



A-552-817

Administrative Review

POR: 09/01/2018 – 08/31/2019

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July 27, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Oil Country Tubular Goods from the Socialist Republic of
Vietnam

I. SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam). As a result of our analysis, we find that sales of OCTG have not been made at less-than-normal value during the period of review (POR) by respondent SeAH Steel VINA Corporation (SeAH VINA) and its U.S. affiliate Pusan Pipe America, Inc. (Pusan Pipe) (collectively, SSV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

Comment 1: Adverse Facts Available
Comment 2: Surrogate Country
Comment 3: Financial Statements
Comment 4: Brokerage and Handling
Comment 5: Inland Freight
Comment 6: Differential Pricing
Comment 7: Water
Comment 8: Section 232 Duties
Comment 9: Ministerial Errors



INTERNATIONAL
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II. BACKGROUND

On January 28, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review in the *Federal Register*.¹ On February 19, 2021, we issued to SSV an “in-lieu-of-verification” questionnaire (verification questionnaire).² We received SSV’s response to the verification questionnaire on February 26, 2021.³

On February 25, 2021, we revised the briefing schedule from that established in the *Preliminary Results*.⁴ On March 10, 2021, we received case briefs from SSV⁵ and from Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars, Inc. (the petitioners).⁶ On March 17, 2021, we received rebuttal briefs from SSV⁷ and the petitioners.⁸ On April 28, 2021, we held a meeting with the petitioners.⁹ On May 10, 2021, we held a meeting with SSV.¹⁰

On May 18, 2021, Commerce extended the final results of this administrative review until July 27, 2021.¹¹

III. SCOPE OF THE ORDER¹²

The merchandise covered by the order is certain oil country tubular goods, 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

¹ See *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 85 FR 7358 (January 28, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Commerce Letter, dated February 19, 2021 (verification questionnaire).

³ See SSV’s Letter, “Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Vietnam — Response to the Department’s February 19 In Lieu of Verification Questionnaire,” dated February 26, 2021 (verification response).

⁴ See Memorandum, “Briefing Schedule,” dated February 25, 2021.

⁵ See SSV’s Letter, “Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Case Brief of SeAH Steel VINA Corporation and Pusan Pipe America, Inc.” dated March 10, 2021 (SSV’s Case Brief).

⁶ See Petitioners’ Letter, “Oil Country Tubular Goods from the Socialist Republic of Vietnam: Case Brief of Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc.,” dated March 10, 2021 (Petitioners’ Case Brief).

⁷ See SSV’s Letter, “Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Rebuttal Brief of SeAH Steel VINA Corporation and Pusan Pipe America, Inc.,” dated March 17, 2021 (SSV’s Rebuttal Brief).

⁸ See Petitioners’ Letter, “Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rebuttal Brief of Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc.,” dated March 17, 2021 (Petitioners’ Rebuttal Brief).

⁹ See Memorandum, “Meeting with Counsel for the Domestic Industry,” dated April 28, 2021.

¹⁰ See Memorandum, “Meeting with Counsel for SeAH Steel VINA Corporation and Pusan Pipe America, Inc.,” dated May 11, 2021.

¹¹ See Memorandum, “Oil Country Tubular Goods from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated May 18, 2021.

¹² See *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

(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 order also covers OCTG coupling stock.

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

The merchandise subject to the order 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 order is dispositive.

IV. CHANGES SINCE THE PRELIMINARY RESULTS

In these final results of review, based on our analysis of comments received, we made the following changes to the *Preliminary Results*:

- We did not use the financial statement of Ravindra Tubes Private Limited in the calculation of the surrogate financial ratios. *See* Comment 3.
- We corrected three ministerial errors with respect to the calculation of inland freight. *See* Comment 5.
- We corrected a ministerial error with respect to billing adjustments. *See* Comment 9.

V. DISCUSSION OF THE ISSUES

Comment 1: Adverse Facts Available

*Petitioners' Case Brief:*¹³

- Commerce should apply adverse facts available (AFA) to SSV because it failed to act to the best of its ability to provide Commerce with requested information. Specifically, Pusan Pipe failed to demonstrate that the U.S. OCTG sales it reported to Commerce were sourced from its Vietnamese affiliate SeAH VINA.
- Commerce requested this country-of-origin information in its initial questionnaire and in two subsequent supplemental questionnaires. SSV's response was that complying with the request would require "extensive manual efforts,"¹⁴ "arduous manual effort,"¹⁵ "an enormous amount of work,"¹⁶ and that "it is not possible to directly tie SeAH VINA's sales to {Pusan Pipe} to those of {Pusan Pipe} to its customers."¹⁷
- Despite these objections by SSV, after Commerce requested supporting documentation in the verification questionnaire with respect to the country-of-origin of Pusan Pipe's reported U.S. sales, SSV produced it within seven days. That SSV was able to compile and submit an extensive and detailed response within only seven days cannot be reconciled with its assertions throughout this review that it was too difficult to provide the information.
- The purpose of a verification (or a verification questionnaire in lieu of an on-site verification) is to verify and gather supporting documentation for information that has already been submitted to the record. Here, the information submitted by SSV in response to the verification questionnaire constitutes entirely new information not tied to any information already on the record.
- The Court of International Trade (CIT) has recognized that "{o}rigin information is among the most basic data necessary for the calculation of a margin, and an experienced respondent would reasonably foresee the need to maintain it," and that SSV's failure to provide this information indicates that it is not acting to the best of its ability.¹⁸
- The courts have held that Commerce may determine that a respondent has not cooperated even in cases where a respondent eventually submitted information that Commerce had

¹³ See Petitioners' Case Brief at 4-15.

¹⁴ *Id.* at 4 (citing SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's November 15 Questionnaire," dated December 30, 2019 (SSV December 30, 2019 CQR) at 47).

¹⁵ *Id.* (citing SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's September 8 Supplemental Questionnaire," dated September 25, 2020 at 14).

¹⁶ *Id.* (citing SSV's Letter, "Administrative Review of the Antidumping Order Certain Oil Country Tubular Goods from Vietnam for the 2018-19 Review Period - Rebuttal Pre-Preliminary Comments," dated December 29, 2020 at 2-3).

¹⁷ *Id.* at 4-5 (citing SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's April 7 Supplemental Questionnaire," dated June 22, 2020 (SSV June 22, 2020 SQR) at 13).

¹⁸ *Id.* at 7 (citing *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 17-00167, Slip Op. 18-146 (Apr. 17, 2019) (*Diamond Sawblades*) at 9, 11).

previously requested.¹⁹

- SSV clearly had the ability to respond to Commerce's repeated requests but refused to do so. Accordingly, Commerce should base SSV's final dumping margin on AFA.

*SSV's Rebuttal Brief:*²⁰

- SSV explained in its various submissions that Pusan Pipe is able to tie its U.S. sales of OCTG to specific suppliers through a supplier-specific product code that Pusan Pipe assigns to each item held in inventory.²¹ Thus, Pusan Pipe knows the country of origin of each of its U.S. sales. However, SSV explained that it was not feasible to provide such traces for all Pusan Pipe sales due to the extensive manual effort required.²²
- In the verification questionnaire, Commerce requested an explanation of the process by which Pusan Pipe tracked the country of origin of its U.S. sales, and also for documentation showing this process for various U.S. sales. In its response, SSV provided the requested information and documentation.
- Significantly, the petitioners identified no deficiencies in the information SSV provided in the verification response.²³ Instead they argue that by providing the requested documentation for these U.S. sales, SSV shows that it had misled Commerce by claiming that the documentation could not be provided without extensive manual effort. The petitioners also claim that documentation SSV provided in response to the verification questionnaire constitutes untimely new information and should be disregarded. These arguments are fundamentally dishonest as SSV has been clear throughout this proceeding that Pusan Pipe identified its Vietnam-sourced U.S. sales through its product codes that were designed specifically for that purpose.
- This same issue arose in the first administrative review of the antidumping duty order on OCTG from the Republic of Korea. In that review, Commerce concluded that Pusan Pipe's reporting of average expenses for shipments from the Korean supplier to Pusan Pipe, rather than transaction-specific expenses, was reasonable in light of the difficulties inherent in tracing sales by Pusan Pipe back to its purchases.²⁴ The reporting of U.S. sales (and the associated expenses) in the instant case is consistent with the methodology that Commerce examined and accepted in the first Korean OCTG review.
- The petitioners assert that Commerce's acceptance of Pusan Pipe's reporting is inconsistent with a decision in the *Diamond Sawblades* case, in which Commerce applied AFA to a company that was unable to establish the country of origin of the products it sold to the

¹⁹ *Id.* at 15 (citing *Yantai Xinke Steel Structure Co. v. United States*, 36 CIT 1035, 1049 (2012); *Fujian Lianfu Forestry Co., Ltd., v. United States*, 638 F. Supp. 2d 1325, 1344 (CIT 2009); and *Essar Steel Limited v United States*, 678 F.3d 1268, 1278 (Fed. Cir. 2012)).

²⁰ See SSV's Rebuttal Brief at 1-7.

²¹ *Id.* at 1-2 (citing SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's November 15 Questionnaire," dated December 19, 2019 (SSV December 13, 2019 AQR) at 29 and Appendix A-9; and SSV December 30, 2019 CQR at 28).

²² *Id.* at 2.

²³ *Id.* at 4.

²⁴ *Id.* at 5 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017) (*OCTG Korea Final*), and accompanying Issues and Decision Memorandum (IDM) at 63).

United States.²⁵ However, the *Diamond Sawblades* decision involved a situation in which the respondent could not identify the country of origin using product codes and was unable to support its alternative methodology at verification. That decision has no relevance here where the information SSV provided in the response to the verification questionnaire fully establish that they properly reported the country of origin.

Commerce Position:

We disagree with the petitioners that we should apply total AFA to SSV in these final results. Upon review of the record, we find that the record sufficiently establishes that Pusan Pipe is able to identify the source country of its U.S. sales, and that it correctly reported all U.S. sales subject to this review.

SSV addressed the issue of linking sales to entries in numerous submissions. In its section A response, SSV explained that Pusan Pipe was able to identify the source country of its U.S. sales through its product coding system.²⁶ It reiterated this information in its section C response, and added that Pusan Pipe's normal records "do not allow it to match its sales of OCTG to specific purchases from a supplier without extensive manual tracing."²⁷ In a subsequent submission, SSV went further, and stated that it was "not possible" for Pusan Pipe to directly tie SeAH VINA's sales to Pusan Pipe to those of Pusan Pipe to its customers.²⁸ Commerce subsequently asked SSV for a further explanation of why it was not possible to tie Pusan Pipe's sales to its purchases from SeAH VINA. SSV responded that, "{i}t is possible for SeAH VINA to trace individual sales by {Pusan Pipe} to vessels and to shipments from SeAH VINA to {Pusan Pipe} through an arduous manual effort using the 'tag number' assigned to each bundle of pipe."²⁹

After SSV provided this information, but prior to our issuing a verification questionnaire to SSV, the petitioners requested that Commerce require in the questionnaire that SSV provide "definitive record evidence to show how {Pusan Pipe} actually knows the OCTG products comprising the U.S. sales database were purchased from SeAH VINA in Vietnam."³⁰ In response, Commerce asked in the verification questionnaire that SSV provide relevant documentation for five of SSV's sales. SSV submitted its response on February 26, 2021.³¹ We have reviewed SSV's response and determined that the documentation SSV submitted substantiates that through its records Pusan Pipe is able to trace each U.S. sale to its country and

²⁵ *Id.* at 6 (citing Petitioners' Case Brief at 7).

²⁶ See SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's November 15 Questionnaire," dated December 13, 2019 (SSV December 13, 2019 AQR) at 29.

²⁷ See SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's November 15 Questionnaire," dated December 30, 2019 (SSV December 30, 2019 CQR) at 28.

²⁸ See SSV's Letter, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department's April 7 Supplemental Questionnaire," dated June 22, 2020 at 13.

²⁹ See SSV's September 25, 2020 SQR at 14.

³⁰ See Petitioner's Letter, "Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Pre-Verification Comments," dated January 27, 2021 at 4.

³¹ See SSV's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Vietnam — Response to the Department's February 19 In Lieu of Verification Questionnaire," dated February 26, 2021 (verification response) at Appendices SV-1-C, SV-1-E, SV-4-A, SV-4-B, and SV-4-C.

company of manufacture. Moreover, the petitioners have not identified any way in which SSV's response to the relevant questions was deficient.

Furthermore, we do not agree with the petitioners that the information SSV submitted in response to our questions constitutes new information not tied to any information already on the record. The sales-to-entries link that SSV demonstrated in its verification response concerns sales information already on the record and was provided in response to Commerce's request. Therefore, we find that it is not untimely or unsolicited information that should be rejected from the record.

Moreover, this determination is consistent with a prior determination Commerce made with respect to Pusan Pipe. The issue of a sales-to-entries link between Pusan Pipe's sales division Pan Meridian Tubular (PMT) and Pusan Pipe's Korean affiliate SeAH Steel Corporation (SeAH) arose in *OCTG Korea Final*. Commerce stated:

SeAH has explained that PMT's computer system does not contain the information that would allow the company to link each PMT inventory sale with the corresponding import. SeAH also explained that while it could, in theory, identify the import corresponding to each sale through PMT inventory, this would involve a manual tracing of information that would take a substantial amount of time. Thus, {Commerce} finds that SeAH has adequately explained why it could not have reported the eight adjustments at issue on a sale or vessel-specific basis for PMT inventory sales.³²

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified. Because SSV timely provided all requested information in its verification response, and we noted no discrepancies with it, we do not find that any of the criteria for the application of "facts otherwise available" is met here. Therefore, in these final results of review we have calculated a margin for SSV based on its submitted data, and we have not applied AFA.

Comment 2: Surrogate Country

*Petitioners' Case Brief:*³³

- In the *Preliminary Results*, Commerce used India as the surrogate country. In the final results, Commerce should use Indonesia as the surrogate country. Even though Indonesia was not on Commerce's surrogate country list, Commerce has previously determined that because a country is not included on the surrogate country list does not equate to a finding

³² See *OCTG Korea Final* IDM at Comment 5H.

³³ See *Petitioners' Case Brief* at 16-28.

that {the country} is not economically comparable.³⁴ The CIT has also held that Commerce may select a country not on the surrogate country list, and that countries not on the list may be deemed “economically comparable” under the statute.³⁵

- India is not a suitable surrogate country.
 - In prior segments of this proceeding Commerce has found that Indian OCTG and pipe producers benefit from a variety of subsidies. For this reason, Commerce has disqualified numerous financial statements from use as surrogates for calculating surrogate financial ratios.
 - Data regarding hot-rolled steel (HRS) imports into India are largely not usable for surrogate value (SV) purposes because most of the imports (more than 81 percent) originated in the Republic of Korea (Korea). Because Korea is known to have generally available export subsidies, Commerce typically excludes imports from Korea when calculating material input-specific SVs.³⁶ When the Chinese and Vietnamese imports into India (which Commerce also excludes because it considers them non-market economy (NME) countries) are also removed from the calculation, only 19 percent of total imports of HRS into India remain for SV calculation purposes. This remaining amount is not representative of India as a surrogate country, and would lead to a distortive SV for HRS.
- Commerce should use Indonesia as the surrogate country in the final results.
 - Commerce stated in the *Preliminary Results* that it did not use Indonesia as the surrogate country in part because (unlike India) the record lacked an Indonesian SV for inland insurance.³⁷ However, inland insurance is only a minor expense that is immaterial to the calculation of the dumping margin, especially when compared to HRS, other material inputs, selling expenses, overhead, and profit. It is not meaningful compared to the fundamental and pervasive distortions that plague the Indian SV information used to value the most important factors of production (FOPs).
 - In a prior segment of an antidumping proceeding involving Vietnam, Commerce selected Indonesia as the primary surrogate country even though Indonesia did not appear on Commerce’s initial proposed list of surrogate countries, concluding Indonesia was economically comparable to Vietnam based on gross national income (GNI) and was a suitable surrogate for Vietnam based on other factors because it “it is at a level of economic development comparable to Vietnam, is a significant producer of comparable merchandise, and provides the best available information with which to value respondents’ {FOPs}.”³⁸
 - Indonesia’s level of economic development is comparable to that of Vietnam. The six countries on the surrogate country list have 2018 per-capita GNI figures ranging from \$2,020 (India) to \$3,370 (Angola), which Commerce has compared to Vietnam’s 2018

³⁴ *Id.* at 17 (citing *Pure Magnesium from the People’s Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review*, 78 FR 34646 (June 10, 2013), and accompanying Issues and Decision Memorandum (IDM) at 11).

³⁵ *Id.* (citing *Vinh Hoan Corporation v. United States*, 179 F. Supp. 3d 1208, 1218 (CIT 2016)).

³⁶ *Id.* at 22 (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 84 FR 62504 (November 15, 2019), and accompanying PDM at 11).

³⁷ *Id.* at 22 (citing *Preliminary Results PDM* at 9).

³⁸ *Id.* at 23 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014), and accompanying IDM at Comment 1).

per-capita GNI figure of \$2,400.³⁹ Indonesia has a 2018 per-capita GNI figure of \$3,840, which puts Indonesia's GNI figure within a mere 12 percent of Angola's GNI figure.⁴⁰ Thus, the difference between the lowest-GNI country on the list (India) and the highest (Angola) is over 50 percent, a larger difference than that between Vietnam and Indonesia. If, despite a more than 50 percent difference in GNI, India and Angola are considered equivalent, then Indonesia is also economically comparable under section 773(c)(4)(A) of the Act.⁴¹

- Indonesia is a significant producer of OCTG or merchandise comparable to OCTG. Export statistics from the POR show that exports of OCTG or merchandise comparable to OCTG from Indonesia were more than twice in value and over 40 percent higher in quantity, than exports of OCTG and merchandise comparable to OCTG from India during the POR.⁴²
- U.S. import statistics show that U.S. imports of OCTG and merchandise comparable to OCTG from Indonesia during the POR were over 35 percent higher in value, and over 13 percent higher in quantity, than U.S. imports of OCTG and merchandise comparable to OCTG from India during the POR.⁴³
- Publicly available information shows that at least one Indonesian-based pipe producer, PT Citra Tubindo, Tbk (PT Tubindo), produces OCTG. The financial statement of this company has been placed on the record, and it does not indicate that it benefited from any subsidies Commerce has found countervailable. In addition, unlike the many countervailing duty (CVD) orders in place against steel and other industrial products from India, Commerce does not currently have any CVD orders on pipe or OCTG producers in Indonesia.
- Surrogate import data for HRS imported into Indonesia is more complete and less distorted than the same data available for India. The import statistics for HRS imported into Indonesia during the POR show that, after excluding imports from Korea, China, and Vietnam and countries with generally available, non-industry specific export subsidies, more than 28 percent of the total volume of HRS imports into Indonesia during the POR would still remain for deriving a SV for HRS.⁴⁴ This is substantially more in terms of relative percentage than the small remaining share of total HRS imports into India (19 percent) that would be used if Commerce continues to use India as the surrogate country.

*SSV's Rebuttal Brief:*⁴⁵

- The petitioners' argument that Commerce should select Indonesia as the surrogate country is illogical. India is substantially closer to Vietnam's level of economic development than is Indonesia. Furthermore, India is a substantial producer of subject merchandise, and is a reliable source of contemporaneous, publicly available, and reliable SV data, including data

³⁹ *Id.* at 24 (citing Memorandum, "Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information," dated March 6, 2020 (surrogate country list) at Attachment.

⁴⁰ *Id.* (citing Surrogate Country Memorandum at 4).

⁴¹ *Id.* at 19.

⁴² *Id.* at 25 (citing *Global Trade Atlas*).

⁴³ *Id.* at 26 (citing U.S. ITC Dataweb).

⁴⁴ *Id.* at 27 (citing *Global Trade Atlas*).

⁴⁵ See SSV Rebuttal Brief at 7-10.

needed to value FOPs such as direct materials, labor, energy, and financial ratios. Based on Commerce's selection criteria, India is the appropriate choice to serve as the primary source of SVs in this proceeding.

- The petitioners' argument that Indonesia's GNI is within "a mere 12 percent" of Angola's GNI ignores the fact that Vietnam is the country being examined, and not Angola. Vietnam's GNI is \$2,400. India's GNI (at \$2,020) is within 15 percent of Vietnam's GNI. Angola's GNI (at \$3,370) is the highest GNI of any country on Commerce's list of possible surrogate countries in this proceeding. Indonesia's GNI (\$3,840) is a whopping 60-percent higher than that of Vietnam.⁴⁶
- The petitioners' argument that PT Tubindo's financial statement is a better source for financial ratios suffers from at least two fundamental problems.
 - PT Tubindo is not an OCTG producer. It is merely a processor of pipe produced by other non-Indonesian manufacturers. Commerce has previously held that financial statements of such processors are not appropriate sources for the surrogate financial ratios for pipe manufacturers like SSV.⁴⁷
 - There are multiple financial statements from Indian steel producers on the record that could be used as the source for surrogate financial ratios. Although the petitioners argue that some of these financial ratios "may" be distorted by government subsidies, they have provided no evidence linking specific, countervailable subsidies to all of the Indian financial statements that SSV placed on the record.
- The petitioners' final argument is that steel import statistics for Indonesia include a larger portion of imports from countries without substantial subsidies than India. Specifically, the petitioners allege that after removing import volume from NME countries and countries with generally available, non-industry specific export subsidies, 28 percent of the imports into Indonesia remain, while only 19 percent of the imports into India remain. This argument is misleading because it compares relative shares of non-subsidized imports, rather than actual volumes. On a tonnage basis, the non-subsidized imports into India were more than four times larger than the non-subsidized imports into Indonesia. In these circumstances, the import values for steel products in India are undoubtedly more reliable than those in Indonesia.
- The Indonesia values on the record are incomplete because there is no value for foreign inland insurance. The petitioners airily dismiss foreign inland insurance as a "minor expense" that is "not meaningful." However, at the investigation stage of this proceeding the petitioners persuaded Commerce to use a value for foreign inland insurance that massively inflated SSV's dumping margin. The enormous difference between the value used in the original investigation and the value established by the evidence in this review demonstrates the critical importance of having a complete set of factor values.

Commerce Position:

We disagree with the petitioners that India is not a suitable surrogate country and that Indonesia is a more suitable surrogate country.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 9 (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014), and accompanying IDM at Comment 2).

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act instructs Commerce to value the respondent's FOPs with the best available information from a market economy country, or countries that Commerce considers appropriate. Commerce has broad discretion to determine what constitutes "the best available information," as this term is not defined by the Act.⁴⁸ Specifically, section 773(c)(4) of the Act requires Commerce, in valuing the FOPs, to utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are: (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."⁴⁹ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country, unless it is determined that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.⁵⁰

Section 773(c)(4)(A) of the Act is silent with respect to how Commerce determines that a country is at a level of economic development comparable to the NME country in question. Thus, Commerce's longstanding practice has been to identify those countries that are at a level of economic development similar to the NME country in question based on gross national income (GNI) data reported in the World Bank Development Report.⁵¹ In making a surrogate country determination, Commerce looks for guidance to the surrogate country list for Vietnam issued by the Office of Policy, which used 2018 GNI data.⁵² It states, "{c}ountries that are not at the same level of economic development as Vietnam's, but still at a level of economic development comparable to Vietnam, should be selected only to the extent that data considerations outweigh the difference in levels of economic development."⁵³

First, the petitioners argue that Indonesia's level of economic development is comparable to that of Vietnam. However, the petitioners focus their analysis on the proximity in Indonesia's GNI to that of Angola.⁵⁴ As SSV correctly points out, the petitioners' analysis is misplaced, as the country subject to this review is Vietnam, not Angola. In fact, Indonesia's GNI of \$3,840 is a considerable 60 percent higher than Vietnam's \$2,400. Thus, we continue to determine that Indonesia is not at a level of economic development comparable to Vietnam.

Next, with respect to data considerations in this review, in this segment and in all prior segments of this proceeding, Commerce has found adequate Indian SV information on the record to value

⁴⁸ See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 975 F.3d 1318, 1331 (Fed. Cir. 2020).

⁴⁹ For a description of our practice, see Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁵⁰ *Id.*

⁵¹ See *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010), and accompanying IDM at Comment 4.

⁵² See Surrogate Country List at Attachment.

⁵³ *Id.*

⁵⁴ See Petitioners' Case Brief at 18-19 (noting that Indonesia's GNI is within a mere 12 percent of that of Angola, a country on the surrogate country list.)

all of SSV's reported inputs. We find that all of the SV information on the record from India in this review is specific to the input, is usable, and is tax and duty-exclusive. Most are also contemporaneous, and those that are not contemporaneous have been inflated to POR values using an inflator based on the consumer price index. All are representative of a broad market average except for the SV for foreign inland insurance, which is a company-specific cost that otherwise meets all of our criteria for SV selection.

Furthermore, with respect to potential SVs from Indonesia, in the *Preliminary Results*, we found that the record "does not contain a usable surrogate value from Indonesia to value inland insurance."⁵⁵ No new information on the record exists to persuade us reverse our finding with regard to the reliability of the Indian data or the drawback of the Indonesia data. In fact, the petitioners do not dispute the lack of Indonesia-based surrogate value for inland insurance, but instead attempt to dismiss it as immaterial.⁵⁶

The petitioners further argue that Commerce should not select India as a primary surrogate country, in part, because of the subsidization of Indian companies and the difficulty of finding publicly available financial statements for India-based producers of OCTG that are reliable for deriving non-distorted surrogate financial ratios. We address the adequacy of Indian financial statements available on the record below in Comment 3. Furthermore, we agree with SSV that PT Tubindo's financial statement appears not to be an appropriate financial statement with which to calculate financial ratios because record information indicates that PT Tubindo is merely a processor of pipe produced by other manufacturers, not itself a producer of pipe, or of OCTG.⁵⁷ Furthermore, with respect to PT Tubindo's processing of OCTG, Commerce determined in a scope inquiry on OCTG from China that PT Tubindo heat treats, upsets, and threads OCTG produced by other manufacturers.⁵⁸ Thus, we find that the financial statements from PT Tubindo are not superior to the Indian financial statements on the record; nor are there any other Indonesian financial statements on the record that are superior to the Indian financial statements on the record.

Moreover, we do not find persuasive the petitioners' argument that Indonesia is a more suitable surrogate country because 28 percent of its imports would be used in the calculation of the surrogate value for HRS, whereas only 19 percent of HRS imports into India would be used. Despite these relative percentages, import data on the record also indicate that in terms of total volume, HRS imports into India during the POR are more than four times the volume of HRS imports into Indonesia.⁵⁹ Therefore, in valuing HRS, we do not find Indonesian data are superior to Indian data.

⁵⁵ See *Preliminary Results* PDM at 9.

⁵⁶ See Petitioners' Case Brief at 23.

⁵⁷ See SSV's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Vietnam for the 2018-19 Period – Rebuttal Comments on Selection of the Primary Surrogate Country," dated June 26, 2020 at Exhibits 4 and 5.

⁵⁸ See *Final Results of Redetermination Pursuant to Remand, Bell Supply Company v. United States*, Consol. Court No. 14-00066, dated March 28, 2019 (*Final Redetermination*).

⁵⁹ See Petitioner's Letter, "Oil Country Tubular Goods from the Socialist Republic of Vietnam: Comments on Proposed Primary Surrogate Country," dated June 19, 2020 at Exhibits 6 and 12; see also SSV's Surrogate Country Rebuttal Comments at Exhibit 9.

In addition, both the CIT and CAFC have upheld Commerce's approach to its surrogate country selection process of first looking to the Surrogate Country List for economically comparable potential surrogate countries, then determining if the countries on the list produced comparable merchandise and were significant producers of the subject merchandise, and finally, if more than one country satisfies these criteria, selecting the country for which there are the best available data on the record.⁶⁰ As discussed above, Indonesia is not on the list of countries at the same level of economic development to Vietnam, and is not within the GNI range of countries Commerce has found to be economically comparable to Vietnam. Therefore, in these final results of review, we have continued to use India as the surrogate country because it is at the same level of economic development as Vietnam, is a significant producer of comparable merchandise, and offers the best data available on the record with which to value factors of production.

Comment 3: Financial Statements

In the *Preliminary Results*, Commerce calculated surrogate financial ratios using the financial statements of six Indian companies: Goodluck India Limited (Goodluck India), Hariom Pipe Industries Limited (Hariom Pipe), Rama Steel Tubes, Ltd. (Rama Tubes), Ravindra Tubes Private Limited (Ravindra Tubes), Swastik Pipe Limited (Swastik Pipe), and Tamilnadu Steel Tubes, Ltd. (Tamilnadu Steel).⁶¹

*Petitioners' Case Brief:*⁶²

- Commerce should reject the financial statements of Rama Steel, Ravindra Tubes, Swastik Pipe, and Tamilnadu Steel for the calculation of surrogate financial ratios in the final results because they do not constitute the best information on the record.
- In selecting the best information on the record, Commerce selects financial statements based on the "specificity, contemporaneity, and quality of the data."⁶³ Commerce also normally excludes the financial statements of potential surrogate companies that received countervailable subsidies.⁶⁴ Commerce normally uses the financial data of just one company to calculate surrogate financial ratios, and less often the financial data of two companies.⁶⁵
- There is no evidence that Rama Steel, Ravindra Tubes, Swastik Pipe, or Tamilnadu Steel are API-5CT certified, and therefore no evidence that they produce OCTG. In the case of Ravindra Tubes, the financial statement provides no information regarding the specific pipe

⁶⁰ See *Jiaying Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1335 (CIT 2014), *aff'd* *Jiaying Bro. Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1298-99 (Fed. Cir. 2016) (upholding Commerce's decision to exclude India from consideration as potential surrogate country in light of a determination that India and China were not economically comparable).

⁶¹ See Memorandum, "Analysis of the Preliminary Results of the Fifth Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam," dated January 19, 2021 at 3.

⁶² See Petitioners' Case Brief at 28-33.

⁶³ *Id.* at 29 (citing PDM at 12).

⁶⁴ *Id.* (citing PDM at 13).

⁶⁵ *Id.*, citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016-2017*, 84 FR 18007 (April 29, 2019), accompanying IDM at 48, and *Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 84 FR 14651 (April 11, 2019), accompanying IDM at 10.

and tube products it produces.

- The financial statements of Rama Steel, Swastik Pipes, and Ravindra Tubes evidence receipt of subsidies.
 - The financial statements of Rama Steel and Swastik Pipes evidence receipt of unspecified export incentives.
 - The financial statement of Ravindra Tubes evidences receipt of government assistance in the form of duties saved under the Indian government's Export Promotion Capital Goods (EPCG) scheme.
- Therefore, if in the final results Commerce continues to use India as the surrogate country, it should use only the financial statements of Goodluck India and Hariom Pipe to calculate surrogate financial ratios, as they do not have these flaws.

*SSV Rebuttal Brief:*⁶⁶

- Under the statute and regulations, surrogate financial ratios for overhead, SG&A, interest expenses, and profit can be taken from the financial statements of companies that produce merchandise “comparable” to the merchandise under investigation. Commerce's past decisions, as well as those by the reviewing courts, make clear that the surrogate company need not actually produce the specific subject merchandise.⁶⁷
- API-5CT certification has proven to be an unreliable indicator of whether a company actually produces OCTG.
- The scope language in this case makes clear that the scope is not limited to API-certified OCTG. Instead, the language defines the scope of the order to include an expansive range of products including pipe that does not conform to the API specifications. For example, the scope includes “green tubes” which require further processing to meet the API specifications, as well as “limited service” pipes that had failed inspection and could not be certified to meet the API specifications.
- In its investigation, the International Trade Commission found that both line pipe and structural pipe (which do not carry the API certifications for OCTG) can be substituted for low-grade OCTG in certain applications.⁶⁸ SSV's exports consisted of only one of the lowest grades of OCTG.⁶⁹ The six surrogate companies whose financial statements Commerce chose produced line pipe and structural pipe. Some of them produced pipe used in water wells.⁷⁰ Tenaris has not explained how such products differ from the low-grade OCTG that SSV exported, or why the line pipe, structural pipe, and water-well pipe that the selected surrogate companies produce are not acceptable substitutes for OCTG in the sort of undemanding oil wells in which SSV's OCTG could be used.
- Contrary to the petitioners' argument, Commerce has no practice of using the financial

⁶⁶ See SSV Rebuttal Brief at 11-14.

⁶⁷ *Id.* at 11 (citing *Yantai Xinke Steel Structure v. United States*, 36 ITRD 129 (2014); and *Viraj Forgings, Ltd. v. United States*, 283 F. Supp. 2d 1335, 1347 (CIT 2003))

⁶⁸ *Id.* at 13 (citing *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Pub. 4489 (September 2014) at II-17.

⁶⁹ *Id.* (citing SSV December 13, 2019 AQR at 28).

⁷⁰ *Id.* (citing SSV's Letter, “Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Submission of Factual Information to Value Factors of Production,” dated July 9, 2020 (SSV July 9, 2020 SV Submission) at Appendix 11-A-7 at 36-37).

statements of no more than two companies when more than two financial statements with usable data are available.

Commerce Position:

We disagree with the petitioners that the financial statements of Rama Steel, Swastik Pipe, and Tamilnadu Steel do not represent, along with the financial statements of Goodluck India and Hariom Pipe, the best information available on the record for calculating financial ratios. However, we do agree with the petitioners with regard to the receipt of subsidies indicated by the financial statements of Ravindra Tubes.

Commerce's regulations state that for calculating manufacturing overhead, general expenses, and profit, Commerce will normally use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁷¹ Furthermore, in choosing financial statements for calculating surrogate financial ratios, it is Commerce's practice to use financial statements that cover a period that is contemporaneous with the POR, show a profit, for companies with a similar production experience similar to respondents' production experience, and that are not distorted or otherwise unreliable, such as financial statements that indicate that a company received countervailable subsidies.⁷² The CAFC has continuously pointed to Commerce's "broad discretion" in determining what constitutes the best available information.⁷³

Although Commerce prefers to use the financial statements of producers of identical merchandise, we do not agree with the petitioners that API-5CT certification is the only reliable indicator of being an OCTG producer. In litigation involving the investigation stage of this proceeding, Commerce found that even though the Indian manufacturer Welspun Corporation Limited was API-5CT certified, this meant only that it had the capacity to produce OCTG, and not that it actually did produce OCTG.⁷⁴ Furthermore, the petitioners have cited to no record evidence that Goodluck India or Hariom Pipes (whose financial statements the petitioners argue we should use in the final results) have API-5CT certification. Indeed, in the list of Indian producers with active API-5CT certification that the petitioners submitted to the record, Goodluck India and Hariom Pipes do not appear.⁷⁵ Moreover, with respect to the petitioners' point that Ravindra Tubes' financial statement provides no information regarding the specific pipe and tube products it produces, we note that information from Ravindra Tubes' website found elsewhere on the record does specify the pipe and tube products Ravindra Tubes produces: ERW galvanized pipes, black pipes, and hollow sections.⁷⁶

⁷¹ See 19 CFR 351.408(c)(4).

⁷² See *Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 86 FR 33228, (June 24, 2021) and accompanying IDM at Comment 8.

⁷³ See *Weishan Hongda Aquatic Food Co. v. United States*, 917 F. 3d 1353, 1364-65 (Fed. Cir. 2019); see also *QVD Food Co. v. United States*, 658 F. 3d 1318, 1323 (Fed. Cir. 2011).

⁷⁴ See Final Results of Redetermination Pursuant to Court Remand, dated May 1, 2017 at 21.

⁷⁵ See Petitioners' Letter, "Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rebuttal Comments on Surrogate Value Information," dated July 16, 2020 at Exhibit 2.

⁷⁶ See SSV July 9, 2020 SV Submission at Attachment 11-B-8.

Therefore, we find the six manufacturers whose financial statements we used in the *Preliminary Results* to be equally satisfactory with respect to specificity of merchandise as they are all producers of comparable merchandise. Furthermore, no party has challenged that these financial statements are complete, contemporaneous, and publicly available.

In addition, as noted above, Commerce's practice is to disregard financial statements of companies that evidence receipt of countervailable subsidies where there are other usable data on the record. Therefore, we agree with the petitioners that we should disregard the financial statement of Ravindra Tubes because it indicates that the company received subsidies from the EPCG Scheme,⁷⁷ which Commerce has found countervailable.⁷⁸ However, we do not agree with the petitioners that we need to disregard the financial statements of Rama Steel or Swastik Pipes. The subsidy indicated on the financial statements of these two companies to which the petitioners cite is identified as "export incentives,"⁷⁹ which is not the name of any specific program Commerce has found countervailable. Commerce's practice is to disregard financial statements because of subsidies only if the financial statement identifies a particular subsidy program that Commerce has found countervailable.⁸⁰ Thus, we do not find the financial statements of Rama Steel or Swastik Pipes to be disqualified because of subsidies. Therefore, in these final results of review we have continued to use the financial statements of Rama Steel and Swastik Pipes for purposes of calculating financial ratios, as well as the financial statements of Goodluck India, Hariom Pipe, and Tamilnadu Steel.

Comment 4: Brokerage and Handling

In the *Preliminary Results*, Commerce used *Doing Business 2020: India (Doing Business)* to calculate the SV for Indian brokerage and handling (B&H) costs.⁸¹ The total B&H costs consisted of the summation of costs for "clearance and technical control" and "terminal handling and port charges."

*Petitioners' Case Brief:*⁸²

- Commerce erred by using SSV's average export shipment volume as the denominator in calculating the per-unit cost of "customs clearance and technical control" and by using the maximum weight of a twenty-foot container in calculating the per-unit cost of "terminal handling and port charges." *Doing Business* specifies that the B&H expenses reported in the publication are based on the assumption of a 15-metric ton (MT) shipment weight. Therefore, in the final results Commerce should use 15 MT as the denominator in calculating

⁷⁷ *Id.* at Attachment 11-A-8, at 233.

⁷⁸ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 75672 (December 12, 2008).

⁷⁹ See SSV July 9, 2020 SV Submission at Attachment 11-B-7 at 102; Petitioners' Letter, "Oil Country Tubular Goods from the Socialist Republic of Vietnam: Surrogate Value Information," dated July 9, 2020 at Exhibit No. 6.K. at 95.

⁸⁰ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the New Shipper Review*, 77 FR 27435 (May 10, 2012), and accompanying IDM at Comment I.

⁸¹ See Memorandum, "Surrogate Values for the Preliminary Results," dated January 19, 2021 (*Preliminary SV Memorandum*) at 6.

⁸² See Petitioners' Case Brief at 35-37.

the per-unit cost, which is Commerce's normal methodology. Even though Commerce did not follow this methodology in the appeal of the investigation segment of this proceeding before the Court of Appeals for the Federal Circuit (CAFC),⁸³ there is no final judgment in that appeal, and Commerce should therefore follow its normal methodology in calculating B&H in the final results.

SSV's Rebuttal Brief:⁸⁴

- The petitioners' argument is flawed because it is based on an assumption that is not supported by record evidence. Contrary to the petitioners' claim, *Doing Business* does not purport to calculate B&H costs by multiplying the number of tons in the hypothetical shipment by the cost per ton for such services. Instead, *Doing Business* provides an estimate of the cost of a single shipment consisting of a single container weighing 15 tons and having a value of \$50,000. Nothing in *Doing Business* indicates how the costs would change if the number of containers, weight per container, or value per shipment were modified.
- There is other evidence on the record that does indicate how the costs would vary if the characteristics of the hypothetical shipment were to change. Specifically, the price lists from the Oriental Overseas Container Line (OOCL) that SSV submitted indicate that the costs for customs clearance and technical control would vary with the number of shipments (and not with the number of containers per shipment, weight per container, or value per container), and that the costs for terminal handling would vary with the number of containers (but not with the weight per container or the value per container).⁸⁵
- As the petitioners concede, Commerce's methodology is consistent with the decision of the CAFC in the appeal of the determination in the original antidumping investigation in this case.⁸⁶ It is also consistent with decisions by the CIT in other cases.⁸⁷ Nothing in the petitioners' brief explains why this methodology is incorrect.

Commerce Position:

We disagree with the petitioners that we erred in our allocation methodology in the *Preliminary Results*. As SSV noted, while *Doing Business* states that it assumes a 15 MT container weight, it does not explain how the costs would change if the number of containers, weight per container, or value per shipment were modified. Indeed, the OOCL price lists that SSV submitted indicate that the costs for customs clearance and technical control would vary with the number of shipments, and that the costs for terminal handling would vary with the number of containers.⁸⁸ The calculation methodology we used in the *Preliminary Results* is consistent with this record information.

⁸³ See Petitioners' Case Brief at 36 (citing *See SeAH Steel VINA Corp. v. United States*, 950 F.3d 833 (Fed. Cir. 2020); and *SeAH Steel VINA Corporation v. United States*, Remand – CAFC 2019-1091, Final Results of Redetermination Pursuant to Court Remand at 7 (September 28, 2020)).

⁸⁴ See SSV's Rebuttal Brief at 16-18.

⁸⁵ *Id.* at 17 (citing SSV July 9, 2020 SV Submission at Attachments 7-A and 7-B).

⁸⁶ *Id.* at 18 (citing *SeAH Steel VINA Corp. v. United States*, 950 F.3d 833, 845-49 (Fed. Cir. 2020)).

⁸⁷ *Id.* at 18 (citing *Dupont Teijin Films China v. United States*, 7 F. Supp. 3d 1338, 1351-52 (CIT 2014); and *CS Wind Vietnam v. United States*, 971 F. Supp. 2d 1271 (CIT 2014)).

⁸⁸ See SSV July 9, 2020 SV Submission at Attachments 7-A and 7-B.

Furthermore, the weight-based allocation the petitioners argue we should use is one that was found by the CAFC to be not supported by substantial evidence in the litigation following the investigation of this proceeding (*SeAH VINA*).⁸⁹ Therefore, the methodology we used in the redetermination on remand is the methodology we also used in the subsequent final results of the 2017-2018 administrative review of this order,⁹⁰ as well as in the *Preliminary Results*. We therefore disagree with the petitioners that the weight-based methodology they request that we use is our “normal methodology.”

In light of the above, we find the allocation methodology we used in the *Preliminary Determination* to be consistent with record evidence, the CAFC ruling in *SeAH VINA*, and our prior practice. We have therefore not changed it in these final results of review.

Comment 5: Inland Freight

Petitioners’ Case Brief:⁹¹

- Commerce made three errors in its calculation of inland freight.
 - Commerce intended to multiply the surrogate truck freight cost it derived from *Doing Business* by a Consumer Price Index inflator to ensure contemporaneity, but inadvertently referenced an empty Excel cell in the calculation, which means the SV was multiplied by zero.⁹² Commerce should correct this error in the Excel spreadsheet by not multiplying the SV by zero because it is not necessary to use an inflator. The truck SV (TRUCKSV) data is based on 2019 data cited in *Doing Business*, and is therefore contemporaneous with the POR.
 - The SV for inland truck freight was reported in *Doing Business* in U.S. dollars, but Commerce inadvertently converted this U.S. dollar value by applying an exchange rate for U.S. dollars, which incorrectly lowered the SV.
 - When applying the SV for inland truck freight to SSV’s reported FOP for emulsified oil (EMOIL), Commerce failed to convert the per-kilogram SV for inland truck freight to a per-liter equivalent to match the unit of measure in which SSV reported its consumption of emulsified oil (*i.e.*, liters).⁹³ In the final results Commerce should correct this error by converting the SV for inland truck freight applied to Field EMOIL to a per-liter, rather than a per-kilogram, equivalent basis.

⁸⁹ See *SeAH Steel VINA Corp. v. United States, et al.*, 950 F. 3d 833 (Fed. Cir. 2020) (*SeAH VINA*).

⁹⁰ See *Final Results of Redetermination Pursuant to Court Remand*, dated September 28, 2020; *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41552 (July 10, 2020) (*OCTG Vietnam 2017-2018 Final*), and accompanying IDM at Comment 1.

⁹¹ *Id.* at 34-35.

⁹² *Id.* at 34 (citing Preliminary SV Memorandum at Exhibit 1 and Exhibit 10).

⁹³ *Id.* at 35 (citing SSV’s Letter, “Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam – Response to the Department’s November 15 Questionnaire,” dated December 30, 2019 (SSV December 30, 2019 DQR).

*SSV Rebuttal Brief:*⁹⁴

- Commerce should indeed correct these errors in the final results, but the petitioners' proposed modification of emulsified oil will have the effect of lowering the total cost, not raising it.

Commerce Position:

We agree with both parties that the changes the petitioners noted should be made, and we have corrected them in these final results of review.

Comment 6: Differential Pricing*SSV's Case Brief:*⁹⁵

- Commerce properly found in the *Preliminary Results* that the evidence in this review does not support the conclusion that there was “a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time” that “cannot be taken into account” using an average-to-average comparison.
- Nevertheless, the “differential pricing analysis” used in the *Preliminary Results* is both mathematically and legally improper.
 - The Cohen's *d* cut-offs that are used in the “differential pricing analysis” cannot properly be applied to data sets that have unequal variances, that do not follow a normal distribution, and that have fewer than 20 data points in each.
 - Even if Commerce could rely on the cut-offs Professor Cohen proposed for analyses of normal distributions with a sufficient number of data-points and homogeneous variance, there is nothing in Professor Cohen's work that supports the 33-and 66-percent “pass rate” cut-offs Commerce uses in the second stage of its “differential pricing analysis.” As a matter of law, Commerce cannot apply those thresholds in this case unless it demonstrates, based on substantial evidence on the record, why they are appropriate in the specific circumstances of this case.

*Petitioners' Rebuttal Brief:*⁹⁶

- Commerce has already considered and rejected each of the arguments SSV has put forth, and its differential pricing methodology has been upheld by the CIT and the CAFC.⁹⁷
 - With respect to the Cohen's *d* cut-offs, Commerce's methodology has been upheld by the reviewing courts.⁹⁸ Commerce also considered and rejected this argument in the prior administrative review of this order, saying, “{w}e find SSV's claim to be misplaced. As

⁹⁴ See SSV's Rebuttal Brief at 15-16.

⁹⁵ See SSV's Case Brief at 1-3.

⁹⁶ See Petitioners' Rebuttal Brief at 2-4.

⁹⁷ *Id.* at 3 (citing *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1354-57 (CIT 2019) (*NEXTEEL I*); *NEXTEEL Co. v. United States*, 392 F. Supp. 3d 1276, 1294-97 (CIT 2019) (“*NEXTEEL II*”); *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1314-37 (CIT 2016); and *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1344-51 (Fed. Cir. 2017)).

⁹⁸ *Id.* at 3 (citing *NEXTEEL II*, 392 F. Supp. 3d at 1295-96).

- an initial matter, discussions of sampling, sample size, and statistical inferences are irrelevant to the Cohen's *d* test as there is no sampling involved in it.”⁹⁹
- With respect to the 33-and 66-percent ‘pass rate’ cut-offs, Commerce has explained its use of these cut-offs in past cases,¹⁰⁰ and the reviewing courts have upheld these percentage cut-offs as reasonable.¹⁰¹
 - SSV has provided no new information or argument with respect to the differential pricing methodology. Commerce has rejected these arguments in the past and should do so here as well.

Commerce Position:

As an initial matter, we note that SSV's argument regarding differential pricing is inconsequential because in our *Preliminary Results* we determined that the evidence does not support the conclusion that there was a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time that cannot be taken into account using an average-to-average comparison.¹⁰² To this, SSV concedes that it “agree{s} with the ultimate result of the Department's analysis.”¹⁰³

Nevertheless, we disagree with SSV that the methodology Commerce used in the Preliminary Results is either mathematically or legally improper. We note that the CAFC recently ordered the CIT to remand to Commerce to provide further explanation on whether the limits on the use of the Cohen's *d* test in the underlying investigation of certain nails from Taiwan were satisfied in conditions where “the data groups being compared are small, are not normally distributed, and have disparate variances” or “whether those limits need not be observed when Commerce uses the Cohen's *d* test in less than fair value adjudications.”¹⁰⁴ Commerce has yet to address the CAFC's concerns on remand. In this review, we continue to apply the Cohen's *d* test as lawful and reasonable. With respect to SSV's challenge of Commerce's use of the 33 percent and 66 percent cut-offs in the ratio test, we note that the CAFC affirmed Commerce's use of those

⁹⁹ *Id.* (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 41552 (July 10, 2020), and accompanying IDM at Comment 3 (OCTG from Vietnam 17-18 Final IDM)).

¹⁰⁰ *Id.* at 3-4 (citing *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014), accompanying IDM at Comment 1; OCTG from Vietnam 17-18 Final IDM at 23-24; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 18105 (April 17, 2017), as amended, *Certain Oil Country Tubular Goods from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 31750 (July 10, 2017), and accompanying IDM at 25-26; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 17146 (April 18, 2018), and accompanying IDM at 72- 73; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at 67-68; and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at 86- 87 (“OCTG Korea AR4 Final IDM”).

¹⁰¹ *Id.* at 3-4 (citing *NEXTEEL II*, 392 F. Supp. 3d at 1296).

¹⁰² See Memorandum, “Analysis for the Preliminary Results of the Fifth Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam,” dated January 19, 2021 at 5.

¹⁰³ See SSV's Case Brief at 2.

¹⁰⁴ See *Stupp Corp. v. United States*, No. 2020-1857, 2021 WL 2964967 at *11-13 (Fed. Cir. July 15, 2021) (*Stupp*).

cutoffs in Stupp, finding that “Commerce’s cutoffs are reasonable in light of the alternatives.”¹⁰⁵ Further, the CAFC has affirmed Commerce’s use of the “large” threshold as part of the Cohen’s d test to establish that the price difference are significant.¹⁰⁶ Therefore, in these final results of review we have continued to use our differential pricing analysis.

Comment 7: Water

*SSV’s Case Brief:*¹⁰⁷

- In the *Preliminary Results*, Commerce treated the water usage reported by SSV as a direct cost, which it valued based on information downloaded from the Maharashtra Industrial Development Corporation.¹⁰⁸ However, water is not incorporated in the subject merchandise during the production process, and the cost of water is typically considered a part of factory overhead.
- At least one of the financial statements submitted by the petitioners to calculate “financial ratios,” that of Maharashtra Seamless Limited, explicitly listed “water charges” as a separate item of “manufacturing expenses.”¹⁰⁹ While the other Indian producers did not provide a similar breakdown of the details of their overhead costs, the presumption must be that they also classify “water charges” as part of manufacturing overhead expenses, and not as part of the cost of materials, labor, or electricity.
- Because the cost of water is included in the factory overhead rates calculated from the financial statements of Indian producers of comparable merchandise, the inclusion of a separate value for water based on the reported usage and the Indian values downloaded from the Maharashtra Industrial Development Corporation double-counts the relevant cost.

*Petitioners’ Rebuttal Brief:*¹¹⁰

- SSV claims that because water is part of factory overhead costs reported in the surrogate financial statement of Maharashtra Seamless Limited, Commerce should assume the surrogate overhead ratio applied in the calculation of NV also includes water-related costs. However, Commerce did not rely on the financial statement of Maharashtra Seamless Limited to derive surrogate financial ratios for the *Preliminary Results*, and none of the six surrogate financial statements for India-based producers Commerce used in the *Preliminary Results* indicate that water is part of reported factory overhead costs.
- Commerce determined in the investigation stage of this proceeding that SSV’s water consumption should be valued as a production input because record evidence showed that “water is an integral part of the production process for OCTG.”¹¹¹ Commerce continued to

¹⁰⁵ *Id.* at *10.

¹⁰⁶ *See Mid Continent Steel & Wire, Inc. v. United States*, 940 F.Supp.3d 662, 673 (CAFC 2019).

¹⁰⁷ *Id.* at 3-4.

¹⁰⁸ *Id.* at 3 (citing Preliminary SV Memorandum at 5).

¹⁰⁹ *Id.* (citing the financial statement of Maharashtra Seamless Limited at 86 and 125, found in Petitioners’ July 9, 2020 SV submission at Exhibit 6.F).

¹¹⁰ *See* Petitioners’ Rebuttal Brief at 5-7.

¹¹¹ *Id.* at 6 (citing *Certain Oil Country Tubular Goods from Vietnam: Final Determination of Sales Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014), accompanying IDM at Comment 4.

value water as a production input in all subsequent segments of this proceeding, and included the resulting cost in the calculation of SSV's overall cost of manufacturing. It should follow the same practice here.

Commerce Position:

We disagree with SSV that we should not assign a surrogate value to water in the calculation of NV. Although water may sometimes be classified as overhead, Commerce has stated, “{n}ormally, {Commerce} values water directly and not in factory overhead when water is used for more than incidental purposes, is required for a particular segment of the production process, or appears to be a significant input in the production process.”¹¹² Although SSV states in its case brief that “water is not incorporated in the subject merchandise during the production process,”¹¹³ it previously submitted the information that water is used in the production process of OCTG. Specifically, SSV stated, “SeAH VINA uses electricity and water in its production of subject OCTG products.”¹¹⁴ Moreover, we do not find Maharashtra's reporting of water to be relevant because we did not use Maharashtra's financial statement to calculate financial ratios either in the *Preliminary Results* or for these final results, and SSV has submitted no evidence that any of the financial statements we did use included water as part of factory overhead. Therefore, because water is an integral part of the production process for OCTG, we have continued to include water as a direct input in these final results.

Comment 8: Section 232 Duties

SSV's Case Brief.¹¹⁵

- In the *Preliminary Results*, Commerce reduced SSV's reported constructed export price (CEP) in its dumping calculation by the amount of section 232 duties paid by Pusan Pipe. In justifying its decision, Commerce found that section 232 duties should be treated as “United States import duties,” which are deducted from export price and CEP under the statute, rather than as “special” duties which should not be deducted from U.S. price.
- Commerce's deduction of section 232 duties from U.S. price is based on section 773(c)(2)(A) of the Act, which requires “United States import duties” to be deducted from the exporter's CEP and export price (EP). However, this treatment of Section 232 duties conflicts with Commerce's treatment of section 201 duties, which Commerce has characterized as “special” customs duties, and that it therefore does not deduct from U.S. price under section 773(c)(2)(A) of the Act.
- In *Wheatland Tube*, the CAFC sustained Commerce's decision to treat section 201 duties as “special” duties that would not be deducted from EP or CEP.¹¹⁶ In doing so, the CAFC accepted the following reasoning from Commerce: (1) Congress intended “special dumping

¹¹² See *OCTG Vietnam Investigation Final IDM* at Comment 4; see also *Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying IDM at Comment 1.

¹¹³ See SSV Case Brief at 3.

¹¹⁴ See SSV December 30, 2019 DQR at 22.

¹¹⁵ *Id.* at 4-7.

¹¹⁶ *Id.* at 4 (citing *Wheatland Tube Co., v. United States*, 495 F.3d 1355, 1363 (CAFC 2007) (*Wheatland*)).

duties” to be treated differently than normal customs duties (*i.e.*, U.S. import duties), (2) section 201 safeguard duties are more similar to antidumping duties (*i.e.*, special dumping duties) in that they are remedial duties aimed to provide temporary relief from adverse effects of imports, and (3) allowing such a deduction would likely lead to an impermissible double remedy.¹¹⁷ Thus, the CAFC distinguished section 201 duties from normal customs duties, which have no remedial purpose and are imposed regardless of whether the U.S. industry is suffering adverse effects as a result of imports.¹¹⁸

- Commerce has attempted to draw a distinction between section 232 duties and section 201 duties by claiming that “section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.”¹¹⁹ However, this distinction contradicts the basis given for the imposition of the section 232 duties of steel imports such as OCTG. Proclamation 9705, which imposed the section 232 tariffs, makes clear that the purpose of the section 232 duties was to remedy the injury that the domestic steel industry was allegedly suffering from foreign imports.¹²⁰ This remedial purpose was explicitly recognized by the CAFC in *Borusan*, which found that both section 201 and section 232 tariffs are remedial, and are focused on “saving a United States industry.”¹²¹
- Furthermore, both section 201 and section 232 tariffs are, like antidumping duties, temporary in nature. Proclamation 9705 explicitly states that the section 232 duties were put in place to eliminate a supposed threat to national security “under current circumstances.”¹²² The CIT also recognized the temporary nature of these tariffs in *Borusan*, which concluded that “section 232 duties and section 201 duties are both temporary in nature in that no Congressional action is needed to end them.”¹²³
- By deducting section 232 tariffs from EP and CEP, Commerce improperly required the importer to pay the Section 232 duties twice — first as section 232 duties, and a second time as an increase in the dumping margin. Commerce’s preliminary methodology would, therefore, provide the domestic industry twice the remedy needed to prevent injury from imports.

*Petitioners’ Rebuttal Brief:*¹²⁴

- The Presidential Proclamation implementing the section 232 duties states that the section 232 duties shall be levied “in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles.”¹²⁵ There is nothing in Proclamation 9705 to indicate that section 232 duties are “special duties.” In fact, Presidential Proclamation 9740 specifically

¹¹⁷ *Id.* at 5 (citing *Wheatland* at 495 F.3d at 1361-62).

¹¹⁸ *Id.*

¹¹⁹ *Id.* (citing *Preliminary Results PDM* at 17).

¹²⁰ *Id.* at (citing Proclamation 9705 of March 8, 2018, *Adjusting Imports of Steel into the United States*, 83 FR 11625 (March 15, 2018) (Proclamation 9705)).

¹²¹ *Id.* (citing *Borusan Mannesmann Boru Sanayi Ve Ticaret A.Ş. v. United States*, 494 F. Supp. 3d 1365, 2021 Ct. Intl. Trade LEXIS 18, Slip Op. 2021-18 (CIT 2021) (currently on appeal) (*Borusan*)).

¹²² *Id.* (citing Proclamation 9705 at paragraph 8).

¹²³ *Id.* (citing *Borusan* at *7).

¹²⁴ See Petitioners’ Rebuttal Brief at 7-11.

¹²⁵ *Id.* at 8 (citing Proclamation 9705 of March 8, 2018 – *Adjusting Imports of Steel into the United States*, 83 FR 11625, 11627 (March 15, 2018) (Proclamation 9705)).

refers to section 232 duties as “ordinary” customs duties.¹²⁶ Thus, the express wording of the Proclamations also demonstrates that section 232 duties are not contemplated as “special” duties, but should be treated as ordinary U.S. import duties.

- Commerce’s established practice is to treat section 232 duties as U.S. import duties, and to deduct them from EP or CEP.¹²⁷ The CIT recently upheld this approach in *Borusan*.¹²⁸ In that decision, the CIT affirmed Commerce’s practice of deducting Section 232 duties from EP and CEP calculations, confirming that Section 232 duties constitute “United States import duties.”
- SSV argues that Commerce’s treatment of section 232 duties is inconsistent with its treatment of Section 201 duties.¹²⁹ However, in the *Preliminary Results*, Commerce distinguished between section 232 duties and section 201 duties in terms of their respective purpose and function. Specifically, Commerce stated that section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and Section 201 safeguard duties to remedy injury to a domestic industry.”¹³⁰ This distinction and the fundamentally different purpose of the section 232 duties are reinforced by Proclamation 9705, which states that “the tariff imposed by this proclamation is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security”¹³¹
- SSV also argues that by deducting section 232 duties from EP and CEP, Commerce improperly required the importer to pay the section 232 duties twice, first as section 232 duties and as an increase in the dumping margin. However, the CIT rejected this same argument in *Borusan*, finding that these duties do not impose a double remedy.¹³²

Commerce Position:

We disagree with SSV that section 232 duties are special duties similar to section 201 duties. For the purposes of the final results, we continue to find that section 232 duties should be treated as U.S. import duties for purposes of section 772(c)(2)(A) of the Act, and therefore as U.S. Customs duties, which are deducted from U.S. price. In the *Preliminary Results*, we thoroughly explained our reasoning for treating section 232 duties as a normal duty and deducting the expense from the U.S. price.¹³³ Moreover, this is consistent with Commerce’s practice of treating section 232 duties as normal duties.¹³⁴ This practice of deducting section 232 duties

¹²⁶ *Id.* (citing *Proclamation 9740 of April 30, 2018 – Adjusting Imports of Steel into the United States*, 83 FR 20683, 20687 (May 7, 2018)).

¹²⁷ *Id.* (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey*), as amended, *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 12893 (March 5, 2020), and accompanying Issues and Decision Memorandum at Comment 3.

¹²⁸ *Id.* at 9 (citing *Borusan*).

¹²⁹ *Id.* (citing SSV Case Brief at 4).

¹³⁰ *Id.* at 10 (citing PDM at 17).

¹³¹ *Id.* (citing Proclamation 9705).

¹³² *Id.* at 10 (citing *Borusan* at 22).

¹³³ See *Preliminary Results* PDM at 16–18.

¹³⁴ See *Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2702 (January 16, 2020) (*Reinforcing Bar from Mexico*), and accompanying PDM at 12–

from the U.S. price in our AD duty calculations was also recently upheld by the Court of International Trade.¹³⁵

First, with respect to SSV's argument that section 232 duties are "special duties" because they are remedial in nature, we disagree. To substantiate its argument, SSV cites *Wheatland Tube* in which the CAFC sustained Commerce's determination not to adjust U.S. prices in AD proceedings for section 201 safeguard duties. However, the issues are different because section 201 duties and section 232 duties are designed for different reasons. In *Reinforcing Bar from Mexico*, we explained the CAFC ruling in *Wheatland Tube* as follows:

It is incorrect to claim that the CAFC's characterization of Section 201 duties in *Wheatland Tube* as temporary duties that are designed to remedy injury to a domestic industry also applies to Section 232 duties. Rather, the CAFC's holding in *Wheatland Tube* is based on a close examination of Section 201 duties and does not extend to Section 232 duties. In other words, *Wheatland Tube* assesses Commerce's interpretation of "United States import duties" and "special dumping duties" in consideration of the function and treatment of Section 201 safeguard duties.¹³⁶

Furthermore, as explained in *CWPs from Turkey*, we find that section 232 duties are not akin to AD or section 201 duties.¹³⁷ In contrast to SSV's contention that section 232 duties are remedial in nature, we find that section 232 duties are not focused on remedying injury to a domestic injury. The objective of section 201 duties is to "remedy the injurious effect on the U.S. industry of significant surge in imports."¹³⁸ In addition, the objective of AD duties is to "remedy sales by a foreign exporter in the U.S. market at less than fair value." With respect to countervailing duties, the objective is to "remedy unfair competitive advantage that foreign exporters have over domestic producers as a result of foreign countervailable subsidies."¹³⁹ As such, these types of duties "are all directed at the same overarching purposes – protecting the bottom line of domestic producers."¹⁴⁰

As noted in the *Preliminary Results*, the text of the Presidential proclamations clearly highlights the intent of establishing section 232 duties.¹⁴¹ *Presidential Proclamation 9705*, for example, states that it "is necessary and appropriate to adjust imports of steel articles so that such imports

14, unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 75053 (November 6, 2020), and accompanying IDM; see also *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7279 (February 7, 2020), and accompanying PDM at 21-23, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 77159 (December 1, 2020)

¹³⁵ *Borusan*, 494 F. Supp. 3d at 1376 (as noted earlier, currently on appeal to the CAFC).

¹³⁶ See *Reinforcing Bar from Mexico* PDM at 12.

¹³⁷ See *CWP from Turkey* IDM at 31.

¹³⁸ See *Wheatland Tube*, 495 F. 3d at 1362; see also Section 201 of the Trade Act of 1974; and Section 731(1) of the Act.

¹³⁹ See *Wheatland Tube*, 495 F. 3d at 1363.

¹⁴⁰ *Id.* at 1364.

¹⁴¹ See *Preliminary Results* PDM at 17.

will not threaten to impair the national security ...”¹⁴² Commerce has noted that the text of section 232 duties of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the article.”¹⁴³

We also note that the Presidential proclamations state that section 232 duties are to be imposed in addition to other duties, unless expressly provided for in the proclamations.¹⁴⁴ The Annex to Presidential Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping and countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”¹⁴⁵ Notably, there is no express exception in the HTSUS revision in the Annex. In other words, we find that section 232 duties are treated as any other duties. Moreover, as we noted in the *Preliminary Results*, “{had} the President intended that AD duties be reduced by the amount of Section 232 duties imposed, the Presidential Proclamation would have expressed that intent.”¹⁴⁶

Second, we disagree with SSV’s argument that section 232 duties are “special duties” because they are temporary in nature. Section 232 duties are not temporary in nature. The Court stated in *Wheatland Tube* that, “Commerce also found that Section 201 safeguard duties are like AD duties and unlike normal customs duties because they provide only temporary relief from the injurious effects of imports.”¹⁴⁷ However, section 232 duties have no termination, and they remain in place unless and until modified by an Executive Order from the President of the United States. Furthermore, in *HWR from Mexico*, we stated that “{w}e note in this regard that Section 232 are distinct from Section 201 duties because Section 232 duties are: (1) imposed for an indefinite period of time, and, thus, they are not remedial duties for a limited duration{.}”¹⁴⁸ Thus, section 232 duties are unlike section 201 safeguard duties in that section 232 duties are not temporary.

Finally, section 232 duties are not special duties because section 232 duties are delegated by Congressional authority to the Executive Branch as special measures. The authority given by Congress to the Executive Branch to impose section 232 duties does not preclude Commerce from treating section 232 duties as an ordinary import duty. As noted in the *Preliminary Results*:

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See *Presidential Proclamation 9705*, 83 FR at 11627; see also *Adjusting Imports of Steel Into the United States, Proclamation No. 9711*, 83 FR 13361, 13363 (March 28, 2018); *Adjusting Imports of Steel Into the United States, Proclamation No. 9740*, 83 FR 20683, 20685-87 (May 7, 2018) (*Presidential Proclamation 9740*), (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); *Adjusting Imports of Steel Into the United States, Proclamation No. 9759*, 83 FR 25857-77 (June 5, 2018); *Adjusting Imports of Steel Into the United States, Proclamation No. 9772*, 83 FR 40429, 40430 (August 15, 2018); and *Adjusting Imports of Steel Into the United States, Proclamation No. 9777*, 83 FR 45025, 45027 (September 4, 2018). The proclamations do not expressly provide that section 232 duties receive differential treatment.

¹⁴⁵ See *Presidential Proclamation 9740*, 83 FR at 20685-87.

¹⁴⁶ See *Preliminary Results* PDM at 18.

¹⁴⁷ See *Wheatland Tube*, 495 F. 3d at 1362-63.

¹⁴⁸ See *HWR from Mexico* IDM at 10.

The Annex to Proclamation 9740 refers to Section 232 duties as ‘ordinary’ customs duties, and it also states that ‘{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.’¹⁴⁹

Furthermore, in the *Preliminary Results*, we noted that there is no express exception in the HTSUS revision in the Annex and that section 232 duties are intended to be treated as any other duties for purpose of the trade remedy laws. Therefore, consistent with our treatment of 232 duties in the previous administrative review of OCTG from Vietnam,¹⁵⁰ we continue to determine that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act — and thereby as “U.S. Customs duties,” which are deducted from U.S. price.¹⁵¹

Comment 9: Ministerial Errors

*Petitioners’ Case Brief:*¹⁵²

- Commerce incorrectly deducted SSV’s reported billing adjustments (BILLADJU) from U.S. gross unit price, rather than adding them.

No other party commented on this issue.

Commerce Position:

We agree with the petitioners on this point and have corrected this error in these final results of review, to ensure that SSV’s reported billing adjustments (BILLADJU) are added to U.S. gross unit price, rather than deducted therefrom.

¹⁴⁹ See *Preliminary Results* PDM at 17-18.

¹⁵⁰ See *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 84 FR 62504 (November 15, 2019), and accompanying PDM at 16-17, unchanged in *OCTG Vietnam 2017-2018 Final*.

¹⁵¹ See *Preliminary Results* PDM at 16-17.

¹⁵² See *Petitioners’ Case Brief* at 34.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program for SSV accordingly. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.



Agree

Disagree

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance