

redistribution of VAAG's assets. Therefore, consistent with Certain Steel, we have found that the assets provided by VAAG to Kindberg are not a subsidy. However, as discussed above, the losses retained by VAAG did give rise to a subsidy to Kindberg.

*Comment Six: Bayou Steel Corporation ("BSC")*

Respondents assert that the Department should not countervail the equity infusions and grants received by VAAG in 1983 and 1984 because these funds were used to cover losses incurred by BSC in the United States. Moreover, because BSC was sold in 1986, Kindberg cannot be receiving any benefits from those funds.

Petitioners argue that in Certain Steel, the Department found that the funds in question were provided to cover VAAG's worldwide losses, including those associated with Bayou Steel. Therefore, the subsidies are attributable to all of VAAG, including Kindberg.

*DOC Position*

We agree with petitioner. In Certain Steel, we determined that these funds were provided to cover VAAG's worldwide losses. Respondents have not provided information that these funds were intended solely to benefit BSC (see GIA, at 37236). With respect to the sale of BSC, we have applied the spin off methodology applied in the Certain Steel cases. A portion of the subsidies received by VAAG would have been allocated to BSC at the time of its sale, but the payment VAAG received for BSC was sufficiently large that all of the subsidies reverted to VAAG. Hence, these subsidies continue to be, in part, attributable to Kindberg.

*Verification*

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

*Suspension of Liquidation*

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which were entered or withdrawn from warehouse for consumption, on or after January 24,

1995, the date our preliminary determination was published in the **Federal Register**.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning May 24, 1995, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from January 24 through May 23, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

**OCTG**

Country-Wide *Ad Valorem* Rate: 11.44 percent

*ITC Notification*

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on OCTG from Austria.

*Return or Destruction of Proprietary Information*

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d).

Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 19, 1995.

**Susan G. Esserman,**  
*Assistant Secretary for Import Administration.*

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[A-357-810]

**Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3646 or (202) 482-1673, respectively.

**Final Determination**

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the Suspension of Liquidation section of this notice.

*Case History*

Since the amended preliminary determination on March 6, 1995 (60 FR 13119, March 10, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Siderca S.A.I.C. and Siderca Corp. (collectively Siderca). Verification reports were issued in May 1995. On May 10 and 17, 1995, the interested parties submitted case and rebuttal briefs, respectively. On May 18, 1995, a public hearing was held. On May 23, 1995, Siderca submitted a revised sales tape pursuant to the Department's request correcting for minor errors discovered at verification.

*Scope of the Investigation*

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well

casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed by Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

#### *Period of Investigation*

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

#### *Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

#### *Such or Similar Comparisons*

We have determined for purposes of the final determination that the OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(16) of the Act. Where there were no sales of identical merchandise in the third country<sup>1</sup> to compare to U.S. sales, we made similar merchandise comparisons on the basis of the product characteristics listed in Appendix V of the Department's antidumping questionnaire, as modified and discussed in the preliminary determination. In two instances, the revised product concordance submitted by Siderca did not follow exactly the product comparisons made in the preliminary determination. We have corrected the product concordance for these instances (see Comment 5 in the "Interested Party Comments" section of this notice).

We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

#### *Fair Value Comparisons*

To determine whether Siderca's sales of OCTG from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

#### *United States Price*

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. For the cost of production (COP) of the merchandise that was further manufactured in the United States, we included in the cost of manufacture (COM) the research and development (R&D) expense excluded by respondent and computed general and administrative (G&A) expense on an annual basis from Siderca's March 31, 1994, income statement.

2. We applied the net financial expense of the consolidated parent to

the further manufacturing costs of the related further manufacturer.

3. We made deductions from gross unit price for movement variances that represent the difference between the accrual and actual movement costs.

4. We recalculated inventory carrying cost to use the interest rate of the entity during the time period when that entity holds title to the goods. That is, we used the Argentine interest rate during the period from production to Siderca S.A.I.C.'s transfer of title to Siderca Corp. and the U.S. interest rate during the period the merchandise is held by Siderca Corp.

In order to calculate credit expenses for certain sales which had either not yet been shipped or paid for, we followed the methodology used in our preliminary determination and assigned the average number of credit days when shipment and payment dates were missing, but now used the date of the final determination, June 19, 1995, as the assumed payment date when only payment dates were missing.

#### *Foreign Market Value*

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on sales to the People's Republic of China (PRC). During the course of this investigation, the petitioners questioned the legitimacy of certain sales made by Siderca to the Chinese market. The Department closely examined these sales at verification and found no reason to alter its determination that PRC sales are the appropriate basis for FMV (see Comment 1 in the "Interested Party Comments" section of this notice).

#### *Cost of Production Analysis*

As we indicated in our preliminary determination, the Department initiated an investigation to determine whether Siderca's sales in the PRC were made below their COP. We calculated the COP according to the methodology described in our preliminary determination, with the following exceptions:

1. We included in the COM the R&D expense excluded by Siderca.

2. We computed G&A expense on an annual basis from Siderca's March 31, 1994, income statement.

3. We excluded duties from the COP since the price to which COP was compared was also exclusive of duties.

After computing COP, we compared product-specific COP net of direct and indirect selling expenses to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

<sup>1</sup>The home market in this case is not viable. Sales to the People's Republic of China (PRC) are being used as the basis for the FMV and COP analysis.

### Results of COP Analysis

In accordance with section 773(b) of the Act, we followed our standard methodology as described in the preliminary determination to determine whether the third country sales of each product were made at prices below their COP. Based on this methodology, none of Siderca's PRC sales were found to be below cost. Accordingly, we calculated FMV according to the methodology described in our preliminary determination, with the following exceptions:

1. We recalculated credit using the U.S. interest rate since all third country sales were denominated in U.S. dollars.
2. We made a circumstance-of-sale adjustment to FMV to account for the difference in the average effective reintegro (rebate) rate included in the U.S. price (see Comment 6 in the "Interested Party Comments" section of this notice).

In order to calculate credit expenses for unshipped or unpaid Chinese sales, we applied the same methodology described above for USP.

### Currency Conversion

Because certified exchange rates for Argentina were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Argentine pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund in accordance with 19 CFR 353.60(a).

### Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

### Interested Party Comments

#### Comment 1: Third Country Sales

The petitioners argue that information obtained from Siderca reveals that the date of sale of many of Siderca's third-country sales falls outside the POI, making the home market viable. The petitioners state that Siderca did not adhere to the Department's definition of date of sale for the majority of its third-country sales. They argue that Siderca's refusal to produce written agreements with a certain Chinese customer or price lists pursuant to those agreements leads one to conclude that there were two binding contracts between Siderca and the Chinese customer, one inside the POI and one outside the POI. The petitioners argue that the shipments pursuant to both of those agreements should be excluded from the Department's viability analysis.

Regarding the first agreement, the petitioners argue that the price and quantity were agreed to before the POI, in accordance with the terms specified in Siderca's 1991 Framework Agreement with its customer. Therefore, the POI shipments should be associated with pre-POI sales and excluded from the Department's analysis.

The petitioners argue that Siderca's contention that the 1991 Framework Agreement resulted only in periodic "general agreements" on quantity and on "general price levels" is an attempt to discount the authority of the 1991 Framework Agreement. They state that nothing in the 1991 Framework Agreement makes any mention of Siderca's claim that the general agreements entered into periodically with the customer were not final. Furthermore, the petitioners state that changes in some sales terms, as mentioned by Siderca to support its claim that the general agreements were not final sales agreements, do not invalidate the parties' intent to establish definite sales terms in the general agreements for the rest of the merchandise.

The petitioners further state that in the Final Determination of Sales at Less Than Fair Value: Steel Bar from India (59 FR 66915, December 28, 1994), the Department found that shipments under a sale agreement were a valid sale as of the date of the agreement, even though the sale was subsequently cancelled. The petitioners argue that if the cancellation of a contract does not alter the date of sale with regard to other merchandise covered by the contract, then ordering a new product does not alter the date of sale, at least for all other types of merchandise, evidenced by the general agreements in question. Therefore, the periodic agreements must be considered actual sales agreements.

As a result, the petitioners maintain that only the second agreement with the Chinese customer was entered into during the POI. However, the petitioners argue that the shipments pursuant to this second agreement should also be excluded from the Department's viability analysis because the terms of delivery for the total tonnage ordered were not met by Siderca, and the quantity shipped is not even close to the shipment terms agreed to by the parties. The petitioners state that the delivery term was an essential term of the agreement and was changed; therefore, the Department must exclude these sales from its viability analysis. Alternatively, if the Department does not exclude all the sales pursuant to this agreement, it must, at a minimum, exclude the merchandise where

shipment was not even close to the shipment term agreed to by the parties. Additionally, the petitioners contend that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis.

Regarding a non-Chinese third country sale, the petitioners state that the documentation placed on the record demonstrates that the correct date of sale is outside the POI, since the documentation references a sales acknowledgement dated outside the POI. Therefore, the Department must also exclude this sale from its viability analysis.

Finally, the petitioners argue that because a proper analysis of third country sales results in a viable home market, the Department must base its determination on the best information available, which in this case is the information contained in the petition.

Siderca states that to determine the date of sale, the Department relies on the first written memorialization of the sales agreement setting forth the essential contract terms. Siderca argues that there were no written agreements with the Chinese customer pursuant to the periodic negotiations and that there is nothing in the record to support the petitioners' claims that written agreements or price lists pursuant to the periodic negotiations exist.

Siderca states that it holds periodic negotiations with its customer regarding sales of OCTG, pursuant to the 1991 Framework Agreement, which end with a general agreement on the tonnage to be purchased during the next six months, and on general price levels. However, the product mix is not specified in these agreements, nor is there any firm commitment to purchase the total quantity. Sometimes the customer orders the total quantity discussed in the negotiations, sometimes it does not. Siderca states that production does not begin until the contracts pursuant to the general agreements are signed. It further states that it reported all contracts which were signed by both parties during the POI as POI sales.

Siderca argues that its sales process was fully verified by the Department. Siderca states that information was provided on the record which supports Siderca's treatment of the contract date as the date of sale, such as an internal document requesting guidance on the price to offer a certain customer during the POI. Siderca further states that the verification showed that it was consistent in its approach to the date of sale; for example, not treating as POI sales those shipments during the POI

that were pursuant to a contract signed before the POI.

Siderca further argues that there is evidence on the record which proves that the periodic negotiations with the Chinese customer do not end in a formal commitment to buy or sell. This is evidenced by a purchase order showing no terms for a particular product and also by the fact that, while the second agreement listed a certain quantity, only a portion of that quantity was actually ordered and shipped.

Siderca contends that the record supports its position that the specific terms of sale are established when the customer's purchase order is received. It notes that the original contracts were examined at the verification.

Regarding the merchandise that was shipped after the delivery date stipulated in the contract, Siderca argues that the delivery date influenced the timing of the negotiations and the timing of the contract signing. Siderca contends that the customer wanted shipment by a particular month but then experienced logistical problems and arranged for subsequent delivery. It states that the parties did not change the merchandise, price, quantity or other material terms of the contract. It also states that the petitioners could cite no cases where this type of modification had been interpreted as changing the date of sale.

Siderca then addresses the petitioners' argument that, at a minimum, the Department should exclude the merchandise where the shipment terms were not even close to those agreed to by the parties. Siderca argues that the petitioners provided no precedent to support their theory that these sales do not constitute sales during the POI. It argues that a delivery term is only a material term if the parties treat it as one and that the evidence on the record shows that all merchandise was eventually shipped.

Next, Siderca addresses the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and excluded from the viability analysis. Siderca states that this merchandise was never ordered because it was never sold. Therefore, it does not need to be excluded from the viability analysis because it was never included.

Finally, Siderca addresses the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese third country sale is outside the POI, since the documentation references a sales acknowledgement dated outside the

POI. It argues that the sales acknowledgement was only an "observation/clarification" of the customer's purchase order and that the record does not show any change or modification in the material terms.

#### *DOC Position*

We agree with Siderca. This issue was argued extensively by the parties and examined very closely by the Department at the verification. At verification, we found no evidence of written price agreements or price lists pursuant to the periodic negotiations which might result in certain reported sales being outside the POI. A review of the 1991 Framework Agreement also showed no basis to discount Siderca's claim that the periodic agreements with the Chinese customer were only "general agreements" where terms were not finalized. Thus, the 1991 Framework Agreement was akin to a memorandum of understanding between the parties, setting forth no definite material contract terms. It is clear from information on the record that the purchase order sets the price and quantity of the sale. Therefore, respondent's reporting of the purchase order date as the date of sale was consistent, and in accordance, with the Department's practice (see, e.g., Final Determination of Sales at Less than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom (52 FR 18992, July 28, 1987).

Furthermore, changes in the delivery term of the contract at the end of the POI do not constitute changes to a term of the contract significant enough to alter the date of sale, unlike terms such as price and quantity. This is evidenced by the fact that the parties themselves did not treat the delivery term as a material one. Moreover, the petitioners could show no cases to support the opposite conclusion. Therefore, these sales were also properly within the POI.

Regarding the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis, this merchandise was never sold nor reported; therefore, this issue is moot.

Regarding the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese sale is outside the POI, the acknowledgement in question references no change in the material contract terms. Furthermore, even if the petitioners' argument was correct, excluding this sale alone would not change the viability analysis.

Accordingly, the use of best information available, as suggested by the petitioners, is not warranted. We will use all PRC sales as reported by Siderca in our analysis.

#### *Comment 2: Related Customer Allegation*

The petitioners argue that Siderca and a certain Chinese customer are related parties and, therefore, the sales to the Chinese customer must be excluded from the Department's analysis. They state that the Department's questionnaire specifies that companies are considered related when one or more of the same individuals are members of the board of directors of both companies or other entities which control those companies. The petitioners also argue that in the Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan (57 FR 56319, November 27, 1992) (Roller Chain), the Department found that two companies were related when they shared one director on each board. Thus, the petitioners contend that shared board members and officers have long been equated with common control of companies.

The petitioners state that when different individuals sit on the boards of two different companies, but serve as representatives of a common corporation, it results in interlocking directors which may violate section 8 of the Clayton Act, instituted to prevent a restraint of trade from being effected. The petitioners state that this is the situation that exists between Siderca and the Chinese customer through the management of several companies. They claim that Siderca failed to rebut the documentary evidence of relatedness placed on the record by the petitioners.

The petitioners contend that the ownership of Siderca is closely tied to that of many other companies, through Siderca's parent companies. They then argue that information on the record demonstrates shared management between Siderca and the Chinese customer. The petitioners note that all evidence they placed on the record to show the interrelationship between the management of these companies are certified copies of extracts from commercial registers. The petitioners then state that Siderca's attempts to rebut this evidence at verification are inadequate for the following reasons.

First, the petitioners discuss Siderca's attempt to obtain ownership information from the Chinese customer. They argue that Siderca has shared management with the Chinese customer and, therefore, it could have done more to obtain information from this

customer than just to send the customer a letter.

Second, the petitioners discuss Siderca's explanation of its alleged connection with the representative of the Chinese customer. They question Siderca's characterization of the president of Siderca's ultimate parent as only serving as local agent of the representative of the Chinese customer. The petitioners also claim that, under Swiss law, which applies to the representative of the Chinese customer, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims. In addition, the petitioners claim that Siderca's explanation for the common board member between the Chinese customer and its representative fails to rebut the presumption of a relationship.

Third, the petitioners discuss Siderca's explanation of the alleged relationship with the local Argentine office of its Chinese customer. They argue that Siderca's characterization of a legal representative as that of an employee with no powers of a director or officer of the company is incorrect. The petitioners contend that, under Argentine law, persons authorized to represent a company are "obliged to it for all the acts that are not manifestly outside the company's objectives." Furthermore, the petitioners argue that the self-serving oral explanations at verification are not sufficient to rebut the documentary evidence provided by the petitioners.

Fourth, the petitioners discuss the charts provided by Siderca to illustrate its relationships with other companies. The petitioners contend that these charts are inadequate to rebut the claim of relatedness between Siderca and the Chinese customer because the charts are incomplete and have no supporting documentation.

The petitioners conclude that the Department must exclude Siderca's sales to this particular Chinese customer from its analysis because they were made to a related party and because Siderca has made no effort to prove that the sales to this customer were at arm's length.

Siderca argues that the petitioners' argument is results-oriented and that the Department should follow established standards for determining whether parties are related. Moreover, the fact that the sales to the customer in question are similar to U.S. sales makes the Chinese market a better comparison market than those where Siderca did not sell similar merchandise (*i.e.*, plain end OCTG).

Siderca argues that the Tariff Act of 1930, as amended (19 U.S.C. 1677(13)), focuses on either some financial relationship through stock ownership or otherwise, or the exercise of some control over the other business, to show relatedness. Siderca maintains that neither it nor its related commissionaire own or control the Chinese customer and are, therefore, not related to that customer.

Siderca maintains that the verification documents support the following conclusions. First, there is no corporate relationship between the Chinese customer and its representative, which the Chinese customer uses for certain corporate services, such as the collection of mail. Second, there is no corporate relationship between the customer and Siderca, either by ownership or control. Third, the only information that links Siderca and its Chinese customer is a good relationship that is not uncommon between a supplier and a client. Siderca states that it is because of this good relationship that the customer approached an officer of one of Siderca's related parties for advice on setting up a subsidiary in another country. Siderca maintains that this individual agreed to have his name placed on the incorporation documents as an attorney-in-fact. As a result, Siderca states that its related company and this customer each had a subsidiary in the same country with the same individual involved in both. In addition, Siderca argues that its related company and its customer appointed some of the same citizens to serve as corporate directors in fulfillment of local law requirements regarding the citizenship and residency of corporate directors.

Fourth, the Chinese customer expanded its activities in Argentina by opening a branch there, and hired an employee to serve as its local representative. This employee was not involved at any time in the ownership or management of the Chinese customer, and was never employed at the same time by the Chinese customer and Siderca's related companies. Siderca argues that this person switched jobs to one of Siderca's related companies, and recommended another person to wind down the operations of the Argentine branch of the Chinese customer. This other person was a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization.

Siderca concludes from the above-cited evidence that there is no evidence of corporate control, through stock ownership, common management, or otherwise.

Siderca then states that the Department's questionnaire never mentions the term "shared management," even though the petitioners use this term to define related parties. It also states that Roller Chain says nothing about "shared management" and refers to individuals on multiple boards being one of the indicia of control, not control in and of itself. Siderca argues that Roller Chain based relatedness by control on many factors, including financial relationship and the sharing of two of five board members. It states that the Department mentioned common board members as "further evidence that the potential to control was present" and this was not the only or major reason for its decision. Siderca also argues that modern corporate boards are routinely comprised of individuals who sit on boards of other unrelated companies. It says that this does not make the companies related.

Siderca concludes that the petitioners' relationship allegations do not satisfy a balanced statement of the applicable statutory provision, nor even the "shared management control" standard that the petitioners, themselves, have invented. It states that the petitioners have shown no ownership, financial dealings, coordinated management or cross investments.

#### *DOC Position*

We agree with Siderca. To determine whether Siderca's customer is related to Siderca, we examined whether the definition of "exporter" was met by the customer within the meaning of section 771(13) of the Act. First, regarding the petitioners' argument that since Siderca has shared management with the Chinese customer, Siderca could have done more to obtain information than simply to send a letter, we note that, as stated below, no shared management between these parties has been demonstrated by the record evidence.

Second, regarding the petitioners' claim that under Swiss law, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims, we acknowledge that, under Swiss law, a representative acts in the same capacity as a board member. However, with regard to the president of the ultimate parent of Siderca, this only shows that the Siderca's parent company and the customer's agent had a common board member. As shown below, this is not enough to establish control of Siderca over the Chinese customer.

Regarding the other individuals listed by the petitioners as showing a relationship between Siderca and its

customer, only one has conclusively been shown to be on the board of a company related to Siderca through its parent companies and also on the board of a subsidiary of Siderca's customer. All other individuals characterized by the petitioners to be common board members have what is known as a "power of attorney." We found no evidence that under Swiss law, the "power of attorney" capacity equates with being a member of a board of directors.

Few past cases address the issue of indirect control. In *Roller Chain*, cited by the petitioners, the Department found that a company was related to its customer within the meaning of 771(13) of the Act, noting that since two company officials were members of the customer's board of directors and that the company in question provided a majority (60%) of the capital used to establish the customer. Thus, in *Roller Chain*, it was the significant financial connection, coupled with the two common board members, that provided the basis for the Department's determination of relatedness. In this case, there is only one common board member and no proof of outlay of capital to establish the customer. Therefore, the circumstances present in this case are not analogous to those found by the Department in *Roller Chain*. Furthermore, there is no proof of any stock ownership between the companies.

Third, with regard to the alleged relationship between Siderca and the local Argentine office of its Chinese customer, the Department acknowledges that, under Argentine law, persons authorized to represent a company are "obliged to it for all the acts that are not manifestly outside the company's objectives." However, the employee in question was never employed at the same time by the Chinese customer and Siderca's related companies.

Also, the other person mentioned by the petitioners was characterized by Siderca as having been hired to wind down the operations of the Argentine branch of the Chinese customer. This other person was also characterized as a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization. We note for the record that the Department was informed at verification that this person was not completely retired from one of Siderca's related parties but was still on the payroll as a consultant when he was hired by the Argentine branch of the Chinese customer. However, even if he was on Siderca's payroll as a consultant at the same time he was winding down

the operations of the Argentine branch of the Chinese customer, this employee/consultant capacity is not the same thing as board membership or management and is not enough to establish control.

Fourth, regarding the petitioners' contention that the charts provided by Siderca to illustrate its relationships with other companies are inadequate to rebut the claim of relatedness, at the verification the team also examined the corporate books that listed the management of these companies. Nothing to discredit Siderca's claims was found.

Finally, we also note that the petitioners have shown, and we have found, no ownership between the parties.

In sum, the record evidence does not demonstrate that the Chinese customer and Siderca are related companies within the meaning of section 771(13) of the Act.

#### *Comment 3: Ordinary Course of Trade*

The petitioners state that section 773(a)(1)(A) of the Act requires that FMV of imported merchandise be based on sales made in the ordinary course of trade. According to the petitioners, the U.S. Court of International Trade noted that the ordinary course of trade requirement is meant to "prevent dumping margins which are not representative" of sales in the home market (*Cemex, S.A. v. United States*, Slip. Op. 95-72 at 6, April 24, 1995). The petitioners contend that, in the past, the Department has considered the following factors to determine whether sales were made in the ordinary course of trade.

First, the petitioners discuss the channels of sale. The petitioners argue that since the Chinese customer was not located in China, used the services of another company not located in China, and had intertwined control with Siderca, the sales to this customer are not representative of Siderca's sales practices in China.

Second, the petitioners discuss product uses. The petitioners argue that the products sold by Siderca to this Chinese customer had different characteristics from Siderca's other sales of OCTG to the Chinese market and therefore were not in the ordinary course of trade. The petitioners cite the Final Results of Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India (57 FR 54360, November 18, 1992) (Standard Pipes) to show a case where products with different physical characteristics were excluded as being outside the ordinary course of trade.

Third, the petitioners discuss the frequency and volume of sales. The petitioners argue that the frequency and volume of sales to this particular Chinese customer, when compared to the frequency and volume of sales to another customer, and when considering the other factors mentioned by the petitioners, demonstrates that these sales were not in the ordinary course of trade.

Fourth, the petitioners discuss the shipping arrangements. The petitioners contend that the difference in the average time between order and shipment for the sales to this particular customer, when compared to the other reported Chinese sales, is evidence that these sales are not in the ordinary course of trade.

Finally, the petitioners state that Siderca's characterization of its relationship with the Chinese customer is not one of an ordinary business relationship, even a "friendly" one, between a producer and a buyer. The petitioners argue that in the ordinary course of trade producers do not lend the services of their officers to set up subsidiary companies for their buyers and serve as attorneys in fact for the resulting subsidiaries.

Siderca argues that petitioners' points fail to show that this sale is outside the ordinary course of trade. First, regarding the channels of sale, Siderca contends that there is no abnormality in the customer not being located in China, as it is a trading company. Siderca asserts that trading companies rarely take delivery in the country where they do business. Siderca states that this particular customer purchased OCTG for other markets during the POI as well. Siderca argues that the use of trading companies is a normal practice in the steel trade.

Second, regarding product uses, Siderca states that, while the merchandise to this customer did have different, albeit not abnormal, physical characteristics than the other merchandise sold to this market, it did have the same end use. Siderca states that the trading company's customer in China simply did not need, or could not use, the type of product Siderca sold to the other Chinese customers. Siderca argues that the Department only excludes sales as outside the ordinary course of trade where the product use is very dissimilar. Siderca states that in Standard Pipes, the Department found that the physical differences had a direct bearing on use.

Third, regarding the frequency and volume of sales, Siderca argues that these sales cannot be considered aberrant. Siderca states that the sales to

this particular customer are similar in size and frequency to the sales to another Chinese customer, to which the petitioners do not object. Therefore, Siderca states that the sales to the customer in question were consistent with other sales in the Chinese market.

Fourth, regarding the shipping arrangements, Siderca states that in examining shipping arrangements for the purpose of an ordinary course of trade determination, the Department examines factors such as shipments over substantial distances, the unusual absorption of high freight costs or a complete change in shipping terms, none of which is relevant to the customer in question. Furthermore, Siderca notes that shipment was made within the period stipulated in the purchase order.

#### *DOC Position*

We agree with Siderca. In making the determination whether sales should be excluded by being outside the ordinary course of trade within the meaning of section 773 of the Act and section 353.46 of the Department's regulations, the Department examines several factors (see the Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (58 FR 37154, July 9, 1993).

Regarding channels of sale, there is nothing unusual with selling to a trading company located in a third country. As noted by Siderca, we consider these sales to be Chinese sales because Siderca knew the ultimate destination of the merchandise. Regarding product uses, the petitioners, although showing that the products sold to different customers in China had certain different physical characteristics, in no way proved, and we did not find, that the products had different end uses.

Regarding the frequency and volume of sales, since the frequency and volume of sales to the customer in question were similar to that of another Chinese customer, we don't find that there is an abnormality. Regarding the shipping arrangements, differences in average time between order and shipment alone is not evidence that the sales were outside the ordinary course of trade. No cases were cited by the petitioners, nor found by us, to support this position and the shipments were made within the period stipulated in the purchase order. Therefore, the Department finds that these sales are not outside the ordinary course of trade within the

meaning of section 773(a)(1)(A) of the Act.

#### *Comment 4: Home Market Sales*

The petitioners contend that certain home market sales reported as being made prior to the POI were actually made during the POI. According to the petitioners, the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Since the prices do not match, the petitioners contend that these sales were made during the POI and not pursuant to the pre-POI sales agreement. The petitioners claim that adding the home market sales to this particular customer in the viability analysis would make the home market viable.

Siderca argues that the petitioners are wrong in claiming that the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Siderca states that the petitioners did not take into consideration an article in the contract that explained a large part of the discrepancy. Siderca also states that minor calculation errors were made by the petitioners due to poor copy quality of the contract. Siderca argues that correcting for these errors results in the price charged being the same as the price agreed upon in the contract.

Siderca claims that it correctly reported the home market sales during the POI. It states that information was provided which supported its position that: (1) Exporting to world-wide markets has dominated Siderca's sales in each six month interval; (2) short-term sales were the norm in the 18 month period from January 1, 1993 to June 30, 1994; (3) the POI, with private end-user clients, was representative of the post-privatization market that was the context for Siderca's home market sales practices during the 18 month period; (4) there was no sale pursuant to a long-term contract in the POI; and (5) Siderca's home market sales practices prior to 1993 reflected a different era, characterized by a single, state-owned oil and gas monopoly.

Siderca states that its definition of the date of sale and the Department's preliminary determination that the home market was not viable during the POI was supported by the evidence presented at verification. It states that the Department reviewed the long-term contracts in detail, including a complete list of the purchase orders associated with a given contract and, for selected purchase orders, the shipments made against the order. Siderca states that the Department also verified the actual

volume and value of Siderca's home market sales and no discrepancies were found.

#### *DOC Position*

We agree with Siderca. At the public hearing, the petitioners conceded that their argument was based on an incomplete reading of the contract (namely, failure to take into account an article in the contract), as well as an illegible copy of the contract. Therefore, there was no price discrepancy. Furthermore, we examined the home market sales process (especially price and quantity terms in the purchase orders pursuant to the long-term contracts) in detail at the verification and no discrepancies were found. Therefore, the record continues to show that the home market is not viable.

#### *Comment 5: Model Match*

The petitioners argue that the Department should rely on its own product matching decisions outlined in a January 24, 1995, product matching memorandum and used in the preliminary determination instead of Siderca's proposed model matches.

Siderca argues that a certain Chinese product, although more similar to the U.S. products based on a strict application of the Department's model-matching methodology, is not the most similar overall based on physical characteristics, production and commercial value. Siderca states that while the two third country selections are nearly equally dissimilar to the U.S. products based on a higher-ranking characteristic, its match is more similar based on lower-ranking characteristics, which should be taken into consideration.

Siderca argues that there is nothing that prevents the Department from adapting the hierarchy to a particular set of facts, especially where there is a clear reason to modify the approach and the statutory definition of similar merchandise warrants the modification. Siderca contends that in the past the Department has deviated from the published hierarchy when the respondent has demonstrated that it is necessary to achieve the proper comparison.

#### *DOC Position*

We agree with the petitioners. The matching of the U.S. products based on the January 24, 1995, memorandum, is consistent with the purpose of a matching hierarchy; i.e., more weight is given to higher-ranked characteristics and less weight to lower-ranked characteristics. Following a strict application of the matching hierarchy



also allows for more predictable results. Lower-ranked characteristics are taken into consideration only when higher-ranked characteristics are equal. This is not the case here.

*Comment 6: Reintegro (Rebate)*

The petitioners argue that the Department must deduct from the COP only that portion of the reintegro (a rebate upon export of indirect taxes imposed during production of the merchandise) attributable to material inputs. The petitioners note that current law does not address the issue of rebates such as the reintegro in COP situations. The petitioners argue that the statutory silence on the issue of indirect taxes relating to items other than materials indicates that such taxes should remain in the product's cost and, therefore, the full rebate should not be deducted from the COP. Both the Department's regulations (19 CFR 353.50(a)(1)) and section 773(e)(1)(A) of the Act provide that, when calculating constructed value, the cost of materials is to exclude internal taxes applied directly to the cost of such materials when the taxes are refunded upon exportation. The petitioners argue that under current law only the Department's practice of excluding value added taxes paid on raw material inputs offers guidance in the area of COP.

The petitioners also argue that the Department must average the market specific tax rebate so that only one cost of production is reported for each product. The petitioners maintain that the Department's long standing practice is that cost differences based on shipping destination should not enter into the company's cost of production for a particular product.

Siderca argues it properly reduced the actual cost of production by the average rebate received on sales to China. Siderca states that both final stage and prior stage indirect taxes appear in its records as costs and, therefore, the rebate of the tax must be applied as an offset to this cost. Siderca argues it presented to the Department the same indirect tax study it presents annually to the Argentine government to prove the amount of rebate it is entitled to under the reintegro program. Siderca notes the study was tested and reviewed during the cost verification and that Department personnel have reviewed the study on six previous occasions.

Siderca concedes the precise percentage of material cost accounted for by cumulative indirect taxes cannot be known, but argues that the study provides a reasonable estimate. Moreover, there is no double counting of the exclusion, because the total level

of taxes paid exceeds the rebate. Further, the 1993 tax study, upon which the 1994 rebate was based, accurately reflects the amount of taxes paid while the tax was in effect during 1993. Siderca states that it presented support for the actual cash rebate received on sales to the U.S. and China.

Siderca maintains that its approach is consistent with the Department's practice of using actual costs, and cites to the Final Determination of Sales at Less Than Fair Value: Fresh Chilled Atlantic Salmon from Norway (58 FR 37915, July 14, 1993), where the Department stated its preference for the use of the actual cost of the subject merchandise, whenever possible. Siderca also cites Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-phenylene Terephthalamide from the Netherlands (59 FR 23684, May 6, 1994) in which the Department treated government grants as an offset to the respondent's fixed overhead costs.

Siderca does not dispute that its methodology results in two different net costs, but argues that this is always the case when duties are rebated on export sales. Siderca states that the cost of the home market product is tax inclusive, and the cost of the export product is exclusive of the tax after export. Because the COP comparisons are based on sales to a specific market, the calculation should take into account only rebated taxes relevant to that market.

Finally, Siderca argues the effect of the differential should not be a source of double jeopardy. The differential exists because Siderca has foregone a portion of the rebate for exports to the United States in deference to the U.S. countervailing duty regime.

*DOC Position*

We agree with Siderca, in part. Regarding the issue of allowing only the portion of the reintegro attributable to material inputs, the Department's Offices of Countervailing Investigations and Countervailing Compliance normally test to determine whether or not the reintegro is countervailable (see, e.g., *American Alloys, Inc. v. United States*, 30 F.3d 1469 (Fed. Cir. 1994)). To be non-countervailable, the rebate must be for taxes on merchandise which was physically incorporated into the exported product and the rebate must be no greater than the actual taxes imposed.

The last countervailing determination concerning OCTG from Argentina for which results have been published is the 1988-89 Countervailing Duty Administrative Review. In the

preliminary results of that review, the Department determined that Siderca was entitled to the entire reintegro without incurring countervailing duties (56 FR 50855, October 9, 1991). This issue was not discussed and, therefore, was not changed, in the final results (56 FR 64493, December 10, 1991). The reimbursement percentage on OCTG was then raised in 1992. However, Siderca only accepts the pre-1992 rebate percentage on U.S. sales because the current U.S. countervailing duty order is still in place. Based on the fact that the Department has previously determined that Siderca was entitled to a rebate without incurring countervailing duties and because it currently accepts a lower rebate, it is reasonable to assume that the entire reintegro is attributable only to material inputs.

We agree with Siderca regarding the issue of averaging the market specific tax rebates so that only one cost of production is reported for each product. For the cost test, the Department noted that the cost of production is the cost of the product as sold in the third country. This cost is being compared to the third country price. Since Siderca receives the entire rebate on sales to the third country, the cost of the third country product should be lowered by the entire amount of the rebate received upon exportation of the product to the third country.

Therefore, for COP, we have made no changes from the preliminary determination and have deducted the full rebate percentage from the COP.

Although not mentioned by the interested parties, the impact of the reintegro in the context of the price-to-price comparisons must be addressed. Included in Siderca's manufacturing costs of OCTG are taxes paid to the Argentine government. Siderca received a rebate of these taxes upon exportation of the merchandise. However, the amount of the rebate claimed by Siderca for the two export markets was not identical. For sales to the PRC, Siderca chose to accept the entire rebate. For sales to the United States, Siderca chose to accept only a partial rebate. Because only a partial rebate is taken for U.S. sales, a portion of the tax imposed by the Argentine government remains in the U.S. price (the difference between the total rebate and the partial rebate taken). Because these rebates are directly related to the sales of the merchandise in the two markets, it is necessary to make a circumstance-of-sale adjustment to FMV to account for the different amount of taxes included in the Chinese and U.S. prices. This procedure is consistent with *Zenith*



*Electronics v. United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993).

In calculating dumping margins, the Department equalizes the effective tax rates in each market. Normally (where the home market sale is taxed, but the export sale to the United States is not taxed) this is accomplished by applying the home market tax rate to the U.S. price at the same point in the chain of commerce at which the home market tax is imposed. Here, where the pipe exported to the United States was taxed in excess of the tax on the pipe exported to China, the comparable procedure would be to subtract the differential from the price charged in the United States. Because the statute provides no mechanism for removing tax from the U.S. price, however, we achieved the necessary equivalence in tax rates by adding the difference between the effective rebate percentages claimed by Siderca between the two prices to the price of the pipe exported to China as a circumstance-of-sale adjustment, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a). This prevented Siderca's acceptance of a complete tax rebate on the sales to China, but only a partial export tax rebate on the sales to the United States from masking any tax-net dumping margin.

#### *Comment 7: Revenues Earned on Sales of Secondary Pipe*

The petitioners argue Siderca should not reduce the reported costs for the subject merchandise by revenues earned on sales of secondary pipe. The petitioners argue that Siderca is treating secondary pipe as a by-product, when it should be treated as a co-product. According to the petitioners, in *IPSCO Inc. v. United States (IPSCO)* (965 F.2d 1056, 1060-61 (Fed. Cir. 1992)) the Court of Appeals for the Federal Circuit upheld the Department's treatment of second quality pipe when the Department fully allocated costs evenly over output tons. The petitioners argue that the classification of secondary pipe as a co-product precludes Siderca's offset of costs by revenue from secondary pipe.

Siderca argues it properly offset the cost of production by the revenue earned on sales of secondary pipe. Siderca contends the secondary pipe in question is a by-product, not a co-product, and is pulled from the scrap pile when a particular customer periodically stops by to purchase material. It further contends by-products are defined as products that have a low sales value compared with the sales value of the main product. Siderca notes that revenue from the sale of these

products account for a small percentage of its total revenue for the period. Siderca rebuts the petitioners' reliance on *IPSCO* by asserting that *IPSCO* concerned limited service pipe, not scrap pipe. It argues that if the Department treats the secondary pipe as a co-product, then it must increase the production quantity over which production costs have been allocated, thereby lowering the cost of all products.

#### *DOC Position*

We disagree with the petitioners that IPSCO applies in this case. IPSCO dealt with limited service merchandise, an OCTG product with a quality sufficient enough to allow its use in some drilling applications. We also note that during the relevant period in that case, IPSCO produced and sold limited service products in significant quantities. Although Siderca overstates its assertion that these pipes are scrap sales, this is not a product that could be used for normal pipe applications. In this case, the merchandise in question was purchased because of its form, not because of its ability to act as a conduit for fluids.

The distinction as to whether a joint product is a by-product or a co-product of the subject merchandise is important because the Department treats by-products and co-products differently in calculating the COP of the subject merchandise. Central to our determination as to whether a product is a by-product or a co-product of the subject merchandise is the determination of the "split-off" point, which is the point in the production process where the co-product becomes a separately identifiable product. All costs incurred up to and including the split-off point are considered common to producing all co-products. Accordingly, where the Department determines a product to be a co-product, common costs incurred up to and including the split-off point are allocated among all the co-products, with none allocated to by-products. Alternatively, where the Department determines a product to be a by-product, it allocates all common costs to the primary merchandise and subtracts the amount of the revenue from the sale of by-products from the total COM of the chief product (see, e.g., the Preliminary Determination of Sales at Less than Fair Value and Postponement of the Final Determination: Sebacic Acid from the People's Republic of China (Sebacic Acid) (59 FR 565 (January 5, 1994))).

The most important factor in determining whether a product is a co-product or a by-product is its relative

sales value compared with that of the other main products produced in the joint processes (see Sebacic Acid). By-products are defined as "products of joint processes that have minor sales value as compared with that of the chief product" by Charles T. Horngren in *Cost Accounting*, Fifth Edition. In this case, the record evidence demonstrates that the relative value of secondary pipe is insignificant compared to OCTG and line pipe, and accounts for only a small percentage of Siderca's sales.

Additional factors that the Department may examine include: the respondent's normal accounting treatment; whether significant additional processing occurs after the split-off point; whether management controls the quantity produced of the product in question; and whether its production is an unavoidable consequence of the production process (see Sebacic Acid; see also the Final Determination of Sales at Less than Fair Value: Titanium Sponge from Japan (49 FR 38687, October 1, 1987) and the Final Determination of Sales at Less than Fair Value: Frozen Concentrated Orange Juice from Brazil (52 FR 8324, March 17, 1987)).

The respondent's normal accounting treatment indicates its opinion as to whether the product in question is a by- or co-product. A respondent's normal treatment is not considered persuasive if the Department has evidence indicating that it would be unreasonable for purposes of an antidumping analysis. In this case the respondent treats the product in question as a by-product. We find that this treatment does not distort the antidumping analysis. Significant additional processing of a magnitude that would raise the value of the product in question to a point where its relative value to the other main products is significant may indicate that the product should be treated as a co-product. In this case no additional processing takes place. Additionally, if management takes steps to intentionally produce the product, then it would be an indication that the product may be a co-product. If the production of a product is unavoidable, the product could be either a by-product or co-product. Other factors would have to be considered to make the determination. In this case, the management of Siderca takes steps to avoid the production errors which cause pipes to become seconds. It is only where production errors exist that the secondary pipe is produced. After careful consideration of all of the relevant factors, the Department concludes that the product in question was properly treated as a by-product in this investigation.

*Comment 8: Fixed Fabrication and Depreciation Cost*

The petitioners argue the difference between the company-wide average and the average of the reported fixed fabrication and depreciation cost indicates Siderca understated the reported amounts. The petitioners assert fixed costs are normally higher for OCTG than for other types of pipe because of substantially higher finishing costs for OCTG. The petitioners state differences in fixed costs could only result if different production lines are used or if different capacity utilization rates are realized, but neither situation applies to Siderca. The petitioners reference Siderca's production flow charts, which show that subject and non-subject merchandise share the same production lines. Where subject and non-subject merchandise do not share the same production line, the equipment used for downstream processing is similar.

Siderca argues it properly allocated depreciation expense in the reported product-specific costs. Siderca asserts the results of the gross comparison test can be explained. First, the test compares an average of all products to an average from only two OCTG markets. Siderca's plain-end pipes carry a smaller portion of fixed fabrication and depreciation, while the remaining production carries a greater amount of these costs, because of their complexity. Siderca argues the overall product mix of the merchandise sold to the United States and China is at the lower end of the complexity range. It is natural, they argue, that the average fixed fabrication and depreciation costs allocated to OCTG sold in the United States and China would be lower. The more complex products include pipe that is cold-drawn, custom threaded, buttress threaded, and also pup joints.

Second, the Department's verification report notes that the total depreciation expense was traced to each cost center and that Siderca demonstrated how the per-unit costs were determined using the productivity of each product in a given cost center. Siderca also notes the Department looked at several product comparisons which show the relative amounts of fixed fabrication costs allocated to each product.

Siderca contends that it was able to demonstrate the flow of fixed factory costs and depreciation from the financial statements to the amounts input into the computer for each cost center. Siderca notes that the Department verified the allocation factors used to apply fixed factory costs and depreciation and that they were the

same factors used to allocate factory costs under normal circumstances. In addition, they note that the Department was able to recalculate the cost of manufacturing for the test products and compared the allocation of costs between various products, including line pipe. Siderca further argues that plain end pipes account for a significant portion of its U.S. sales, but account for only a small proportion of its overall sales.

*DOC Position*

We agree with Siderca. At verification, while we could not reconcile the total of the individual per unit fixed fabrication and depreciation costs to the total expense, we were able to perform alternative procedures in place of that reconciliation. If the Department is satisfied that the respondent described the systems abilities accurately, that the system was used in the normal course of business, and that the data could be verified through alternative procedures, then the Department normally does not adjust the reported information. In this case, the system used to allocate the fixed factory cost and depreciation is the same system used in the normal course of business to derive the variable factory costs. We performed the following alternative procedures in place of the reconciliation.

Our analysis compared a company-wide average of fixed factory overhead and depreciation expense to an average of these variables for only the U.S. and PRC markets. Additionally, our test of reasonableness compared a weighted-average figure of fixed factory overhead and depreciation expense to a simple average figure of these variables. We do not find that the Department's reasonableness test nor other evidence on the record indicated Siderca's methodology distorted the reported per unit costs. Consequently, we used the per unit fixed factory costs and depreciation reported by Siderca.

*Comment 9: Treatment of Quality Control Costs*

The petitioners argue the Department may not treat inspection costs as selling expenses. The petitioners contend that the costs in question are quality control costs incurred at the end of the production process and in varying degrees are incurred on all products. The petitioners cite the Final Determination of Sales at Less than Fair Value: Gray Portland Cement and Clinker from Japan (56 FR 12156, 12162, March 22, 1991), in which the Department held that quality control costs incurred at respondent's plant did

not constitute selling expenses. The petitioners argue that the record does not demonstrate that the testing was a condition of sale. In the Final Determination of Sales at Less than Fair Value: Forged Stainless Steel Flanges from India (59 FR 68853, 68858, December 29, 1993), the petitioners argue that the Department found that there was no evidence on the record to support the assertion that the testing was a condition of sale, and the Department included the quality control costs in the cost of manufacturing.

Siderca argues that it correctly treated these particular inspection costs as selling expenses. It argues that its normal records treat these inspection costs as selling expenses, and notes that the Department verified Siderca's ability to identify the extra inspection costs associated with sales to China. It further argues that the Department has treated inspection costs as a selling expense in prior cases. Siderca cites the Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings from Japan (Industrial Belts) (58 FR 39729, 39750, July 26, 1993) and Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof Whether Cured or Uncured, from Japan (58 FR 30018, 30024, May 25, 1993).

*DOC Position*

We agree with Siderca. We find that these costs are incurred commensurate with Siderca's corporate goal to continue to develop sales of OCTG to the PRC, a situation similar to that in Industrial Belts (Comment 12). At the sales verification, we looked at correspondence and other documentation between Siderca and the Chinese customer and were able to confirm that quality control issues were discussed in great detail.

At the cost verification, we were able to verify that Siderca tested OCTG destined for China significantly more than OCTG destined for other markets. Finally, Siderca is only claiming the quality control testing costs which can be specifically identified to a particular market. Siderca included quality control testing costs incurred at earlier production steps as a cost of production. These quality control testing costs incurred at the earlier production stage were incurred regardless of market and, therefore, were properly included in the COP. The quality control costs incurred at the end of production could be differentiated based on the market to which the merchandise was shipped.

*Comment 10: Threading Technology Research and Development*

The petitioners argue that the reported costs must include the amounts Siderca spent on threading technology R&D. The petitioners argue that Siderca's assertion that it properly excluded R&D costs is completely unsupported. The company brochure indicates Siderca's research center focuses on research into basic physical phenomena and research directly related to production techniques. It is clear, they argue, that R&D advancements in threading technology would benefit all OCTG products and are, therefore, not market specific.

Siderca argues it properly excluded non-related R&D costs from the cost of production. Siderca argues the R&D expenses did not relate to any of the products sold in the United States or China during the POI. The expenditures were targeted at the development of special threading for extreme conditions. Siderca argues that the brochure only refers to the capabilities of the R&D facility, not to specific R&D efforts. Siderca asserts that if the Department decides to include these R&D costs, the amount incurred in 1993 should be added, not the 1994 amount.

*DOC Position*

We agree with the petitioners. Siderca provided no support for its assertion that the R&D expenses relate only to OCTG products sold in markets other than the United States and China. More importantly, the R&D costs in question were for products included in the scope of the investigation, even if they were not sold in the United States or China during the period of investigation. Research into technologies for specific products within the scope of the investigation can reasonably be assumed to provide collateral benefits for other products within scope. It would be infeasible for the Department to identify model-specific distinctions in R&D expenditures. Generally, the Department has only made distinctions between research into subject and non-subject merchandise, as shown in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings and Parts Thereof From France, *et al.* (60 FR 10900, 101921, February 28, 1995). The Department normally does not make distinctions between research into specific models. We, therefore, included the R&D expenses as part of the cost of manufacturing.

*Comment 11: Asset Taxes, Restructuring Costs and Social Security Taxes*

The petitioners argue Siderca understated G&A expense by excluding a portion of asset taxes and by normalizing restructuring costs and social security taxes. Siderca calculated a G&A rate from the audited financial statements for the year ending March 31, 1994, but in doing so adjusted these three types of expenses. The petitioners argue the Department's long-standing practice requires G&A expenses to be calculated from the financial statements which most closely correspond to the period of investigation, as shown in Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From Thailand (Furfuryl Alcohol) (60 FR 22557, 22560, May 8, 1995).

In Furfuryl Alcohol, the Department reasoned G&A expenses are tied more closely to the time period than to the revenues earned during the period and, therefore, an average rate representing one full business cycle of the company is a reasonable basis on which to calculate the G&A rate. The Department concluded the G&A rate should be calculated from annual audited financial statements because G&A expenses: (1) Are incurred sporadically throughout the fiscal year; (2) are frequently based on estimates that are adjusted to actual expenses at fiscal year end; and (3) are typically incurred in connection with the company's overall operations. The salient point, the petitioners argue, is that Department methodology already smooths out fluctuations and captures a representative picture of respondent's G&A costs. The petitioners also note the Department's questionnaire instructed Siderca to calculate its G&A rate from the audited financial statements for the year which most closely corresponds to the POI.

Siderca argues the Department is mistaken about the amount of asset taxes excluded from G&A expense, and that it was proper to exclude this portion. Siderca argues the government repealed the asset tax four months prior to the POI and, therefore, the asset tax does not relate to the products under investigation.

In Argentina, the private pension funds took over the social security functions previously administered by the Argentine government. Individuals close to the retirement age were given the option of remaining under the old system. The retirement age was increased by five years. As a result, a significant number of individuals chose to retire early. This led to a larger than normal number of retirements for

Siderca. These higher costs were recognized by Siderca in 1994.

Siderca argues that because of this, severance expenses and social security expenses were adjusted to reflect what they otherwise would have been if the government had not changed the labor law at the end of 1993. Because of the privatization, Siderca argues it incurred in fiscal 1993 labor costs that it otherwise would have incurred in a future period.

*DOC Position*

We agree with the petitioners. As the petitioners note, the Department's methodology intends to smooth out fluctuations and capture a representative picture of respondent's G&A costs (see *e.g.*, Furfuryl Alcohol). The Department's long-standing practice is to calculate G&A expenses from the audited financial statements which most closely correspond to the POI. Neither the change in the tax law nor the restructuring costs incurred during the period are extraordinary events that warrant a departure from the Department's practice. The events are neither unusual in nature nor infrequent in occurrence. Companies frequently must react to changes in the laws of the countries in which they conduct business. The specific change may not occur frequently, but tax laws which affect the company and its employees are continuously changing. Therefore, consistent with our normal methodology, as set forth in Furfuryl Alcohol, we have excluded Siderca's normalization of costs, and recalculated the G&A rate from audited financial statements for the year ending March 31, 1994.

*Comment 12: Offsetting G&A With Intermediary Sales Revenues*

The petitioners argue that Siderca inappropriately offset G&A expense with revenues from the sale of non-subject merchandise. Reported total G&A expense included other income and expenses. The detail of other income and expenses shows revenues from the sale of miscellaneous products, none of which were pipe. The petitioners argue the Department's long-standing policy is to deduct from G&A only the portion of miscellaneous income related to the production of subject merchandise. The petitioners cite the Final Results of Antidumping Duty Administrative Reviews: Certain Brass Sheet and Strip From Italy (57 FR 9235, March 17, 1992), in which the Department disallowed miscellaneous income because it did not relate to the subject merchandise.

Siderca argues that the revenue from the sale of intermediate products can be used to offset G&A expense because they were produced in the same integrated facility with the OCTG products. Siderca argues that the costs associated with the revenue are included in the reported costs, and therefore the G&A should be offset by the revenue. Siderca claims that the petitioners' focus on "production of the subject merchandise" is misleading. Siderca argues there does not have to be a direct link to OCTG, only to the production facilities where the merchandise was produced. Siderca cites the Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea (59 FR 58826, 58828, November 15, 1994), in which the Department stated that miscellaneous income should be permitted as an offset to G&A because the income was related to respondent's production operations.

*DOC Position*

We agree with Siderca. The insignificant size of the offset indicates the revenue is miscellaneous in nature and should be included in G&A. The costs associated with this revenue are captured in the company's overall variance and, therefore, have been included in the reported costs. As the Department noted in Saccharin from Korea, miscellaneous income relating to production operations of the subject merchandise may be permitted as an offset to G&A. Intermediate products, sold in small quantities, are considered to be related to production operations. We have included in G&A the miscellaneous revenue from the sale of intermediate products.

*Comment 13: G&A Expense of Siderca Corp.*

The petitioners argue the Department must treat the G&A expense of Siderca Corp. as further manufacturing costs and not as indirect selling expenses. They state that Siderca Corp. plays an integral part in the further manufacturing process, claiming it negotiates and oversees the work of the unrelated subcontractors, functions as a purchasing agent for Texas Pipe Threaders (TPT) and the unrelated subcontractor, and shares with TPT office space and the same company president. The petitioners argue that, because Siderca failed to demonstrate which of Siderca Corp.'s G&A expenses relate to further manufacturing, the Department should make an adverse inference, and include all of the costs in further manufacturing.

Siderca argues that it properly included Siderca Corp.'s G&A expenses

as a selling expense. Siderca concedes that Siderca Corp. does purchase material for use in further manufacturing, and arranges when necessary for the further processing to occur at TPT and other processors. However, Siderca argues that Siderca Corp.'s activities are directed toward selling merchandise.

*DOC Position*

We agree with Siderca. Siderca Corp. may direct the movement of materials to the related and unrelated further manufacturers, but all production activities are carried out by the further manufacturers. These further manufacturers charge Siderca Corp. for their services. These charges have been reported as further manufacturing costs. We have treated the G&A expenses of Siderca Corp. as a selling expense, since the primary function of Siderca Corp. is one of a selling agent.

*Comment 14: Interest Expense on Further Manufactured Merchandise*

The petitioners argue that Siderca calculated and applied interest expense incorrectly on sales of further manufactured merchandise. The petitioners also argue Siderca inappropriately applied the interest factor to fabrication costs only, and thereby understated costs. Finally, the petitioners argue Siderca should calculate the rate from the consolidated financial statements of Siderca, rather than the financial statements of Siderca Corp.

Siderca maintains that Siderca Corp.'s interest expense is the appropriate measure of interest expense on sales of further manufactured merchandise. Siderca argues that Siderca Corp. has a direct line of credit with a bank in the United States to finance its operations. Siderca also argues that it is unnecessary to apply any financing to TPT's activities as the cash balance at TPT is sufficient to handle its requirements.

*DOC Position*

The Department's methodology for calculating financial expense is well-established (see, e.g., the Final Determination of Sales at Less than Fair Value: New Minivans from Japan (57 FR 21937, May 26, 1992) and the Final Determination of Sales at Less than Fair Value: Small Business Telephones from Korea (54 FR 53141, December 27, 1989)). The Department's preference for using the consolidated financial statements of the organization, because of the fungibility of money, applies equally in further manufacturing situations. Both TPT and Siderca Corp.

are consolidated with their parent, Siderca S.A.I.C.. Therefore, the appropriate rate to apply to the further manufacturing costs is the rate from the parent's consolidated financial statements.

The petitioners are incorrect in their assertion the rate should be applied to the cost of the materials (i.e., the cost of the product produced by Siderca in Argentina which is further manufactured in the United States). The Department accounts for the interest expense associated with the product produced in Argentina as part of the financing cost of the product. It would effect a double counting of financial expenses if the Department applied the financial expense rate first to the product produced in Argentina and then to the total of the further manufactured product.

We applied the financial expense percentage calculated from the audited consolidated financial statements of Siderca to the cost of the foreign manufactured product and the cost of the U.S. further manufacturing.

*Suspension of Liquidation*

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below for entries of OCTG from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C. ....	1.36
All Others .....	1.36

*International Trade Commission (ITC) Notification*

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the

Department will issue an antidumping duty order.

#### *Notification to Interested Parties*

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95-15616 Filed 6-27-95; 8:45 am]

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[A-433-805]

#### **Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bill Crow or James Maeder, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482-0116 or 482-3330, respectively.

#### **Final Determination**

We determine that oil country tubular goods ("OCTG") from Austria are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

#### *Case History*

Since the preliminary determination of sales at less than fair value in this investigation on January 26, 1995 (60 FR 6512, February 2, 1995), the following events have occurred.

In February and April 1995, the Department conducted its sales and cost verifications of the respondent, Voest-Alpine Stahlrohr Kindberg GmbH ("Kindberg"). Verification reports were issued on April 17, 1995, April 26, 1995, and April 27, 1994.

On May 12, 1995, Koppel Steel Corporation, U.S. Steel Group (a unit of USX Corporation) and USS/Kobe Steel

Company ("the petitioners") and Kindberg submitted case briefs. Rebuttal briefs were submitted by both parties on May 19, 1995. No hearing was held, as petitioners withdrew their request on April 12, 1995.

#### *Scope of Investigation*

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

#### *Period of Investigation*

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

#### *Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

#### *Such or Similar Comparisons*

For purposes of the final determination, we have determined that the OCTG covered by this investigation comprises a single category of "such or similar" merchandise within the meaning of section 771(b) of the Act. We modified the matching hierarchy outlined in Appendix V of the Department's antidumping questionnaire as described in the preliminary determination.

#### *Fair Value Comparisons*

To determine whether sales of OCTG from Austria to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the third country, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. Further, in accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

#### *United States Price (USP)*

We calculated USP according to the methodology described in our preliminary determination with the following exceptions: (1) We recalculated U.S. indirect selling expenses incurred in Austria to adjust for cost variances; (2) we recalculated U.S. indirect selling expenses incurred by Kindberg's Houston Texas related sales agent, VATC, to adjust for cost variances and to correct for an incorrect allocation of VATC's personnel costs; (3) we made corrections and adjustments to reported foreign brokerage charges; (4) we made corrections and adjustments to U.S. duty, wharfage and brokerage expenses, where necessary; and (5) we recalculated U.S. imputed credit to use an interest rate tied to U.S. dollar lending.