitimacy or commercial reasonableness of transactions and claimed adjustments during its proceedings. For example, in new shipper reviews, the Department examines whether the sale forming the basis for the new shipper request is a bona fide commercial transaction, and this practice has been affirmed by the courts.[50] Even in administrative reviews, whether the statute clearly states that the Department "shall determine" the dumping margin for "each" entry, the CIT stated: "{a}lthough the term 'each entry' seems all-inclusive, this court has recognized that it does not 'compel inclusion of all sales, no matter how distorting or unrepresentative.'"[51] Likewise, the phrase in our regulations – "will use a price that is net of any price adjustment" – does not compel inclusion of all price adjustments, including those that are not known at the time of sale and therefore not legitimate.

Comment 4: *Depreciation on Revalued Assets for Ajmal Steel*

For the preliminary determination, the Department recalculated Ajmal Steel's cost of manufacturing (COM) by using the fixed overhead database field, which includes depreciation expense based on revalued asset values (i.e., FOH 1).[52]

According to Ajmal Steel, the Department relies on a company's books and records when they are in accordance with home country GAAP, provided that they reasonably reflect the costs associated with the production and sale of the merchandise.[53] Ajmal Steel states that its auditors approved the adjustment on the income statement where depreciation expense based on the revalued assets is added back to derive net profit from comprehensive income. Ajmal Steel argues that, as a result, the Department should use the variable FOH and not include FOH1, which includes the revalued asset depreciation, in the final determination.

The petitioners argue that the Department should continue to base Ajmal Steel's COM on depreciation expense that includes the revaluation of assets, consistent with its prior practice.[54]

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[47] Id., 81 FR 15644-45.

[48] See Koehler, 971 F. Supp. 2d at 1256-1257.

[49] Id. See also Nachi-Fujikoshi Corp. v. United States, 890 F. Supp. 2d 1106 (CIT 1995).

[50] See Hebei New Donghua Amino Acid Co. v. United States, 374 F. Supp. 2d 1333 (CIT 2005).

[51] Id. at 1337 (citing American Permac v. United States, 783 F. Supp. 1421, 1424 (CIT 1992)).

[52] See Ajmal Steel's Preliminary Cost Memo, at 2.

[53] See Ajmal Steel's Case Brief, at 6-7 (citing section 773(f)(1) of the Act).

[54] See Petitioners' Rebuttal Brief at 20 (citing Notice of Final Determination of Sales at Less Than Fair Value:

Department's Position

Ajmal Steel's building, plant, property and equipment were revalued by an independent appraiser in fiscal year 2013.[55] Ajmal Steel states that it is the Department's practice to use a company's books and records where they are in accordance with home country GAAP, provided that they reasonably reflect the costs associated with the production and sale of the merchandise.[56]

We continue to rely on Ajmal Steel's revalued depreciation expenses as recorded in its normal books and records. In this case, we find that the calculation of Ajmal Steel's depreciation expense on a revalued basis is consistent with the company's normal books and records, in accordance with UAE GAAP. This treatment is consistent with the Department's practice of applying the foreign GAAP except where those principles distort the reported costs.[57] Ajmal Steel failed to demonstrate why the revalued depreciation expenses from its UAE GAAP based normal books and records are unreasonable and distortive to the Department's calculations.

Where a company revalued its fixed assets in its GAAP-based books and records, it has been the Department's practice to include depreciation expenses based on the revalued amounts, and not the historical fixed assets costs.[58] This practice has also been upheld by the CIT, where it explained that depreciation based on the historical, rather than revalued, asset values would distort the production costs of a company because such a methodology would overlook the significant impact that the revaluation of the assets had on the company, such as increased equity values and an improved ability to borrow or acquire capital.[59] Therefore, because Ajmal Steel failed to demonstrate that the use of the revalued depreciation expenses from its normal books and records is distortive, we continued to use the database field FOH1, which includes the revalued depreciation expenses for the final determination. While Ajmal Steel argues that the depreciation on the revalued fixed assets is added back and approved by the auditors, the depreciation adjustment identified by Ajmal Steel is simply a footnote on the income statement, not a restatement of its net income. Ajmal Steel's comprehensive net income as reported on its income statement includes the depreciation expense on revalued fixed assets. And this comprehensive net income, which incorporates the depreciation on the revalued fixed assets, is

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Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 10 (LWR Mexico); and Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 21)).

[55] See Ajmal Steel's 2014 fiscal year financial statements, at footnote 14.

[56] See Ajmal Steel Case Brief, at 6-7 (citing section 773(f)(1) of the Act).

[57] See e.g., Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 6365 and accompanying Issues and Decision Memorandum at Comment 6 (February 9, 2009) (SSSS from Mexico II); and Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061 (September 12, 2007) (Shrimp from Brazil), and accompanying Issues and Decision Memorandum at Comment 5.

[58] See Shrimp from Brazil, and accompanying Issues and Decision Memorandum at Comment 5; and LWR Mexico, and accompanying Issues and Decision Memorandum at Comment 10.

[59] See Laclede Steel Co., v. United States, 18 CIT 965, 975 (October 12, 1994).

ultimately closed out to the net equity on the Statement of Changes in Equity for the fiscal year.[60] Because the cost of sales (COS) and, therefore, comprehensive income, include depreciation expense on revalued fixed assets, there is no reason to treat this expense any differently than any other expense. As a result, we continue to include the depreciation expenses associated with the revaluation of fixed assets in COM.

Comment 5: *G&A and Financial Expenses for Ajmal Steel*

Ajmal Steel argues that, if the Department continues to use fixed overhead that includes depreciation expenses on revalued assets (database field FOH1), it should revise the COS denominator used to derive the G&A and financial expense rates to also include revalued depreciation expenses.

The petitioners did not comment on this issue

Department's Position:

We agree with Ajmal Steel and for the final determination have adjusted the COS denominator, used to derive the G&A and financial expense rates, to include depreciation expense on revalued assets.

Comment 6: *Revision of Ajmal Steel's POI Depreciation Analysis*

Ajmal Steel's reported COM is based on fiscal year 2014. The 2015 unaudited financial statements were on the record prior to verification. Three months of the POI fell in fiscal year 2014 and nine months in fiscal year 2015. At verification, the Department compared fiscal year 2014 depreciation expenses with fiscal year 2015 depreciation expenses, and concluded that basing depreciation expenses on 2015 data would increase Ajmal Steel's COM by an insignificant amount.[61]

Ajmal Steel argues that the Department should base its depreciation analysis on the number of months in the POI coinciding with each fiscal year. In addition, Ajmal Steel states that the Department's analysis of the COM depreciation expense inappropriately includes depreciation expense for G&A, which is already accounted for in G&A itself and is based on the 2015 depreciation expense.

The petitioners did not comment on this issue.

Department's Position:

For reporting purposes Ajmal Steel incorrectly calculated its depreciation expense by using the fiscal year 2014. Since the POI is October 1, 2014, through September 30, 2015, nine months of

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[60] See Ajmal Steel's 2014 fiscal year financial statements, at Section A Exhibit A-9(b).

[61] See Ajmal Steel Cost Verification Report, at 21 and Ajmal Steel's 2015 financial statements, at 28, where we compared depreciation for fiscal year 2014, 2015, and the POI.

POI coincide with fiscal year 2015. At verification, we reviewed the difference in depreciation expenses for the fiscal year 2014 and the POI.[62] We found the difference in depreciation expenses between the fiscal year 2014 (used for reporting purposes) and the POI was insignificant. In its case brief, Ajmal Steel provided an analysis that resulted in an even smaller difference between the reported depreciation expense and one based on the POI. Ajmal Steel's analysis used 3/12ths of the depreciation expense from fiscal year 2014, and 9/12ths from fiscal year 2015.[63] Ajmal Steel's analysis appropriately did not include G&A depreciation because this expense was properly accounted for in its G&A ratio. Ajmal Steel's analysis supports the Department's position that no adjustment is necessary, as the 2014 depreciation expense assigned to COM is virtually identical to the POI depreciation expense.[64] Therefore, under section 777A(a)(2) of the Act and 19 CFR 351.413 (Disregarding insignificant adjustments) we did not make an adjustment to depreciation expense for the final determination.

Comment 7: *Universal's LOT Adjustment*

Universal reported that it sold CWP in the home market during the POI through its producers UTP, DIP, and KHK and through its affiliated distributors Dayal Steel Suppliers LLC (DSS), Dayal Steel Suppliers LLC Ajman & Sharjah Branch (DSS-SA), and Al Zaher.[65] In the Preliminary Determination, we analyzed the selling functions with regard to UTP's, DIP's, and KHK's sales to unaffiliated (channel 1) and affiliated (channel 2) customers.[66] Based on this analysis, we determined that Universal made home market sales at a single LOT during the POI.[67]

Universal argues that the Department's preliminary finding is inconsistent with the information on the record of this investigation, which shows that Universal made home market sales at two LOTs. Universal argues that there are significant differences between the selling functions performed by Universal's manufacturers and the selling functions performed by its affiliated resellers, and these differences give rise to differences in LOTs between the two groups.

According to Universal, its manufacturers and affiliated resellers perform many of the same selling activities; however, it argues that the affiliated resellers undertake certain of these selling functions to a significantly greater degree, and at higher level of frequency. Specifically, Universal argues that the resellers: 1) maintain a larger direct sales staff who interact with customers on a daily basis;[68] 2) consistently engage in sales forecasting and prepare various sales

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[62] Id.

[63] See Ajmal Case Brief, at 8-9.

[64] Id. at attachment 1. Ajmal calculated an increase in percent of the cost of manufacturing of .037%.

[65] See Universal Section A Response, at 8.

[66] See Preliminary Determination and accompanying Preliminary Decision Memorandum, at 13-14.

[67] Id.

[68] See Universal's Case Brief, at 5-6 (citing UTP HM Sales Verification Report, at 6; UTP HM Sales Verification Exhibit 5; Universal January 8, 2016 Section A Response, at Exhibit A-2; UTP Sales Verification Report, at 6; DSS Verification Report, at 5-7, and DSS Verification Exhibits, at Exhibits 1 and 4).

monthly reports;[69] 3) provide sales and marketing support, including assigning customer account representatives, conducting frequent customer visits, and performing customer service activities;[70] 4) actively negotiate prices using price lists as a starting point;[71] 5) perform advertising and other promotional activities, including running advertisements in the yellow pages, giving small promotional gifts to customers throughout the year and larger gifts to specific customers at particular times, and conducting customer outreach after identifying potential new customers;[72] and 6) provide technical assistance by answering technical questions and post-sale follow-up.[73] In contrast, Universal claims that the mills have smaller sales staffs who are primarily engaged in order input activities, limit sales forecasting to yearly meetings, provide little sales and marketing support to large customers already familiar with their products, only occasionally negotiate prices, advertise only in the yellow pages, and handle occasional warranty claims and issue mill test certificates.[74]

Further, Universal argues that the affiliated resellers perform additional sales functions that the manufacturers do not perform. These functions include: 1) maintaining inventory for sales;[75] 2) regularly selling to small customers and making small-quantity sales;[76] 3) extensively training sales personnel over a number of years;[77] 4) holding weekly meetings with sales staff to discuss market fluctuations and identify in-demand products;[78] 5) assisting customers with identifying the proper product;[79] 6) providing product loading for walk-in customers;[80] and 7) discussing market conditions in weekly sales meetings to assess market needs.[81]

According to Universal, the Department has found multiple LOTs in cases involving similar circumstances. For example, Universal notes that the Department found a respondent sold at two LOTs when it: 1) sold its products through two channels of distribution (i.e., directly to distributors and through wholly-incorporated distribution centers to distributers), but 2) performed certain selling functions, such as market research, inventory maintenance, in only one channel.[82]

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[69] See Universal's Case Brief, at 6-7 (citing DSS Verification Report, at 5; and DSS Verification, at Exhibit 5).

[70] Id., at 8-9 (citing DSS Verification Report, at 7; and DSS Verification, at Exhibit 4).

[71] See Universal's Case Brief, at 9-10 (citing DSS Verification Report, at 5-6).

[72] Id., at 11 (citing DSS Verification Report, at 6-7).

[73] Id., at 11-12 (citing DSS Verification Report, at 7).

[74] Id., at 5-15 (citing UTP Sales Verification Report, at 6-7, and UTP Verification Exhibit 5).

[75] Id., at 13-14 (citing DSS Verification Report, at 6).

[76] Id., at 6 (citing DSS Verification Report, at 6-7; DSS Verification Exhibit 4; and UTP Sales Verification Report, at 7).

[77] Id., at 10 (citing DSS Verification Report, at 6-7).

[78] Id., at 10-11 (citing DSS Verification Report, at 6-7).

[79] Id., at 11-12 (citing DSS Verification Report, at 7; and DSS Verification Exhibit 1).

[80] Id., at 13 (citing DSS Verification Report, at 6).

[81] Id., at 12 (citing DSS Verification Report, at 6-7).

[82] Id., at 18-19 (citing Certain Hot-Rolled Steel Flat Products from the United Kingdom: Final Determination of

Universal similarly notes that the Department has found two LOTs where home market affiliated resellers had different, more complex distribution patterns, involving a substantially greater number of selling activities, than did the mills when the mills sold for their own account.[83] Universal argues that its affiliated resellers perform substantially different and greater selling activities than its manufacturers and, thus, like in the cases cited in its case brief, the Department should find that it sells at two LOT in the home market. Further, Universal argues that, because there are significant price differences across these LOTs, Universal is entitled to an LOT adjustment for the final determination.

The petitioners argue that the Department should continue to find that Universal made home market sales at one LOT. According to the petitioners, Universal's responses show that Universal performed seven common selling functions in home market channels 1 and 2 (i.e., sales from Universal's manufacturers to unaffiliated customers and affiliated distributors, respectively), all of which were performed at the same level of intensity, and one additional selling function (i.e., payment of commissions) in channel 1.[84] The petitioners note that, given this fact pattern, Universal did not ask for an LOT adjustment, and the Department correctly did not grant it one in the Preliminary Determination. The petitioners further assert that there is no information on the record of this investigation which would warrant granting Universal's belated request for a LOT adjustment now.[85] Indeed, the petitioners argue that the Department should be skeptical of Universal's argument for an LOT adjustment, given that Universal has dropped its request for a CEP offset.

The petitioners note that Universal changed certain descriptions of UTP's selling functions at the start of UTP's sales verification in the UAE, including reducing the intensity for three activities in, and adding one activity (sales forecasting) to, channel 1. According to the petitioners, it is implausible that Universal would not have identified these changes earlier. Nonetheless, the petitioners claim that the changes are irrelevant because, under the Department's practice and CIT precedent, differences of degrees in selling functions alone are insufficient to grant LOT adjustments.[86]

According to the petitioners, Universal's argument is largely quantitative in nature (i.e., listing a number of differences in common selling activities); however, the petitioners contend that the

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Sales at Less Than Fair Value, 81 FR 53436 (August 12, 2016), and accompanying Issues and Decision Memorandum at 10 (Hot Rolled from the UK)).

[83] See Universal's Case Brief, at 19-20 (citing Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 70 FR 41681, 41685-6 (July 20, 2005) (SWR from Canada Prelim), unchanged in Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,71 FR 3822 (January 24, 2006) (SWR from Canada 2006)).

[84] See Petitioners' Rebuttal Brief, at 5 (citing Universal March 28, 2016, Supplemental Response, at Exhibit A-33).

[85] Id., at 4-7 (citing Universal January 8, 2016 Section A Response, at Exhibit A-6, and Universal March 28, 2016, Supplemental Response, at 10 and Exhibit A-33).

[86] Id., at 9 (citing Hornos Electricos de Venezuela, S.A. v. United States, 27 CIT 1522, 285 F. Supp. 2d 1353 (2003) (Hevensa)).

Department's practice is to evaluate selling activities on a qualitative basis instead,[87] and therefore Universal's argument is ineffective. Further, the petitioners disagree that Universal's reliance on statements by company officials in the verification reports, as well as certain documents taken at verification, does not in and of itself demonstrate that qualitative differences in selling functions exist. In fact, the petitioners note that the CIT has expressly rejected similar arguments in the past.[88]

Moreover, the petitioners argue that the precedent cited by Universal is inapposite because the record of this investigation differs greatly from the records of the cases cited. The petitioners maintain that, in Hot Rolled from the UK, the Department found significant differences between the two home market channels, whereas here, there is only a difference in commissions.[89] Further, the petitioners assert that, in that case and in SWR from Canada 2006, quantitative differences in selling functions spanned multiple categories used in the LOT analysis.[90]

Finally, the petitioners argue that Universal has not met its burden in proving that it deserves an LOT adjustment, as required by the Preamble.[91] The petitioners maintain that the Department requires adequate record evidence to support qualitatively-different selling activities before finding that multiple LOTs exist. The petitioners note that the Department examined Universal in a previous investigation and concluded there, based on a similar fact pattern, that Universal was not entitled to an LOT adjustment.[92] Consistent with its previous finding, the petitioners argue that the current differences in Universal's selling functions are not substantial enough to warrant a finding of two LOTs, and, thus, the Department should reject Universal's argument for the final determination.

Department's Position:

[87] Id., at 11-12 (citing Hot Rolled Flat-Rolled Carbon Quality Steel Products from Japan: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 24329 (May 6, 1999) (Hot Rolled from Japan)).

[88] See Petitioners' Rebuttal Brief, at 12 (citing Certain Frozen and Canned Warmwater Shrimp from Thailand: Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 69 FR 76,918 (December 23, 2004) (Shrimp from Thailand), accompanying Issues and Decision Memorandum at Comment 5 (stating "Contrary to the Rubicon Group's claim, we did not, in fact, find at verification that significant differences in selling functions between third country and affiliated party sales exist; rather, we merely discussed the issue with company officials"); and Allegheny Ludlum Corp. v. United States, 24 CIT 1424, 1438 n.11, 215 F. Supp. 2d 1322 (2000) (Allegheny) (stating "YUSCO appears to operate under the misapprehension that mere recitation of its claims within the Verification Report somehow constitutes verification of those claims. This is not so.")).

[89] See Petitioners' Rebuttal Brief, at 12-13 (citing Hot Rolled from the UK).

[90] Id., at 12-13 (citing Hot Rolled from the UK; and SWR from Canada Final, and accompanying Issues and Decisions Memorandum, at Comment 2). The petitioners note that the Department reversed its decision to provide the respondent in SWR from Canada 2006 an LOT adjustment in a subsequent review, based on its practice of conducting qualitative analysis. In support of this argument, the petitioners cite Carbon and Certain Alloy Steel Wire Rod from Canada: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 77005 (December 18, 2008) (SWR from Canada 2008).

[91] Id., at 2 (citing Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27370 (May 19, 1997) (Preamble)).

[92] Id., at 17 (citing Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 77 FR 64475 (October 22, 2012) (CWP from UAE)).

After considering the evidence on the record, we find that DSS made home market sales during the POI at a different LOT than the LOT of sales made by Universal's manufacturers. 19 CFR 351.412(c)(2) outlines the Department's policy regarding differences in the LOTs as follows:

> The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

In the Preliminary Determination, we analyzed the selling functions that Universal's manufacturers performed to sell to their unaffiliated and affiliated customers. Contrary to the petitioners' assertions, we did not analyze whether Universal's affiliated distributors themselves made sales at a different LOT. Because the record contains sufficient information to perform this analysis for DSS, we are now doing so.

Although Universal did not report DSS's selling functions in the format requested by the Department (i.e., the selling functions chart contained in Exhibit A-33), it provided general descriptions of these functions in its narrative responses. At verification, we discussed these selling functions with DSS's employees, who described the day-to-day selling activities undertaken at DSS with respect to CWP sales, as well as their own responsibilities related to these activities. Specifically, these officials described the sales process as follows:

> According to the sales manager, new sales staff members start in the logistics department to learn about the products and how to identify the products (by completing packing slips). Each salesman is assigned a customer list and given price lists to quote to these customers. Salesmen are trained on what discounts, if any, can be offered. Sales staff may be trained on new prices weekly but the products are the same. However, if DSS sales staff identifies products in demand but not currently being produced in the area, they will look into having Universal produce the wanted product or import it.
>
> On average, salesman will visit the customer's location on a monthly basis, but it is determined by the customer's need. Most of communication between the salesman and customer is happening over the telephone and salesmen are given credit for their cell phones which are used to communicate with customers. To maintain or grow relationships, DSS sales staff generally gives out small promotional gifts throughout the year and, occasionally, will give out larger gifts to specific customers who are making a lot of orders under good credit terms. For new customers, DSS sales staff only deal with cash orders until they establish a relationship and credit terms are established. DSS sales staff does not typically visit trade shows or expos, nor do they solicit business from project contractors. DSS pays commission to freelance selling agents who bring in new customers for agreed to prices. DSS will also pay commissions to the selling agent on subsequent sales to the customer.
>
> DSS's typical customer is a fabricator/end-user and they do not typically sell large quantities to their customers. DSS maintains a larger sales staff (9 persons) as well as 9

> delivery trucks and 5-6 forklifts because DSS has numerous customers which require additional trucks and salesmen to service their sales. DSS will also hold merchandise for its customers who do not have the ability to warehouse and deliver the product based on the customers' needs.[93]

We also interviewed sales personnel at UTP, who described the manufacturers' sales process as follows:

> Company officials explained that the business model of the Universal group of companies is that its manufacturers focus on manufacturing while its resellers (domestic and foreign) focus on making sales, soliciting new customers, and maintaining customer relationships. Within this business model, Universal's mills (i.e., UTP, DIP, and KHK) maintain only small sales staffs, while relegating the majority of selling activities to their affiliated overseas and home market reseller offices. According to company officials, the mills do not sell to small customers because small-quantity sales are not economically beneficial to the mills, and, instead, they refer small-quantity sales to their affiliated resellers. Company officials explained that the mills only make sales to large-order customers who know exactly what kind of pipe they need for a project.
>
> Company officials stated that UTP and DIP share much of the same sales staff, while KHK has only one individual who makes and processes sales. According to company officials, UTP's sales staff is mostly made up of Sales Coordinators who do not talk to customers; rather, they enter orders that are received by the Sales Manager in the D-Brix system.
>
> According to company officials, UTP's affiliated resellers are tasked solely with selling and, as such, maintain larger sales staffs. Company officials stated that UTP's affiliated resellers are located in export markets and throughout the UAE and are responsible for sales in their respective regions, as well as delivery of the products to the customer. Company officials stated that the affiliated resellers maintain strong relationships with their customers, which often requires the resellers' sales personnel to speak their customers' languages. Company officials stated that it is not possible for the mills to provide this level of customer support and relationship-building.[94]

At both verification sites, we also reviewed documentation to support the above statements, including: documents generated in the normal course of business;[95] organizational charts;[96] calendars of sales staff;[97] inventory records;[98] and accounts related to selling activities.[99] Based

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[93] See DSS Verification Report, at 6-7.

[94] See UTP Sales Verification Report, at 6.

[95] See DSS Verification Exhibit 5.

[96] See DSS Verification Exhibit 1; and UTP Sales Verification Exhibit 2.

[97] See DSS Verification Exhibit 4.

on these conversations, as well as a review of source documentation supporting their explanation, we find that DSS undertakes significant activities when selling CWP. Specifically, the record shows that DSS has a sales staff that performs a variety of hands-on selling activities, such as maintaining daily or weekly contact with customers, providing technical support related to product selection, undertaking lengthy training programs, and actively marketing DSS's products. Further, DSS maintains its stock primarily in inventory, while Universal's manufacturers mainly produce to order, and its sales staff is trained on the technical aspects of all DSS's products, enabling it to provide technical support, as required, to DSS's customers. In contrast, the record shows that UTP's selling activities are not as extensive or as frequent as DSS's, and, indeed, in many cases UTP did not perform the same selling functions at all. This fact pattern holds true for Universal's other manufacturers, DIP and KHK, as well.

In evaluating selling activities, the Department organizes them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. We found that DSS and the manufacturers performed selling activities in each of these categories. However, as noted above, we found that the selling functions performed by DSS in three of these categories (i.e., sales and marketing; inventory maintenance and warehousing; and warranty and technical support) were substantially different, from both a qualitative and quantitative perspective, than the selling functions performed by the manufacturers, such that sales made by DSS constitute a different marketing stage within in the meaning of 19 CFR 351.412(c)(2).

With regard to Universal's request that the Department make a similar finding for DSS-SA and Al Zaher, we disagree that the record of this investigation is sufficiently developed to permit the Department to draw the same conclusions regarding DSS-SA. Specifically, while Universal has stated that DSS and DSS-SA operate as one company,[100] DSS and DSS-SA maintain their own accounts, operate out of different locations, and have different sales staff and warehousing facilities.[101] As such, the Department cannot impute DSS's selling functions to DSS-SA, and the information obtained at verification relates solely to DSS. Regarding Al Zaher, because the Department has now found sales to this affiliated reseller were made at arm's-length as discussed in Comment 10 below, we have not used Al Zaher's downstream sales in our margin analysis. Instead, we have used the manufacturers' sales to Al Zaher. Therefore, it is not necessary to analyze the selling functions performed by Al Zaher for purposes of the final determination.[102]

Regarding the petitioners' arguments, we disagree that the Department should disregard statements made by company officials cited in the verification report. At verification, we met with company officials and interviewed sales staff at both UTP and DSS who described the

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[98] See DSS Verification Exhibit 17; and UTP Sales Verification Exhibit 23.

[99] See DSS Verification Exhibits 3, 15, and 21; and UTP Sales Verification Exhibit 13.

[100] See Universal January 8, 2016 Section A Response, at 8.

[101] See Universal March 28, 2016, Supplemental Response, at 5; and UTP Sales Verification Exhibit 5, at 4.

[102] See Memorandum to the File from Blaine Wiltse and Whitley Herndon, entitled "Final Determination Calculations for Universal Tube and Plastic Industries, Ltd. – Jebel Ali Branch (UTP); Universal Tube and Pipe Industries, LLC (DIP); and KHK Scaffolding and Framework Limited LLC (KHK) (collectively, "Universal")" dated October 21, 2016.

selling functions undertaken by these entities in detail and who discussed their own day-to-day responsibilities with respect to these functions. Further, as noted above, we linked these officials' explanations to source documentation supporting their descriptions. Thus, unlike in Shrimp from Thailand and Allegheny, there is evidence on the record beyond mere statements made by company officials, and we find no basis to disregard this record evidence in this final determination. We recognize that the Department has previously found Universal and its resellers sold at the same LOT in a previous investigation involving CWP.[103] However, we also note that the administrative record of each investigation stands on its own and the different facts which exist on the record of this investigation support a different outcome.

Finally, we agree with the petitioners that the Department's LOT analysis does not focus simply on the number of selling functions performed by particular entities. As noted above, the Department examines the extent of the activities performed and their significance to the company's selling operations. In this case, we find that DSS not only performs more selling functions than do the mills, but these selling functions are significantly and qualitatively different than those performed by Universal's manufacturers.

We agree with Universal that the facts here are analogous to those in Hot Rolled from the UK and SWR from Canada 2006, where the selling activities performed by certain entities were substantially greater than the activities performed by others.[104] With respect to SWR from Canada 2006, while the Department may have reached a different conclusion in a subsequent segment of that proceeding, this has no bearing on our decision here. The Department's LOT analysis is a fact-intensive and case-specific inquiry, and the facts in SWR from Canada 2006 supported a finding of two LOTs in 2006 and only one in SWR from Canada 2008. This difference is one of fact, not of principle, and it does not change the fundamental nature of the Department's LOT analysis: Where one selling entity performs selling activities which are substantially different than the activities performed by another selling entity, such that the two entities operate at different marketing stages (or their equivalent), the Department finds that multiple LOTs exist, in accordance with 19 CFR 351.412(c)(2). This regulatory precept was upheld by the CIT in Hevensa, which stated that, "Commence has the discretion to make a LOT adjustment if certain conditions are met, a crucial one being 'if the difference in level of trade … involves the performance of different selling activities…'"[105]

Notwithstanding the position above, we recognize the petitioner's concerns with respect to the circumstances surrounding the timing of Universal's LOT adjustment claim. If an antidumping order is issued in this proceeding, we will require in subsequent segments that all information relevant to LOT adjustment claims be made available in the respondents' questionnaire

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[103] See CWP from UAE.

[104] See Hot Rolled from UK, and accompanying Issues and Decision Memorandum, at Comment 2 (finding that direct sales from the mills and sales through a distribution center represent different stages in the marketing process, where there are significant differences in the selling functions involved); and SWR from Canada 2006, and accompanying Issues and Decision Memorandum, at Comment 1 (finding two LOT where the respondent presented substantial evidence regarding the selling functions of its two operating units and the significant differences between the two entities).

[105] See Hevensa at 14.

responses and the intensity and frequency of all selling functions to be fully disclosed at that time as well.

Comment 8: *Credit Expenses for One of Universal's U.S. Customers*

At Universal's CEP verification, we noted that sales to one customer declined during the POI, and, thus, Universal's methodology for calculating the credit period for this customer may have significantly overstated the credit period.[106] Therefore, we requested that company officials prepare an alternate calculation, which we set forth in the verification report.[107] Universal argues that the Department should use this alternate credit period because it is clearly more accurate.

The petitioners disagree, arguing that revising the credit period goes beyond the primary objective of verification, which is to verify the accuracy and completeness of the submitted data. According to the petitioners, verification did not reveal that the reported credit period was inaccurate; instead, it merely showed that Universal's reporting was conservative. The petitioners point out that the verification team encountered a similar situation at the verification conducted in the home market, and it accepted Universal's reported payment dates because they were conservative.[108] Thus, the petitioners contend that the Department should use the credit expense data originally reported for purposes of the final determination.

Department's Position:

At the CEP verification, we examined Universal's methodology for computing its reported credit periods for a specific customer that did not make payments on a consistent basis for sales made during the POI[109] Although we found that Universal's methodology for calculating the credit period for its sales to this customer was acceptable in general,[110] we also found that the methodology generated a distortive credit period because sales to the customer in question declined significantly towards the end of the POI, and, as a result, Universal's methodology yielded a result that did not accurately reflect the credit period for it.[111]

Based on the foregoing, we disagree with the petitioners that the credit period reported for this customer is accurate, or that it would be appropriate to disregard the information taken at verification merely because the reported figure can be deemed "conservative." The difference between the reported figure and the one set forth in the verification report is so significant that

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[106] See Memorandum to the File from Blaine Wiltse and Whitley Herndon, "Verification of UTP Pipe USA Corp. and Prime Metal Corp. in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 17, 2016 (UTP USA CEP Verification Report), at 14.

[107] Id.

[108] See the Memorandum to the File from Blaine Wiltse, Senior International Trade Compliance Analyst, and E. Whitley Herndon, International Trade Compliance Analyst, entitled, "Verification of the Sales Response of Universal Tube and Plastic Industries, Ltd. – Jebel Ali Branch in the Antidumping Investigation of Circular Welded Carbon Steel Pipe from the United Arab Emirates," dated August 16, 2016 (UTP Sales Verification Report), at 12.

[109] See UTP USA CEP Verification Report, at 14.

[110] Id., noting no discrepancies.

[111] Id.

we find that it would be distortive to use it in our margin calculations. Therefore, we relied on the figure in the verification report in the final determination, and we recalculated credit expenses for this customer accordingly.

Finally, we disagree with the petitioners that the facts described above are analogous to those encountered at the verification of UTP's home market sales data. In the latter case, we observed a difference in the payment date reported for a single invoice, and thus, acceptance of the reported figure, unlike the situation in the U.S. market, was not distortive. Nonetheless, in the interest of consistency, we have corrected the payment date for this transaction in UTP's sales listing because verified data exist on the record with respect to it.

Comment 9: *U.S. Packing Costs for Universal*

At verification, we found that UTP had reported the cost of "caps" as both a packing expense and part of its COM.[112] Therefore, we obtained revised packing expenses without the cost caps, and we instructed Universal to report these revised expenses in an updated sales listing submitted after verification.[113]

The petitioners argue that the Department should not use the revised packing expenses because: 1) Universal characterized caps as packing material in its response;[114] 2) this is consistent with Universal's treatment of caps in a prior CWP investigation;[115] and 3) the Department often treats expenses differently in the margin program than a company does in its own books and records.[116] Instead, the petitioners argue that the Department should recalculate packing costs to apply the cost of caps only costs to threaded products, given that caps are used only for threaded pipe. Finally, the petitioners argue that, if the Department disagrees, it needs to: 1) add the removed costs to COM;[117] and 2) adjust all costs which are calculated as a percentage of COM (e.g., G&A).

Universal argues that the Department should use the revised packing figures in the final determination. According to Universal, the petitioners have not based their argument on the record of this case, but instead appear to rely on the record of CWP 2012. Universal states that

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112 See UTP Sales Verification Report, at 17.

113 See Memorandum to the File from Blaine Wiltse, Senior International Trade Compliance Analyst, entitled, "Clarification of Packing Expenses in the Sales Verification Report of Universal Tube and Plastic Industries, Ltd. – Jebel Ali Branch (UTP) in the Antidumping Duty Investigation of Circular Welded Carbon Steel Pipe from the United Arab Emirates," dated September 1, 2016.

114 See Universal's sections B-D response, dated February 11, 2016 (Universal Sections B-D Response), at B-40.

115 See Petitioners' Case Brief, at 3 (citing Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 77 FR 64475 (October 22, 2012), accompanying Issues and Decision Memorandum at Comment 6) (CWP 2012)).

116 Id. (citing Stainless Steel Sheet and Strip in Coils from Mexico; Final results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010), accompanying Issues and Decision Memorandum at Comment 9).

117 Id. at 4 (citing Universal's section D response at D-19, which states that Universal excluded packing expenses from its reported costs).

the Department verified that UTP treats the cost of caps as direct material costs in its books and records, and it reported this cost in COM.[118] Thus, Universal notes that it double counted the cost of caps, once as packing and again as part of COM, and the Department should correct this error by removing the expenses from packing.

Department's Position:

We disagree with the petitioners that it is appropriate to rely on Universal's packing expenses as originally reported. At the sales verification conducted at UTP, we found that Universal had reported the cost of caps as both a packing expense and part of COM.[119] Therefore, we found that Universal had double counted this cost.

Because this error was not discovered until verification, the record does not contain sufficient information to determine whether caps should be treated as packing or a direct material. Therefore, in order to eliminate the double counting, we have accepted Universal's revised packing costs for purposes of this final determination. If an antidumping duty order is issued in this proceeding, we will consider the appropriate treatment of caps in a subsequent administrative review, if one is requested.

Finally, we disagree with the petitioners that accepting Universal's revised packing expenses requires adding the cost of caps to COM. As noted above, Universal reported these costs as part of COM, and, thus, no additional adjustment is necessary.

Comment 10: *Sales to Universal's Affiliated Reseller Al Zaher*

During the POI, Universal sold CWP to Al Zaher, an affiliated reseller in the home market. In the Preliminary Determination, we found that these sales were not made at arms-length, and, thus, we used Al Zaher's downstream sales in our analysis.[120] Universal requests that the Department use its sales to Al Zaher for the final determination because, due to corrections made at verification, these sales now pass the arm's length test.

The petitioners did not comment on this issue.

Department's Position:

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[118] See Universal's Case Brief, at 3-5 (citing Memorandum to the File from Michael Martin, Supervisory Accountant, and Christopher Zimpo, Senior Accountant, entitled, "Verification of the Cost Response of Universal in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated August 24, 2016 (UTP Cost Verification Report), at 11 and Cost Verification Exhibit 12).

[119] See UTP Sales Verification Report, at 17, which states, "In examining UTP's packing materials, we found UTP included purchases of caps as packing material expenses. However, company officials explained that . . . they record these expenses as part of the cost of manufacturing . . . Therefore, removing the cost of caps . . . from UTP's packing expense calculation is appropriate." See also UTP Cost Verification Report at 11 and Cost Verification Exhibit 12, showing that caps are included on various work orders and their total costs are captured in COM.

[120] See Memorandum to the File from Blaine Wiltse, Senior International Trade Compliance Analysist, Office II, AD/CVD Operations, entitled "Preliminary Determination Calculations for Universal Tube and Plastic Industries, Ltd. - Jebel Ali Branch (UTP); Universal Tube and Pipe Industries, LLC (DIP); and KHK Scaffolding and Framework Limited LLC (KIIK) (collectively. "Universal")," dated May 31, 2016, at 4.

We agree. We performed the final margin calculations for Universal using its most recent sales and cost databases. Because these calculations show that Universal's sales to Al Zaher now pass the arms-length test, we used these sales to calculate its final margin.

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

October 21, 2016
(Date)