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Investigation
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DATE: February 14, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Oil Country Tubular
Goods from Ukraine

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that oil country tubular goods (OCTG) from Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 2, 2013, the Department received an antidumping duty (AD) petition concerning imports of OCTG from Ukraine filed in proper form by petitioners.¹ Subsequently, the Department published the initiation of the AD investigation of OCTG from Ukraine on July 29, 2013.² Between August 5 and 12, 2013, the Department received comments and rebuttal comments on product characteristics from a variety of interested parties.

On July 29, 2013, we placed the U.S. import data of OCTG from Ukraine obtained from U.S. Customs and Border Production (CBP) on the record and invited interested parties to comment on the data and the Department's respondent selection methodology; no comments were

¹ United States Steel Corporation, Vallourec Star L.P., TMK IPSCO, Energex Tube (a division of JMC Steel Group), Northwest Pipe Company, Tejas Tubular Products, Welded Tube USA Inc., Boomerang Tube LLC, and Maverick Tube Corporation (collectively, petitioners)

² See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 45505 (July 29, 2013) (*Initiation Notice*).



submitted. Subsequently, on August 29, 2013, the Department selected Interpipe Europe S.A. (Interpipe Europe) as the single mandatory respondent in this investigation, and issued the initial questionnaire to the respondent on August 30, 2013.³ As stated in the “Affiliation and Single Entity” section below, the Department preliminarily determines that Interpipe Europe and a variety of other companies owned by Interpipe Ltd are affiliated and form a single entity (collectively, Interpipe). On December 24, 2013, the Department initiated a sales-below-cost investigation of OCTG sold by Interpipe after analyzing petitioners’ request for such an investigation on December 3, 2013.⁴ Between September 20, 2013, and February 3, 2014, Interpipe submitted responses to sections A, B, C and D of the Department’s questionnaire, which were timely filed. Additionally, Interpipe timely responded to all supplemental questionnaires issued by the Department.

On December 18, 2013, petitioners filed amendments to the petition, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of OCTG.⁵ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, the Department will issue a preliminary finding not later than the preliminary determination. On December 30, 2013, the Department requested that Interpipe report their shipment data for a three-year period ending in February 2014, the month of the preliminary AD determination. On January 7, 2014, Interpipe submitted their shipment data up to December 2013.

Petitioners and the Government of Ukraine filed comments for the Department to consider in its preliminary determination on February 5 and 6, 2014, respectively.

On February 11, 2014, Interpipe requested a postponement of the final determination and an extension of provisional measures.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2013.⁶

³ See Memorandum to Gary Taverman, regarding “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine: Respondent Selection,” dated August 29, 2013; *see also* Letter to Interpipe Europe S.A. regarding “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine,” dated August 30, 2013 (AD Questionnaire).

⁴ See Memorandum to Edward Yang, regarding “Antidumping Duty Investigation of Oil Country Tubular Goods from Ukraine: Petitioners’ Allegation of Home Market Sales at Prices Below the Cost of Production for Interpipe Limited and North American Interpipe,” dated December 24, 2013 (COP Initiation).

⁵ See Letter from petitioners regarding “Amendment to Petition for the Imposition of Antidumping Duties: Oil Country Tubular Goods from Ukraine,” dated December 18, 2013 (Critical Circumstances Allegation).

⁶ See 19 CFR 351.204(b)(1).

IV. POSTPONEMENT OF PRELIMINARY DETERMINATION

On October 21, 2013, the Department fully postponed the deadline for issuing the preliminary determination to no later than 190 days after the date on which it initiated this investigation.⁷ As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁸ Accordingly, the revised deadline for the preliminary determination of this investigation is now February 14, 2014.⁹

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on February 11, 2014, Interpipe requested that the Department postpone the final determination and that the Department extend the provisional measures from four to six months. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter Interpipe accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

VI. SCOPE OF THE INVESTIGATION

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

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

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20,

⁷ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 65268 (October 31, 2013).

⁸ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

⁹ Due to the closure of the Federal Government on February 13, 2014, the Department completed this determination on the next business day (*i.e.*, February 14, 2014). *Id.*

7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

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

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

VII. SCOPE COMMENTS

In the *Initiation Notice*, the Department invited interested parties to “to raise issues regarding product coverage.”¹⁰

On August 12, 2013, we received scope comments from WSP Pipe Co., Ltd. (WSP) (the sole mandatory respondent in the concurrent AD investigation involving OCTG from Thailand), requesting that the Department “clarify the scope of these oil country tubular goods (OCTG) investigations by excluding certain ‘pierced billets’ from the scope.”¹¹ WSP described the merchandise subject to the request as “billets with a chemical composition used to produce a variety of pipe and tube products (including but not limited to OCTG), which have been pierced, but which have not been otherwise further processed prior to importation into the United States.”¹² WSP further described the merchandise as “heated and pierced; it has not been rolled, sized, straightened, cut, *etc.*, prior to importation into the United States.”¹³ WSP stated that it did not think that such “pierced billets” constitute “unfinished OCTG, including green tubes” because the billets are not dedicated for use as OCTG or green tubes and can be used for other applications such as diesel sleeves, mine crane rear axles, and mechanical or structural pipe.¹⁴

¹⁰ See *Initiation Notice*, 78 FR at 45506.

¹¹ See Letter from WSP, regarding “Comments on Scope of Investigations: Antidumping Duty Investigations of Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam; Countervailing Duty Investigation of Oil Country Tubular Goods from India and Turkey,” dated August 12, 2013, at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

WSP also claimed that the merchandise in question requires substantial additional processing before it could be considered unfinished OCTG and thus subject to the scope of the investigations.¹⁵

We received rebuttal comments from petitioners on August 22, 2013, in which petitioners claim that the Department should reject WSP's request and that the merchandise in question is covered by the scope of the investigations.¹⁶ Petitioners state that the scope language of the investigations covers "hollow steel products of circular cross section" that are unfinished and may be used as OCTG, and argue that the merchandise described by WSP fits this physical description and thus is clearly within the scope of the order.¹⁷ Petitioners further state that the inclusion of this merchandise in the scope is consistent with previous practices and decisions by the Department.¹⁸ Petitioners also argue that WSP provided no information to substantiate the claim that "pierced billets" require substantial additional processing, and moreover that there are many types of unfinished OCTG besides "green tubes" that are covered by the scope.¹⁹ Finally, petitioners believe that any "pierced billets" imported into the United States would be classified under the heading 7304 of Chapter 73 of the HTSUS, and that such a classification would indicate that the merchandise was a form of unfinished OCTG and covered by the scope.²⁰

In response to WSP's arguments, petitioners argued in part that the physical characteristics of the product in question were the same as merchandise covered by the scope of the investigations and that there was no evidence that the merchandise in question required further manufacturing. WSP never responded to petitioners' arguments, provided no further information, and subsequently did not respond to the Department's AD Questionnaire. Therefore, we preliminarily find that there is no evidence to suggest the merchandise described by WSP is not covered by the scope of these investigations. We invite parties to comment on this in their briefs so that the issue can be addressed in the final determination.

VIII. AFFILIATION AND SINGLE ENTITY

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: (1) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization (section 771(33)(E) of the Act); (2) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (section 771(33)(F) of the Act); or (3) any person who controls any other person and such other person (section 771(33)(G) of the Act). Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the SAA notes that control

¹⁵ *Id.*, at 2-3.

¹⁶ See Letter from petitioners regarding "Certain Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam: Rebuttal Comments on Scope of Investigation Scope Rebuttal Comments," dated August 22, 2013, at 2.

¹⁷ *Id.*, at 2-3.

¹⁸ *Id.*

¹⁹ *Id.*, at 3.

²⁰ *Id.*, at 4.

may be found to exist within corporate groupings.²¹ The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. We examined the record evidence to determine whether affiliations with any of the following entities existed during the POI: (1) other producers or exporters of subject merchandise, (2) suppliers of inputs used to produce OCTG; (3) reported home market customers; and (4) reported U.S. customers.

In this investigation, Interpipe explained that Interpipe Ltd, a Cyprus-based holding company, owns a variety of companies that are involved in the production and sale of OCTG. Interpipe Ltd owns 100 percent of Interpipe Ukraine, responsible for most domestic sales, Interpipe Europe, a Swiss based affiliate involved in export sales, and North American Interpipe, Inc. (NAI), responsible for sales in the United States and elsewhere in North America. Interpipe Ltd also owns 87 percent or more of three production mills: (1) PJSC Interpipe Niznedneprovsky Tube Rolling Plant (Interpipe NTRP), (2) LLC Interpipe Niko Tube (Niko Tube), and (3) PJSC Interpipe Novomoskovsk Pipe-Production Plant (Interpipe NMPP).²² Interpipe Ltd, therefore, controls Interpipe Ukraine, Interpipe Europe, NAI, and the three mills through ownership. We find Interpipe Ltd's ownership of 87 percent or more of these companies results in operational control or direction that has the potential to impact decisions concerning the production, pricing, and cost of the subject merchandise. Thus, Interpipe Europe, Interpipe Ukraine, NAI, and the three mills are affiliated through the common control of their parent, Interpipe Ltd, under section 771(33)(F) of the Act.

19 CFR 351.401(f) states that the Department will treat affiliated producers as a single entity where producers have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities and there is a significant potential for manipulation of price or production.²³ 19 CFR 351.401(f) further states that in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. The Department also previously explained its practice of collapsing affiliated companies:

²¹ See Statement of Administrative Action Accompanying the Uruguay Round Agreement Act, H.R. Doc. 103-316 (1994) (SAA), at 838, *reprinted in* 1994 U.S.C.A.N. 4040 *et seq* (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

²² See Letter from Interpipe regarding "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine, Section A Questionnaire Response," dated September 20, 2013 (Section A Response), at Exhibit A-2-c.

²³ While 19 CFR 351.401(f) uses the term "producers," the Department's practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (Aug. 19, 1996), citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (*Colombian Flowers*).

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”²⁴

Of the three mills, Interpipe reports that Interpipe NTRP and Niko Tube produced subject merchandise during the POI, supplying all of the OCTG sold by Interpipe Ukraine, Interpipe Europe, and NAI during the POI.²⁵ Thus, Interpipe NTRP and Niko Tube have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities. Moreover, Interpipe NTRP and Niko Tube were dependent on Interpipe Ukraine for the vast majority of their home market sales and on NAI, via Interpipe Europe and Interpipe Ukraine, for all of their sales to the United States and the rest of North America.²⁶ Interpipe NTRP and Niko Tube also conducted some sales on their own, demonstrating that they are able to carry out certain sales functions normally provided by Interpipe Ukraine. Accordingly, each company is part of chain of transactions requiring extensive coordination of sales and production decisions (*e.g.*, price negotiations, production planning, and shipping) and the sharing of sales information.²⁷ Therefore, on the basis of this record evidence, there is a significant level of transactions between these affiliates and, as noted above, a high level of ownership.²⁸ As such, in accordance with 19 CFR 351.401(f) of the Department’s regulations and the Department’s practice,²⁹ we are treating Interpipe Ukraine,

²⁴ *Colombian Flowers*, 53 FR at 24337.

²⁵ *See, e.g.*, Section A Response at A-13.

²⁶ *Id.*, at A-8.

²⁷ *Id.*, at Exhibit A-4-b.

²⁸ *Id.*, at Exhibits A-2-c, A-4-b; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5 (finding that “because {Company A} has a fully functioning facility for producing the subject merchandise, which is located on the same premises as and is controlled by {the respondent}, the role of producer and seller could easily switch from {the respondent} to {Company A} without substantial retooling at either company”); *see also Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651, 79652 (December 22, 2011) (finding that “the ownership, management, and operations of a producer and an affiliated exporter were so intertwined that management could switch the role of producer and seller between the two companies without substantial retooling of either company”), unchanged in *Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012).

²⁹ *See Colombian Flowers* (citing *Granite Products from Spain*); *see also Queen’s Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (1997) (in which the Court of International Trade affirmed the Department’s authority to collapse affiliated parties for purposes of AD analysis).

Interpipe Europe, NAI, Interpipe NTRP and Niko Tube as a single entity for purposes of this preliminary determination.³⁰

Interpipe also reported that several companies involved in supplying and supporting the production of OCTG are at least 99 percent owned by the parent company, Interpipe Ltd: LLC Metallurgical Plant Dneprosteel, LLC Lime Factory, LLC Dneprosteel-Energo, PJSC Interpipe Vtormet, LLC Lugansky Kombinat Vtormet, LLC Meta and LLC Interpipe Management.³¹ Interpipe Ltd, therefore, controls these suppliers and supporting companies through ownership. We find Interpipe Ltd's ownership of 99 percent or more of these companies results in operational control or direction that has the potential to impact decisions concerning the production, pricing, and cost of the subject merchandise. Thus, these suppliers and supporting companies are affiliated with the sellers and mills listed above through the common control of their parent, Interpipe Ltd, under section 771(33)(F) of the Act.

IX. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

To determine whether sales of OCTG from Ukraine to the United States were made at LTFV, we compared the constructed export prices (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum, below. In accordance with section 777A(d)(1)(B) of the Act, we compared transaction-specific CEPs to POI weighted-average NVs for Interpipe.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Interpipe in the home market during the POI that fit the description in the "Scope of the Investigation" section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics established by the Department and reported by Interpipe in the following order of

³⁰ We also note that, based on statements by Interpipe, Interpipe NMPP did not produce subject merchandise during the POI but may have the capacity to do so. Prior to this preliminary determination, the Department requested additional information from Interpipe about this capacity and the ability of Interpipe NMPP to retool its production facilities. We received this information on February 6, 2014, and have not had sufficient opportunity to complete our analysis of the response regarding Interpipe NMPP. We intend to evaluate whether Interpipe NMPP is able to produce OCTG without substantial retooling of its facilities in the final determination. If Interpipe NMPP is able to produce OCTG without substantial retooling, we intend to consider whether there is a significant potential for the manipulation of price or production and whether to collapse Interpipe NMPP with the other producers and sellers discussed above in a single entity for cash deposit and assessment purposes.

³¹ See Section A Response at A-14.

importance: seamless or welded, type, grade, coupled, upset end, threaded, nominal outside diameter, length, heat treatment, and nominal wall thickness.³² The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. As the Department noted “. . . selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.”³³

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent AD proceedings, the Department examined whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.³⁴ The Department finds the DP analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this AD investigation.³⁵ The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

³² See AD Questionnaire.

³³ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum, at Model Match Comment 1.

³⁴ See, e.g., *Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2251 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4; unchanged in *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum From Austria*), and accompanying Issues and Decision Memorandum at 2.

³⁵ See, e.g., *Xanthan Gum From Austria* and accompanying Issues and Decision Memorandum at 2; see also *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Reviews and New Shipper Reviews*, 79 FR 4327 (January 27, 2014) (*Tapered Roller Bearings from the PRC*); *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 4876 (January 30, 2014); *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 5375 (January 31, 2014) (*Light-Walled Pipe and Tube from Mexico*).

The DP analysis used in this preliminary determination requires a finding of a pattern of CEPs for comparable merchandise that differs significantly among purchasers, regions, or time periods.³⁶ If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes), which are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between CEP and NV for the individual dumping margins.

In the first stage of the DP analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of CEPs that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes

³⁶ As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. *See, e.g., Tapered Roller Bearings from the PRC; Light-Walled Pipe and Tube from Mexico.*

the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of CEPs that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that 63.75 percent of Interpipe's U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot appropriately account for such differences because there is a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to all U.S. sales which pass the Cohen's *d* test. Accordingly, the Department preliminarily determines to use the mixed methodology of applying an A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and applying the A-to-A method to those sales identified as not passing the Cohen's *d* test to calculate the preliminary weighted-average dumping margin for Interpipe.³⁷

D. Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation . . . by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter." In accordance with section 772(b) of the Act, we used the CEP methodology for

³⁷ See Memorandum to the File regarding "Antidumping Duty Investigation of Oil Country Tubular Goods from Ukraine: Interpipe Preliminary Analysis Memorandum," dated concurrently with this memorandum (Interpipe Preliminary Analysis Memorandum).

Interpipe because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer. We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, early payments and miscellaneous revenue. We also made deductions for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, testing expenses (courier fees to deliver test samples), U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.³⁸

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales³⁹), we compared Interpipe's home market sales to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(A) of the Act. Based on this comparison, we determined that Interpipe's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.⁴⁰ Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the SAA,⁴¹ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP sales. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁴² we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and

³⁸ *Id.*

³⁹ See 19 CFR 351.404(b)(2).

⁴⁰ See Interpipe Preliminary Analysis Memorandum.

⁴¹ See SAA, 829-831.

⁴² Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses and profit for CV, where possible.

profit under section 772(d) of the Act. In this investigation, Interpipe reported only CEP sales to the United States.⁴³

In this investigation, we obtained information from Interpipe regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Interpipe reported one channel of distribution in the home market and one channel of distribution to the United States (*i.e.*, there is only one channel of distribution from Interpipe to NAI).

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for CEP and home market sales differ significantly. Specifically, the Department reviewed the information provided by Interpipe and concurs that while sales to NAI involve very limited selling functions related to the sale of OCTG, sales of OCTG within Ukraine involve significant selling functions.⁴⁴ As such, we preliminarily determine that sales to the home market during the POI were made at a more advanced LOT than sales to the U.S. affiliate, NAI. We find that the data available do not provide an appropriate basis to determine whether the difference in level of trade affects price comparability. Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to Interpipe.

3. Cost of Production

As noted in the Background section above, we received allegations from petitioners that Interpipe made home market sales below cost of production (COP). Based on our analysis of this allegation, we found that there were reasonable grounds to believe or suspect that Interpipe's sales of OCTG in the home market were made at prices below their COPs. Accordingly, on December 24, 2013, the Department initiated a sales-below-COP investigation of Interpipe's sales.⁴⁵

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and packing costs.⁴⁶ We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁴⁷

⁴³ See Letter from Interpipe regarding "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine, Section B and C Questionnaire Response," dated November 13, 2013 at C-35.

⁴⁴ See, *e.g.*, Section A Response at A-3-c.

⁴⁵ See COP Initiation.

⁴⁶ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁴⁷ See *Xanthan Gum From Austria* and accompanying Issues and Decision Memorandum at 9.

We relied on Interpipe’s submitted COP data except as follows: pursuant to section 773(f)(2) and (3) of the Act, we adjusted the transfer prices of inputs obtained from an affiliated party to reflect fair market values.⁴⁸

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses. The prices were net of billing adjustments, movement charges, and direct and indirect selling expenses, where appropriate.⁴⁹

c. Results of the COP Test

Section 773(b)(1) provides that where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time” the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities, (*i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP or where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales).”⁵⁰ Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁵¹

Based on the analysis described above, we disregarded below-cost sales of a given product control number (CONNUM) where they were made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁵²

4. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated constructed value (CV) based on the sum of the respondent’s material and fabrication costs, SG&A expenses, profit, and packing costs. We calculated the COP component of CV as described above in the “Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of

⁴⁸ For further discussion, see Memorandum entitled “Cost of Production and Constructed Value Adjustments for the Preliminary Determination for Interpipe” dated concurrently with this memorandum, which is incorporated by reference.

⁴⁹ See Interpipe Preliminary Analysis Memorandum.

⁵⁰ See sections 773(b)(2)(C)(i) and (ii) of the Act.

⁵¹ See section 773(b)(2)(D) of the Act.

⁵² See Interpipe Preliminary Analysis Memorandum.

the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

5. Price-to-CV Comparison

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

6. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Interpipe based on the reported packed, ex-factory or delivered prices to comparison market customers. For Interpipe, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses and bank charges). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for Interpipe, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.⁵³ For detailed information on the calculation of NV, *see* the Interpipe Preliminary Analysis Memorandum.

7. Re-export Sales

Interpipe reported having sales of OCTG which were re-exported to other countries from the United States.⁵⁴ Interpipe did not include these sales in its U.S. sales database, stating that re-exports are not subject merchandise because the first unaffiliated sale is to a non-U.S. based customer and because NAI itself shipped these sales out of the United States after inspecting the merchandise.⁵⁵ After analyzing the information on the record, we preliminarily determine that these sales should be considered U.S. sales. Regardless of NAI's knowledge of the ultimate destination for these products or the ultimate customer's primary location, we preliminarily find that these sales were entered into the United States for consumption and sold to unaffiliated parties within the United States.⁵⁶ Moreover, while the original order by a customer in another country may enter the United States, on the basis that all the subject merchandise is entered for inspection, we also note that there is potential that the goods not meeting a certain level of

⁵³ See 19 CFR 351.411(b).

⁵⁴ See Section A Response at A-16-17.

⁵⁵ *Id.*

⁵⁶ See section 772(b) of the Act; *see also Hiep Thanh Seafood Joint Stock Co. v. United States*, 821 F. Supp. 2d 1335 (CIT 2012); *see also* Letter from Interpipe regarding "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from Ukraine, Supplemental Questionnaire Response," dated January 13, 2014 (SQR), at 10-11, Exhibit Supp-A-20.

quality may remain in the United States rather than be sent to the original intended customer.⁵⁷ Subsequent to this preliminary determination, we intend to request that Interpipe provide data pertaining to these sales.

F. Date of Sale

For home market sales, Interpipe stated that it was using the date the contract and production specifications were finalized as the date of sale for certain home-market sales and, for the remaining sales, relying on the invoice date as the date of sale.⁵⁸ 19 CFR 351.401(i) provides that the Department will normally use the date of invoice, but may use another date if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁹ The Department found “material terms of sale” to include price and quantity.⁶⁰ After reviewing the information provided by Interpipe, we preliminarily determine that price may be changed after the date the contract and production specifications were finalized.⁶¹ Thus, we are relying on the invoice data as the date of sale for all home market sales.⁶²

G. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

H. Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in an AD investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For the reasons explained below, we are preliminarily determining that critical circumstances do not exist for Interpipe and all other producers and exporters.

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

⁵⁷ See SQR at 10.

⁵⁸ See, e.g., Section A Response at A-22.

⁵⁹ See also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27349 (May 19, 1997).

⁶⁰ See *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

⁶¹ See Section A Response at Exhibit A-4-d; see also Interpipe Preliminary Analysis Memorandum.

⁶² See Interpipe Preliminary Analysis Memorandum.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise. No parties made any claims regarding completed AD proceedings for OCTG from Ukraine, and the Department is not aware of the existence of any active AD orders on OCTG from Ukraine in other countries. As a result, the Department does not find that there is a history of injurious dumping of OCTG from Ukraine pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales

The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary AD determination and the International Trade Commission's preliminary injury determination.⁶³ The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.⁶⁴ Interpipe, the sole mandatory respondent in the investigation, reported CEP sales only.

For Interpipe, we preliminarily determine that there is not a sufficient basis to find that the importer knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales pursuant to section 733(e)(1)(A)(ii) of the Act, because the calculated margins were not 15 percent or more.

Consistent with Department practice, we based the margin for the "All Others" producers and exporters on the margin calculated for the individually-examined respondent, which is not zero, *de minimis* or based on adverse facts available. Accordingly, we are preliminarily applying to "All Others" producers and exporters a margin of 5.37 percent, which does not satisfy the 15 percent threshold necessary to impute knowledge of dumping for CEP sales, and the all others rate is based upon CEP sales. Therefore, the record does not support imputing importer knowledge of sales at LTFV to importers of these exporters as well.

⁶³ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606, 5607 (February 3, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China*, 70 FR 9037 (February 24, 2005).

⁶⁴ *Id.*

Because the knowledge criterion has not been satisfied, we have not addressed the second criterion of whether there have been massive imports of the subject merchandise over a relatively short period.⁶⁵

X. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 FEBRUARY 2014
(Date)

⁶⁵ The petitioners also alleged that importers, exporters, or foreign producers, through industry media and conferences, had reason to believe that the petition was likely two months before they were filed, and thus argued that the comparison period for determining whether there have been massive imports should begin in May 2013, rather than July 2013, when the petition was filed. *See* Critical Circumstances Allegation. Because we have determined that the first criterion has not been met, we have not reached the second criterion and thus the petitioners' argument as to early knowledge of the petition is moot.