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.

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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.

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 third country sales to Russia.

Cost of Production (COP)

As we indicated in our preliminary determination, on October 5, 1994, the Department initiated an investigation to determine if sales in the third-country market were made below the cost of production (COP). In order to determine whether the third country prices were below COP within the meaning of section 773(b) of the Act, we calculated the COP based on the sum of Kindberg's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). Kindberg had reported four cost variances prior to the preliminary determination, but provided insufficient explanation and incomplete documentation. In fact, some of the information on the record at the date of the preliminary determination concerning the reported variances was self-contradictory.

We sent Kindberg several supplemental questionnaires. The last supplemental questionnaire due date fell after the preliminary determination, therefore we could only consider the corrections submitted pursuant to the last supplemental questionnaire for purposes of this final determination. Additionally, the nature of the variances was confirmed during the course of the cost verification. Therefore, for purposes of the preliminary determination, we did not adjust the reported standard costs for the reported variances because Kindberg had not, at that time, properly explained and documented these variances. Based on clarifications timely submitted after the preliminary determination and reviewed at verification, we analyzed the variances submitted by Kindberg for purposes of the final determination.

Kindberg's four reported variances are as follows: (1) The ''Recalculating'' (Verrechnungsergebnis) variance, which adjusts standard costs to actual costs, (2) the ''Reconciling'' (Überleitung) variance, which reconciles the cost accounting system results with Kindberg's financial statements, (3) the ''Plant Idling'' (Betriebstillstand) variance, which adjusts actual period factory overhead to reverse the decreased efficiencies of scale caused by factory idling, and (4) the ''profit-sharing'' (Gewinnausschüttung) variance, which adjusts actual period costs to reverse Kindberg's state-mandated bonus pay.

For our final determination, we made the following adjustments to Kindberg's costs:

1. We used only the ''Recalculating'' and ''Reconciling'' variances to adjust Kindberg's reported standard costs because the remaining two variances reflect an improper hypothetical normalization of actual costs incurred during the POI. A detailed and proprietary analysis of the nature of Kindberg's reported cost variances is contained in the Department's June 12, 1995, final concurrence memorandum. Also, see the Cost Comments section of the notice, below.

2. We have recalculated the variance as a percentage of the POI cost of manufacturing (COM) and applied that percentage to each per-unit cost of manufacturing. See also the Cost Comments section of the notice, below.

3. We calculated a revised (G&A) rate from the annual financial statements and applied this revised rate to the per-unit cost of manufacturing.

4. We removed from the COM of one model sold in the United States, to a separate packing expense field, the significant packing costs incorrectly included by Kindberg in COM.

5. We recalculated Kindberg's financial expenses using the 1993 annual audited financial statements of its parent organization, Ö.I.A.G. A detailed and proprietary analysis of this adjustment is contained in the Office of Accounting's June 13, 1995, memorandum.

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

Results of COP Analysis

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the third country sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, as described in the preliminary determination.

Based on this methodology, for certain products sold in the United States, there were adequate numbers of third country sales made above the cost of production to serve as FMV. For U.S. sales of other products, there were not. In such cases, we matched U.S. sales to constructed value (CV).

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV as described in the preliminary determination, with the same adjustments for purposes of this final determination as listed in the ''Cost of Production'' section above, with one additional change: We offset the financial expense calculated from Ö.I.A.G.'s financial statements by the ratio of trade receivables and inventory over total assets.

For CV to U.S. price comparisons, we made deductions from CV, where appropriate, for the weighted-average third country direct selling expenses. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Third-Country Sales Comparisons

Where appropriate, we calculated FMV based on delivered prices to unrelated customers in Russia and to unrelated international trading companies whose customers in Russia were known to Kindberg at the time of Kindberg's sale to the trading company.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct third-country movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a), as appropriate. Accordingly, in the present case, we deducted post-sale third-country inland freight, inland insurance and foreign inland insurance from FMV as direct selling expenses under the circumstance-of-sale provision of 19 CFR 353.56(a).

We deducted third-country packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made circumstance-of-sale adjustments for differences in direct selling expenses, which included credit, warranties, guarantees and commissions, in accordance with 19 CFR 353.56(a)(2). We deducted commissions incurred on third-country sales and added total U.S. indirect selling expenses, capped by the amount of third-country commissions; those total U.S. indirect selling expenses included U.S. inventory carrying costs, indirect selling expenses incurred in Austria on U.S. sales and indirect

selling expenses incurred in the United States.

Based on information obtained at verification, we made corrections and adjustments to certain charges claimed by Kindberg. We recalculated indirect selling expenses incurred in Austria for Russian sales to adjust for cost variances. We also recalculated imputed credit on Russian sales to use an interest rate tied to U.S. dollar lending, since Russian sales were denominated in U.S. dollars. Based on information obtained at verification, we allowed an adjustment for occasional early payment discounts, where applicable.

We discovered at verification that Kindberg failed to report a limited number of Russian sales. However, taking into considering the relatively insignificant volume of these sales and the FMV of these sales relative to the FMV of reported sales, we find that the omission does not distort our margin calculation. Therefore, we made no modification to our analysis to account for their inadvertent exclusion. See also *Sales Comment 1,* below.

Currency Conversion

We made currency conversions based on the official exchange rates, as certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales, pursuant to 19 CFR 353.60.

Verification

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

Interested Party Comments

Sales Comments

Comment 1—Kindberg's Failure To Report Certain Russian Sales

The petitioners maintain that the Department should use best information available (BIA) to remedy Kindberg's failure to report Russian sales which account for a portion of the total volume of POI sales to Russia. According to the petitioners, the information on the record is not sufficient to determine what effect these sales would have on the calculation of third country prices or on dumping margins. The petitioners urge the Department to employ a methodology similar to that used in Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand (57 FR 13695, April 17, 1992), (''Kiwifruit'') whereby the Department distributed the volume of the missing sales equally across all pricing periods, and assigned to each portion of the added volume the highest net price in the pricing period that was found in each kiwifruit category.

Kindberg maintains that its omission of these sales should be treated as a clerical error pursuant to section 735(e) of the Act and therefore should be corrected for purposes of the final determination. Kindberg rejects the petitioners' suggestion for use of BIA, stating that the failure to report these sales was unintentional and that their inclusion would have actually benefitted Kindberg. The respondent states that Kiwifruit as cited by the petitioners is not germane for several reasons: (1) The omission of the Russian sales was inadvertent; (2) Kindberg is not requesting that the sales be disregarded; (3) Kiwifruit involved the omission of a significantly larger portion of sales; and (4) Kiwifruit involved sales over six distinct pricing periods where the price did not change during those periods, whereas no analogous pricing structure exists for OCTG. Kindberg maintains that the Department should use its discretion to modify the record and not reject the new sales data, and argues that the courts have never reversed a decision by the Department to accept late information rather than use BIA.

DOC Position

We disagree with the petitioners in that we are not using BIA for these unreported sales. We also disagree with respondent, in that we have not corrected the database to account for the missing transactions. The amount of sales inadvertently omitted is relatively insignificant.

The Department has, in the past, disregarded sales inadvertently omitted from the database for FMV when such unreported sales were of insignificant quantity and value. In the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France, (58 FR 37131, comment 16, July 9, 1993), we disregarded previously unreported home market sales, both those presented at the outset of, and those discovered during the course of, the Department's verification, because they were of insignificant quantity and value.

Further, based on our analysis of sampled missing invoices, the gross prices of the omitted transactions were considerably lower than similar sales reported. As such, the record indicates that the omission of these third-country sales is in fact, adverse to respondent's interests. Accordingly, no further adverse action is warranted.

Comment 2—Discounts on Russian Sales

The petitioners argue that the Department should not allow any adjustment to third country prices for discounts. According to the petitioners, because Kindberg did not report discounts in its database sales listing, but rather only referred to their possible existence in the body of its narrative response, it never truly reported the discounts. The petitioners acknowledge that the Department was able to successfully test the discount program at verification; however, the petitioners also point out that the verification report records the verifier's notice to company officials that examination of the administration of the discount program did not constitute acceptance of the adjustment for purposes of the final determination. Indeed, they object to any such acceptance. The petitioners cite to the Department's regulation that factual information must be submitted no later than seven days before the scheduled date on which the verification is to commence (19 CFR 353.31(a)(i)), maintaining that the inclusion of the discounts is not warranted because the discounts are not a minor revision to the responses but instead are substantial new information.

Kindberg maintains that its omission from the computer listing of these discounts should be treated as a clerical error pursuant to section 735(e) of the Act and therefore corrected for purposes of the final determination. Kindberg maintains that it did report these discounts in its response, though it inadvertently did not include them on its submitted computer tape. Kindberg states that the Department corroborated the applicability of the discounts at verification.

DOC Position

We disagree with the petitioners. Kindberg did report the circumstances in which this discount apply and the percentage thereof, but failed to include the transaction-specific amounts in its computerized sales listing. The detailed information submitted by Kindberg enabled the Department to analyze the pertinent Russian sales prior to verification. Thus, the verification team had at its disposal the subset of such sales in a format which allowed relatively easy review of the omitted discounts. Kindberg officials recognized and alerted verifiers to their mistake early in the verification. The sample selected for verification by the team tied correctly and the correction placed no administrative burden on the Department. Given these particular

circumstances, we modified the final programming to deduct the discount from those sales with the corresponding payment code.

Comment 3—Exchange Rates

The petitioners contend that the Department should follow its normal practice and apply the Federal Reserve exchange rates in its final margin calculations and reject Kindberg's logic for using the ''secured exchange rates'' reported in its sales listings. The petitioners maintain that the Department's regulations governing currency conversions state clearly that the Department will use the quarterly exchange rates published by the Treasury Department on the applicable date of sale. First, the petitioners claim that the Department's decision in the administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, *et. al.*, 60 FR 10900, 10921 (February 25 1995), confirms that the Department will not use the exchange rate a company allegedly received through hedging operations, citing our position in that review that the Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates. Second, the petitioners allege that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone.

Kindberg maintains that the mix of daily and hedged currency conversion rates should be treated as a clerical error pursuant to section 735(e) of the Act (19 USC 1673d(e)) and therefore corrected for purposes of the final determination. Kindberg argues that the reported exchange rate contracts lock in sales that are denominated in U.S. dollars and that these rates are integrally linked to Kindberg's cost accounting and financial accounting systems.

DOC Position

We disagree with the respondent. First, the Department should not use Kindberg's parent-company's partial currency hedging exchange rates in lieu of official exchange rates. The Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates.

Second, the petitioners are correct in pointing out that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone. Kindberg is incorrect to classify a question of fundamental calculation methodology as a ''clerical'' error. The error herein is Kindberg's inaccuracy in describing the use of ''secured'' exchange rates. The Department cannot accurately use Kindberg's mix of reported exchange rates, since the databases for U.S. and third-country sales do not indicate which transactions were ''secured,'' which were recorded with daily newspaper rates and which were recorded with part-secured/part-daily rates.

Comment 4—Third Country Commissions

The petitioners argue that the Department should not adjust Kindberg's third country prices for commissions because Kindberg failed to submit adequate information regarding commissions paid on sales to the Russian market. According to the petitioners, Kindberg failed to provide meaningful details on the payment of charges it claims as commissions in its response. Additionally, the petitioners argue that Kindberg failed to submit any usable information regarding commissions until verification. The petitioners maintain that the information presented at verification by Kindberg indicates that the commissions may not be linked to individual sales or even calculated on the basis of sales.

Kindberg maintains that it reported in its response that commissions on sales to Russia are negotiated individually and may vary for each commissionaire depending on the agreement negotiated with Kindberg. Further, Kindberg states that, regardless of the extent of their services, all commissionaires provide Kindberg with client contact and client cultivation directly relating to sales that are the subject of this investigation. Kindberg therefore urges the Department to make a downward adjustment to foreign market value to account for these commissions.

DOC Position

We disagree with the petitioners. The payments examined in the context of the selected Russian sales were documented by Kindberg as having been administered as commissions. These payments were made in recognition of the selling functions of the trading companies, which are located in market economies, and are by nature sales commissions. The general purpose and administration of these payments is fully consistent with the characteristics of commissions outlined in the Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, (60 FR 16608, 16611, March 31, 1995). These characteristics are consistent in that: (1) These adjustments are designed and agreed upon in writing with the commissionaires; (2) commissions were earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders; (3) the commissions take into consideration the expenses which the trading companies must incur to cultivate and maintain successful relationships with Russian purchasers; and (4) Kindberg relies on the external sales and marketing abilities of these commissionaires in lieu of establishing its own larger Eastern European sales force. We are, therefore, continuing to treat these reported adjustments as commissions, deducting them from FMV and adding to FMV indirect selling expenses incurred by Kindberg on U.S. sales, capped by the amount of third-country commissions.

Comment 5—Value Allocation of U.S. Indirect Selling Expenses

The petitioners maintain that in calculating U.S. price, the Department should divide the total U.S. indirect selling expenses reported by Kindberg by the value of sales to obtain the proper allocation, rather than use the per-ton charges originally reported by Kindberg.

DOC Position

We agree with the petitioners, and are calculating indirect selling expenses, both on U.S. and Russian sales, as a percentage of sales.

Comment 6—U.S. Credit Expenses

The petitioners note that in reporting U.S. sales, Kindberg calculated imputed credit using an Austrian interest rate of 4.6 percent. They point out that in the preliminary determination, the Department based its calculation of U.S. imputed credit on the late payment charge formula used by VATC on its invoices, of ''prevailing New York prime plus 1 percent.'' According to the petitioners, the Department has stated in the past that for a given interest rate to be used, a respondent must show that it actually had access to funds at that interest rate. The petitioners maintain that Kindberg has provided no information that it or VATC in access to funds at the prevailing New York prime rate plus one percent. The petitioners urge the Department to use the higher interest rate on Kindberg's invoices to VATC to calculate U.S. imputed credit.

In response, Kindberg maintains that the Department should not use the late payment rate set forth on its invoices to VATC because this rate is not a borrowing rate but rather a punitive rate established by Kindberg to encourage timely payment by their related sales agent. Asserting that this rate does not reflect the actual cost to it for extending credit to customers in the United States, Kindberg urges the Department to use instead the 4.6 percent interest rate it reported which was based on its deferred interest deposits in Austrian schillings.

DOC Position

We disagree with both parties. Petitioners object to using the U.S. interest rate noted on the VATC invoice to the U.S. customer, and would have us use a higher rate noted on the pro-forma invoice from Kindberg to VATC. Yet the higher rate set forth on the pro-forma invoice does not represent actual borrowing by Kindberg any more than does the rate on the VATC invoices. However, the rate on the VATC invoice is used by VATC to establish the time value of credit it extends when receiving late payment by the first unrelated U.S. customer, the purchaser who defines the actual U.S. transaction. Additionally, the rate on the VATC invoice to the U.S. customer is tied to an objective market rate, the N.Y. prime interest rate.

In contrast, the nominal late payment interest rate shown on the Kindberg to VATC invoices is for delinquent intra-company repatriation of funds from VATC to Kindberg, and is not tied to any objective benchmark related to the lending market, such as a U.S. prime rate. Thus, it is even further removed from objective commercial criteria.

We are not using the reported rate of 4.6 percent because this Austrian rate is denominated in schillings, and both U.S. and Russian sales are denominated and paid for in U.S. dollars. A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

Since the purchaser of record in the investigation is the first unrelated customer in the United States, the appropriate interest rate reflecting imputed credit expenses by Kindberg through VATC is a rate denominated in U.S. dollars. The New York prime rate plus one percent is the rate set during the POI by which Kindberg's related U.S. sales agent measured the time value of late revenue on U.S. sales. In a parallel manner, the Department's imputed credit expense measures the cost to Kindberg, via VATC, of extending credit to that U.S. customer. Additionally, since sales to Russia are also denominated in U.S. dollars, and since this is the only dollar-denominated interest rate indicated by Kindberg's actual business practices, we are also calculating imputed interest for those sales at the New York prime interest rate plus one percent.

Comment 7—Price Changes on Certain U.S. Sales

The petitioners note that the Department discovered that for certain U.S. sales, VATC did not simply re-invoice the prices recorded in Kindberg's invoice to it, but re-invoiced the first unrelated U.S. customer at a higher price, based on renegotiated extended payment terms and, on one occasion, on extraordinary freight expenses incurred by VATC. The petitioners urge the Department not to make any adjustment to these price changes in its final antidumping calculations.

Kindberg states that for the sales where VATC had to re-invoice the customer, the new payment terms were contained in the purchase orders sent from VATC to Kindberg, but omitted from the invoice sent from Kindberg. Kindberg urges the Department to adjust these U.S. prices upward.

DOC Position

We agree with the petitioners. Kindberg did not identify the invoice reporting error to the Department, rather, this inaccuracy was discovered by the Department. We note, however, that the occasional freight charges incurred were passed on exactly to the U.S. customer and that the upward adjustment to U.S. price for extended payment terms was offset by the increased cost of the extended credit. Thus Kindberg's failure to report the subset of changed VATC invoice prices and related charges had no effect on the margin calculations. Additionally, Kindberg's mistake was inadvertent. For these reasons, we did not make any adjustment to the reported gross price on those sales, nor did we apply partial BIA.

Comment 8—Unincorporated Russian Debit and Credit Memoranda

Citing from the Austrian Sales Verification Report, Kindberg notes that it had not matched several debit and credit memos to the Russian sales that they modified. Kindberg stresses that the net effect of the unincorporated memoranda was an over-reporting of certain third-country sales prices and urges, therefore, that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. First, it is not the Department's practice to make substantial and complicated revisions, nor is it the Department's responsibility to reconstruct a response. Correction of the omission of these debit and credit memoranda would require extensive matching and recalculation of specific prices by matching missing memoranda to invoices through mill orders.

Second, in this specific instance, the net effect of Kindberg's omissions is a marginally higher FMV than the correct amount, which we note is slightly adverse to the respondent. We are therefore keeping the reported third-country prices unchanged for purposes of the final determination.

Comment 9—Double-counting of Transportation Insurance Expenses in U.S. and Russian Indirect Selling Expenses

Kindberg notes that the Department found at verification that Kindberg had double-counted transportation insurance expenses by reporting these individually and also as a sub-component of indirect selling expenses, both for sales to the United States and to Russia. Kindberg urges that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. We agree that, where significant, double-counting may be addressed. We note, however, that the inadvertent inclusion of insurance costs comprises a very minute per-ton amount. Additionally, we note that this small error affects equally both U.S. price and FMV. We did not collect the rather extensive documentation required to correct this minor inclusion. Because it is not the Department's practice to reconstruct major portions of a response, which would be required in order to back out these costs from indirect selling

expenses, we are using the expenses as reported.

Comment 10—Packing Costs

The petitioners argue that the Department confirmed at verification that Kindberg incorrectly included packing costs in its calculation of the variable cost of manufacturing used for COP, CV and difference-in merchandise (DIFMER) calculations. According to the petitioners, it is a well-established principle that packing costs are not a cost of manufacturing, and are not included in the variable costs or the difmer calculation, but should instead be reported separately.

However, they also maintain that for all but one model of OCTG the impact of these misplaced packing costs are immaterial. The petitioners state that for that one remaining model where the packing is in wooden boxes, a uniquely expensive method, the actual costs needed for the margin calculations are not on the record. They therefore urge the Department to assign, as partial BIA, to all U.S. sales of this model, a packing cost based on the difference between the highest total cost (sum of material costs, labor costs and variable overhead) of any U.S. sale, which is packing inclusive, and the total cost for the same model as sold in the third country, which is packing exclusive. Calculating this difference isolates from total COM the packing charges which were only included in COM for the U.S. sales of this model.

Kindberg maintains that the special packing costs for this one U.S. model should not be included in the variable cost of manufacturing or in the calculation of differences in merchandise, but that they should be reported as packing costs based on actual cost. Kindberg does not agree with the petitioners' contention that the highest difference in total manufacturing costs for this model should be used as BIA. Kindberg does not state how it would recommend remedying the incorrect reporting.

DOC Position

We agree with the petitioners that the packing costs should not have been reported as a component of manufacturing costs. We also agree with the petitioners that the packing costs should be removed from the reported manufacturing costs and reported independently as packing charges for the specific model in question. We do not agree with the petitioners' recommendation for partial BIA. We have instead calculated the packing expenses for this model from cost of manufacturing based on the data collected at verification, as noted in greater detail in the June 13, 1995, Office of Accounting memorandum. The Department identified the difference between the average unpacked COM reported in the COP database for this OCTG model when sold to Russia and the average packed COM reported in the CV database for sales to the United States. This data allowed the Department to compute a POI-average packing cost for the U.S. sales of this model.

Cost Comments

Comment 1—Cost of Steel Billets

The petitioners object to the use of transfer prices from Kindberg's related supplier, VA Stahl Donawitz, in determining the cost of production and constructed value. They maintain that the use of the reported transfer prices to determine either COP or CV would be contrary to the Act.

With respect to COP, according to the petitioners, Kindberg never provided cost data for raw material purchased from Donawitz, despite the fact that Kindberg and Donawitz are both under common control. The petitioners question the validity of Kindberg's submission of general cost data pertaining to Donawitz's production of various types of blooms and billets, which the petitioners characterize as being untranslated and incomprehensible. The petitioners maintain that these documents do not establish the COP of the billets purchased by Kindberg. Therefore, the petitioners argue that Kindberg has failed to meet the statutory requirement for the use of transfer prices in COP.

With respect to CV, the petitioners maintain that U.S. law only allows the use of transfer prices if two conditions are met: (1) The transfer price reflects market value, and (2) for major inputs, the transfer price is shown to be above the cost of producing the input. They cite to the Department's administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, 58 FR 39729, 39754–5, July 26, 1993.

The petitioners contend that Kindberg has not fulfilled the first condition because it did not demonstrate that the POI purchases of Donawitz billets were at market value, but instead made a comparison of market prices and transfer prices for the year prior to the POI. The petitioners also argue that Kindberg has also failed to meet the second condition, since they presented no actual COP data on billets, the single most significant input for OCTG production.

To remedy this alleged deficiency, the petitioners recommend that the Department follow the statutory instruction to construct cost on the best evidence available as to what costs would have been if the transaction had occurred between unrelated parties. The petitioners suggest that the Department increase the raw material variable overhead for each control number by an amount equal to the average cost of manufacture reported by Donawitz, multiplied by the statutory ten percent for SG&A.

Kindberg contends that it has provided both a comparative analysis of market prices and Donawitz's average cost of production per ton per billet during the POI for the record in this investigation. According to Kindberg, the information provided demonstrates that the transfer prices are above Donawitz's cost of production and that Donawitz was profitable during the full year 1994. Kindberg claims that the documentation shows specifically that Donawitz sold raw materials to it at a profit. Kindberg therefore urges the Department to utilize the reported transfer prices in its calculation of cost of production and constructed value.

Kindberg maintains that the petitioners' suggestion that the Department should increase the variable overhead cost of raw materials by a hypothetical amount is totally without merit. Kindberg claims that this suggestion was made without citation to administrative precedents, judicial precedents or statutory authority; further, the suggestion runs counter to the antidumping law. Kindberg maintains that the Department is required to, and has a practice of, using actual market prices when related party prices are found to be unreliable. According to Kindberg, the information on record clearly establishes that market prices are lower than those paid by Kindberg to its related party supplier.

DOC Position

We disagree with the petitioners. Kindberg: (1) Was able to show benchmark market prices using both a 1994 contract for purchases of billets from an unrelated party; and (2) provided cost data from Donawitz showing the average cost of producing billets to be below all of the transfer prices reported. Therefore, we used the transfer price from Donawitz to Kindberg for purposes of the final determination.

Comment 2—The Plant Idling Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to reflect idle plant expenses due to problems with a major contract. The petitioners contend that this element, which Kindberg called its ''Plant-Idling variance'' is not truly a cost variance. According to the petitioners, Kindberg is using this amount to adjust actual costs to hypothetical costs, *i.e.*, those costs which would have been incurred if it had not encountered contract problems and thus had operated its factory at ''normal'' levels in 1994. The petitioners cite to Final Determination of Sales at Less Than Fair Value: Titanium Sponge from Japan, 49 FR 39687, 38689, October 1, 1984, to support their contention that the Department has in the past specifically rejected adjustments to actual costs, where the adjustments were designed to convert actual production costs to those of a ''hypothetical efficient cost model.'' Second, the petitioners maintain that the Department requires respondents to report a fully absorbed cost of production, including costs associated with down time and with low capacity utilization. The petitioners contend that, based on this principle, the Department requires respondents to include depreciation costs of idled equipment and labor costs of idled staff. According to the petitioners, such costs are included in COP regardless of the cause of plant idling.

According to Kindberg, the reported variance includes costs which are not associated with temporary down-time or low capacity utilization or other costs incurred due to general business conditions such as strikes or production problems or factory modernization. Kindberg maintains that the freezing of the contract, particularly for an extended period of time, forced the factory to incur unforeseeable costs that are not normally associated with general business conditions. Kindberg argues that, because these costs do not reflect its actual cost of production, the Department should include this variance in the calculation of cost of production and constructed value.

DOC Position

We disagree with the respondent. We are rejecting the adjustment to fixed factory overhead costs for the ''Plant Idling'' variance. Rejecting this claimed adjustment corrects fixed factory overhead to the levels actually incurred in the POI. The Department's practice is to calculate the respondent's fully absorbed cost of production for the POI. By fully absorbed cost the Department means actual cost incurred in the POI, including period costs such as SG&A, financial expense and all non-operating costs. The purpose of the COP test is to determine if the respondent's home market or third-country price is sufficient to recover all of its costs, including period costs.

Kindberg recognized the total overhead costs as an operating expense in their income statement, not as an extraordinary expense. Under Austrian GAAP, these expenses were not considered extraordinary, and, in fact, they were not reported as extraordinary expenses in Kindberg's financial statements. As noted in Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan (55 FR 37924, September 14, 1990, the Department does not normally accept the use of expected or budgeted production quantities. Although the cause of Kindberg's loss of the export guarantee was unique, the resulting delay in a major sale was not itself an extraordinary event. Moreover, Kindberg did not provide any evidence to establish their normal production level. The Department may normalize production costs in extraordinary circumstances if the respondent provides several years of production data, establishing their normal historical production level. Kindberg only submitted its year-end yield accounts. Without the historical cost data, we would not have been able to analyze a benchmark for the ''normal'' production level of Kindberg, even if we had determined that normalization was appropriate.

Comment 3—The Profit Sharing Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to adjust for its distribution of profit to employees. The petitioners contend that this element, which Kindberg called its ''profit-sharing variance'' is not truly a cost variance. According to the petitioners, Kindberg is using this amount to remove from the reported manufacturing costs, the expense of paying its employees as mandated by Austrian law. The petitioners cite to the final determinations in the administrative reviews of Porcelain-on-Steel Cooking Ware from Mexico (Mexican Cooking Ware), (60 FR 2378, 2839 January 9, 1995) and (58 FR 43327, 43331–43332, August 16, 1993) as well to the Final Determination of Sales at Less Than Fair Value: Carbon Steel Flat Products from Canada, (58 FR 37099, 37113–37114, July 9, 1993), to support their claim that the Department has consistently required such payment to be included in COP.

Kindberg argues that it properly removed from production costs the bonuses paid to employees under the profit sharing plan. Kindberg states that the Austrian Government sets statutory wage rates and salaries for different jobs in the iron and steel industry and that the profit distribution is a regular incentive given to employees, even if the company incurs a loss. Kindberg argues that the amounts should not be included in the reported costs, because the profit distributions exceed the statutory wages Kindberg is required to pay.

DOC Position

We disagree with respondent. We are rejecting Kindberg's adjustment to manufacturing costs for the ''Profit-Sharing'' variance. Rejecting this variance restates Kindberg's conversion costs to amounts reflecting the actual costs incurred in the POI.

In general, from an economic standpoint, there are several benefits that a company receives through the adoption of a profit sharing plan. The company's fixed wages are reduced allowing it to remain cost efficient in tough economic conditions. The promise of sharing profits in prosperous periods can be used to gain wage concessions from unions. Therefore, profit sharing plans are directly related to wages and salaries.

From an accounting perspective, profit distributions to employees are treated in a manner similar to bonuses. They are typically recorded as an expense and are shown on the income statement. Kindberg included these nominal ''profit-sharing'' distributions as an operating expense on its financial statements. In contrast, dividends, which are true distributions of profit, affect only the equity section of the balance sheet and do not flow through the income statement. This distinction implies that profit sharing distributions are more closely associated with expenses, rather than with earnings. Kindberg admits in its case brief that the profit-sharing distributions are regular incentives to employees and that the distributions increase the operating loss.

Consistent with our determinations in consecutive administrative reviews of Mexican Cooking Ware, the Department determines that these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company.

Comment 4—Allocation of Net Variance

The petitioners take exception to the allocation of Kindberg's net variance. Kindberg divided the total of all of its variances by the total tons produced in the POI. This fixed amount per ton was applied as an offset to each specific per unit standard cost reported to the Department.

The petitioners argue that the Department must apply the cost variances to the cost of manufacturing as a percentage, rather than as a fixed amount per ton. The variance must be applied as a percentage in order to obtain an applied variance proportional to the manufacturing costs. The petitioners argue the fixed amount per ton distorts the reported costs, because it understates the variance applied to products with higher manufacturing costs and overstates the variance applied to products with lower manufacturing costs. The petitioners cite Carbon Steel Alloy Steel Wire Rod from Canada, 59 FR 18791 (April 20, 1994), in which the Department disallowed the use of tonnage to allocate melt shop costs, because it resulted in the same cost per ton regardless of steel grade.

DOC Position

We agree with the petitioners. We have recalculated the variance from standard cost as a percentage of the POI cost of manufacturing and applied the rate to each per-unit cost of manufacturing. The petitioners are correct in their assertion that Kindberg's methodology ''smooths'' costs by applying a smaller proportion of the variance to products with higher production costs. The variance relates to all production costs and should be allocated proportionally among product costs.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1)of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of OCTG from Austria, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Austria 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.

Producer/manufacturer/exporter	Margin percentage
Voest-Alpine Stahlrohr Kindberg GmbH	12.72
All Others	12.72

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 45 days of the publication of this notice. 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 such 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.

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[A–475–816]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Italy

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Stuart Schaag, 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) 482–0116 or (202) 482–0192, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Italy 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) (19 U.S.C. 1673d). The estimated margins are shown in the Suspension of Liquidation section of this notice.

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 found 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. Accordingly,