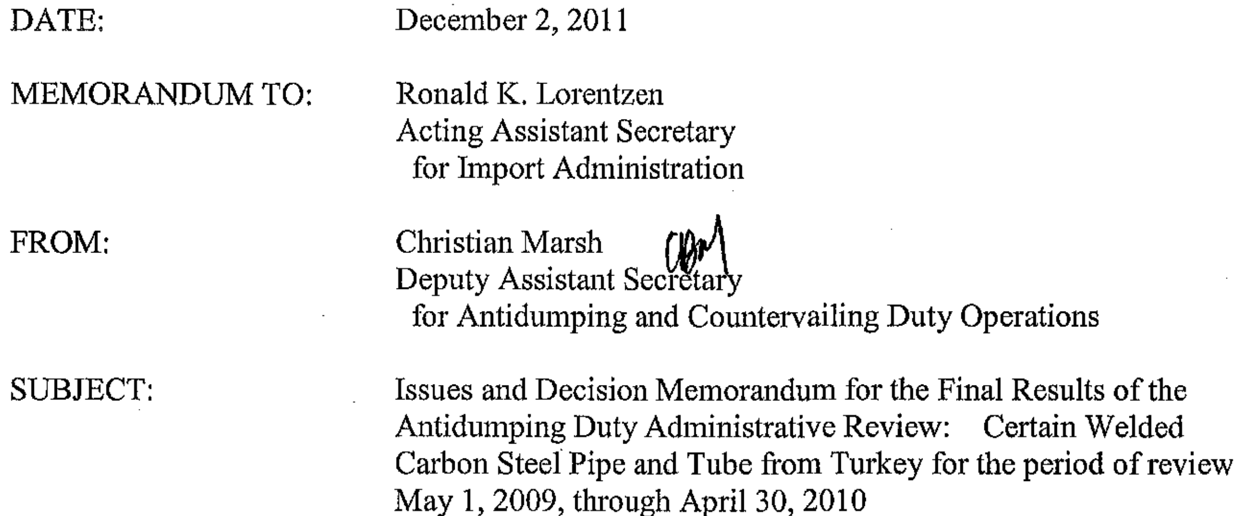
UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-489-501
POR 5/1/09-4/30/10
Public Document
O3: DM, VC



DATE: December 2, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey for the period of review May 1, 2009, through April 30, 2010

Summary

We have analyzed the case and rebuttal briefs of domestic interested parties, U.S. Steel Corporation ("US Steel") and Allied Tube and Conduit Corporation and TMK-IPSCO Tubulars ("Allied Tube and TMK") (collectively, "petitioners"), and respondents the Borusan Group[1] and Toscelik,[2] for the final results of the antidumping duty administrative review covering certain welded carbon steel pipe and tube ("pipe and tube") from Turkey. We recommend that you approve the positions we have developed in "The Department's Position" sections of this memorandum.

Background

On June 8, 2011, the Department of Commerce ("the Department") published the preliminary results of this antidumping duty administrative review of pipe and tube from Turkey. See Certain Welded Carbon Steel Pipe and Tube from Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 33204 (June 8, 2011) ("Preliminary Results"). The period of review ("POR") is May 1, 2009, through April 30, 2010. We received case briefs from Toscelik, Borusan, and U.S. Steel, on July 7, 2011, July 22, 2011, and July 22, 2011, respectively. On August 2, 2011, we received rebuttal briefs from Borusan, U.S. Steel, and Allied Tube and TMK.

---

[1] The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Holding A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., and Borusan Ithicat ve Dagitim A.S. (collectively, "Borusan").

[2] Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and Tosyali Dis Ticaret A.S. (collectively, "Toscelik").

List of Comments

Borusan

Comment 1:	**Whether to Use Quarterly Cost for Borusan**
Comment 2:	**The Cost Recovery Test**
Comment 3:	**Duty Exemption Calculation**
Comment 4:	**Inadvertent Assignment of Surrogate Costs**
Comment 5:	**The Department's Treatment of Borusan's Reported "N" in its VATH Field**
Comment 6:	**Borusan's Home Market Adverting Expenses**
Comment 7:	**Zeroing of Dumping Margins in Administrative Reviews**

Toscelik

Comment 8:	**Application of Quarterly Costs**
Comment 9:	**Financial Expense Ratio Calculation**
Comment 10:	**Short-term Borrowing Rate Used to Calculate Imputed Credit Expense**
Comment 11:	**Treatment of Warranty and Bank Charges in the Program**

Discussion of Comments

Borusan

Comment 1: Whether to Use Quarterly Cost for Borusan

Petitioners argue that the Department should not use quarterly cost averaging for Borusan because there is no correlation between its costs and its sales prices of pipe. Petitioners claim that the Department has developed and applied a two prong test to determine whether the use of a quarterly cost averaging period is warranted. While petitioners acknowledge that Borusan has passed the significance test, they argue that the linkage test has not been met. Petitioners claim that the quarterly sales prices and quarterly costs of pipes are not correlated, and therefore argue that the Department should not use its quarterly cost methodology in determining whether sales were made below the cost of production for Borusan. According to petitioners, the quarterly costs and quarterly sales prices of pipe did not trend in a consistent manner. Petitioners therefore argue that the lack of correlation or linkage between costs and prices of pipe demonstrates that Borusan did not pass through changes in the cost of hot-rolled steel coil (i.e., its most significant raw material), to its customers. Petitioners urge the Department to calculate Borusan's dumping margin using a POR-average cost, rather than using its quarterly cost methodology.

Borusan rebuts petitioner's allegation that there was no linkage between the selling prices and the cost of production during the POR. According to Borusan, the Department relied on the

"significance" and "linkage" tests in order to determine whether the use of quarterly cost averaging periods is warranted and found in the Preliminary Results that both the significance and linkage tests were met. To demonstrate that the Department reasonably relied upon the significance and linkage tests in departing from its standard practice of computing costs on a period average basis, Borusan cites to the Department's decision to use the same tests in Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31242 (June 30, 2009), and accompanying Issues and Decision Memorandum at Comment 1, which the U.S. Court of International Trade (the "CIT") affirmed in SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353 (CIT 2010). Borusan argues that the Department examined this issue in its Preliminary Results and found that the slope of the cost and price curves over time showed similar trends, and that the magnitude of the price and cost increases was similar. Borusan claims that its selling prices were uniformly adjusted to stay above the cost of production for the highest volume control numbers ("CONNUMs") reviewed. Therefore, Borusan argues that the data on the record shows that there is a reasonable linkage between its selling prices and its cost of production, which justify the use of quarterly cost averaging.

The Department's Position:

We agree with Borusan that record evidence supports a finding of linkage between Borusan's quarterly cost of producing pipe and its quarterly sales prices. The Department has developed and applied a two prong test to determine whether to deviate from its normal methodology of calculating an annual weighted average cost. See, e.g., Certain Pasta from Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review, 75 FR 81212 (December 27, 2010), and accompanying Issues and Decision Memorandum at Comment 1 ("Pasta from Italy"); Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February10, 2010), and accompanying Issues and Decision Memorandum at Comment 6 ("Stainless Steel Sheet"); and Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4 ("Stainless Steel Coils"). In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates whether the change in the cost of manufacturing ("COM") recognized by the respondent during the period of investigation ("POI") or period of review ("POR") is significant. See Pasta from Italy, Stainless Steel Sheet, and Stainless Steel Coils. A "significant" change is defined as a greater than 25 percent change in COM from the high to the low quarter. See Id. The record evidence demonstrates that Borusan experienced significant changes in its total COM during the POR and that the change in COM is primarily attributable to the price volatility of hot-rolled steel coils, the major input consumed in the production of merchandise under consideration. See Memorandum from Laurens Van Houten to Neal M. Halper, Director of the Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results-Borusan Mannesmann Boru Sanayi ve Ticaret A.S.," dated May 31, 2011 ("Borusan Preliminary Cost Calculation Memo").

In addition to testing for significance of cost changes, we evaluate whether there is reasonable linkage between the quarterly average unit costs and the sales prices of pipe during the shorter cost periods. See Pasta from Italy, Stainless Steel Sheet, and Stainless Steel Coils. In establishing linkage, we may look at evidence, such as the existence of a surcharge or pricing mechanism that provides for a link between prices and costs. See Id. Absent a surcharge or other pricing mechanism, the Department will look for evidence that changes in selling prices reasonably correlate to changes in unit costs. See Id. In performing this analysis in the instant case, we analyzed the cost and price trends for the five most frequently sold home market CONNUMs and the five most frequently sold U.S. CONNUMs. For each of the ten selected CONNUMs, we compared the quarterly average prices and costs over the POR. As part of our analysis, we looked at the relative magnitude of changes in the prices and costs; whether, from quarter-to-quarter, the prices and costs moved in the same direction, and whether the slope lines for the quarterly prices and costs trended consistently with each other. While we agree with petitioners that the price and cost of pipe did not always move in the same direction from quarter to quarter, our analysis revealed that the magnitude of the changes in the quarterly costs and sales prices of pipe were comparable and that the slope lines for the quarterly prices and costs trended consistently for most of the CONNUMs tested. As such, we continue to find that the quarterly prices and costs of pipe appear to be reasonably correlated and that linkage exists. We have therefore continued to use our alternative quarterly cost calculation methodology for Borusan for the final results. See Memorandum from Laurens van Houten to Neal Halper "Cost of Production and Constructed Value Adjustments for the Final Results-Borusan Mannnesmann Boru Sanayi ve Ticaret A.S.", dated December 5, 2011.

Comment 2: The Cost Recovery Test

Borusan argues that the Department should perform its cost recovery test by comparing individual sales prices, found to be below the quarterly cost of production, to the average unadjusted POR cost for the CONNUM. According to Borusan, section 773(b)(2)(D) of the Act states that "{i}f prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time." Borusan argues that this individual-to-average methodology is what the plain language of the statute requires. Thus, according to Borusan, the statute talks about prices, i.e., prices for individual sales, it does not talk about average prices for a particular product or product line. Borusan argues that all sales prices that the Department initially removed from the home market sales file because they are below quarterly cost of production and that exceed the average POR cost should be restored to the normal value sales file because such sales prices provide for the recovery of all costs over a reasonable period of time.

Borusan also alleges that the CIT previously has condemned the average-to-average comparison. According to Borusan, the Department in SeAH Steel Corporation v. United States, No. 09-248, Slip Op. 11-33 (CIT March 29, 2011) ("SeAH II") rejected sales as being insufficient to recover costs if the weighted average price of all sales within the CONNUM were less than the average POR cost. In the instant case, the Department compared the weighted-average POR prices of

below quarterly cost sales to the POR weighted-average cost for the same CONNUM computed on an unadjusted basis over the entire POR. Borusan claims that the Department did this to comply with SeAH II. Borusan claims that the CIT rejected this methodology in SeAH II and argues that the methodology is not consistent with the language of section 773(b)(2)(D) of the Act. Borusan claims that the CIT stated that "{s}ales are to be compared to the weighted average per unit cost of production for the POR, but this is done not to see whether costs are recovered within the POR, but rather to determine whether sales 'shall be considered to provide for recovery of costs within a reasonable period of time.'" SeAH II, Slip. Op. 11-33 at 27-29. Borusan argues that the CIT clearly stated that the cost recovery test requires the comparison of individual sales prices to the POR cost of production, rather than a weighted average sales price to weighted average cost comparison, because the CIT believed that whether the respondent earned an overall profit during the POR is not part of the test mandated by Congress. Thus, Borusan argues that the Department should adopt an individual sales price to compare to the average POR cost for the CONNUM to determine whether to restore below-quarterly-cost sales prices to the pool of sales used to calculate normal value.

U.S. Steel disagrees with the Department's new quarterly cost methodology which uses a two-step approach for determining sales below cost. According to U.S. Steel, the Department's normal practice for determining whether sales fall below cost is to compare prices to an annual weighted average cost for the POR. U.S. Steel now claims that the Department's new methodology, used for the preliminary results, employs a two-step approach for determining sales below cost, which provides an additional hurdle to finding sales below cost. According to U.S. Steel, prices are first compared to quarterly costs, then those sales that fall below quarterly costs are weight-averaged by CONNUM and compared to the weighted average cost per CONNUM. If the annual weighted-average price of the below-cost sales per CONNUM, is above the weighted-average annual cost per CONNUM, then the Department restores all of the below cost sales of that CONNUM to the normal value pool of sales available for comparison with U.S. sales. U.S. Steel claims that the Department's new methodology for determining sales below cost in quarterly cost cases is inherently biased against finding sales below cost.

In its rebuttal brief, Borusan disagrees with the petitioner's assertion that that the Department's new quarterly cost methodology is biased. Borusan argues that the application of a two-step cost test is precisely what the stature requires when the Department engages in quarterly cost averaging. According to Borusan, section 773(b)(1)(B) of the Act states that sales below cost that "provide for the recovery of costs over a reasonable period of time" may not be disregarded in the determination of normal value, and section 773(b)(2)(D) of the Act provides that sales below cost at the time of sale shall be considered to provide for the recovery of cost over a reasonable period of time if they are "above the weighted average per-unit cost of production for the period of...review." Thus, Borusan argues that under the plain language of the statute, the Department must first determine whether the selling price is below cost "at the time of sale" and then must decide whether the selling price is above the annual average cost of production. Borusan claims that the purpose of sections 773(b)(1)(B) and 773(b)(2)(D) is to give a producer time to increase its prices to account for cost fluctuations as long as the prices charged cover the long-run average cost of the merchandise. Borusan argues that if some sales are priced so as to

permit the recovery of costs over the POR, then those prices should be utilized, whether or not they are below the cost of production at the time of sale.

In its rebuttal brief, U.S. Steel reiterates its disagreement with the Department's new quarterly cost methodology, which uses a two-step approach for determining sales below cost. However, in the event the Department should nevertheless decide to continue to use quarterly costs and its new two-step method for Borusan, U.S. Steel believes that the decision to weight average below-cost sales prices for the cost recovery test is proper. U.S. Steel argues that the statute does not mandate that the Department use individual sales prices instead of weighted-average sales prices. U.S. Steel notes that the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 832 ("SAA"), expressly provides that the Department may use weighted-average prices as part of the cost recovery test, stating the "{t}he determination of cost recovery is based on an analysis of actual weighted-average prices and costs during the period of investigation or review . . . ." Thus, U.S. Steel claims that the Department is not obligated to use individual sales prices when conducting the cost recovery test and is authorized to base its comparisons on the weighted-average of the below-cost prices.

Allied Tube and TMK in its rebuttal brief agrees that the Department properly applied the cost recovery test. Allied Tube and TMK state that the practice employed by the Department for the cost recovery test in the present review is consistent with the language of the statute and is also consistent with the Court's interpretation of the language of the cost recovery provision in SeAH II. Allied Tube and TMK argue that the statute does not indicate, as Borusan argues, that an individual sale recovers costs if the price of the individual sale price is greater than the POR average cost. Allied Tube and TMK argue that the specific language of the statute specifies that it is "sales" in the plural and not an individual sale that is compared with the unindexed POR weighted-average cost.

The Department's Position:

We disagree with Borusan that the cost recovery test must be based on a comparison of the individual sales that fail the below-cost test with the weighted average cost during the POR, rather than using the weighted average of the prices that fail the cost test. Section 773(b)(2)(D) of the Act states:

> If prices which are below the per-unit cost of production at the time of sale are above the weighted-average per-unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

Pursuant to this provision, in calculating normal value, the Department will "recover" sales/prices that have been disregarded if they are found to be above the weighted-average per unit cost of production for the period of investigation or review, even if those prices were below the "per-unit cost of production" at the time of the sale of that merchandise. In applying the cost recovery test, it is the Department's practice normally to calculate the cost of production

using a single, weighted-average cost of production for the entire period of review. See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084 (Fed. Cir. 2001). The Department views the purpose of section 773(b)(2)(D) as allowing for the recovery of costs within a reasonable period of time. See Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31,242 (June 30, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40,167 (August 11, 2009).

We determined it appropriate to rely on our alternative quarterly cost calculation approach for Borusan and Toscelik in this review. See Borusan Preliminary Cost Calculation Memo and Memorandum from Laurens Van Houten to Neal M. Halper, Director of the Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Toscelik Profil ve Sac Endustrisi A.S. and its affiliated exporter Tosyali Dis Ticaret A.S. dated December 5, 2011 ("Toscelik Final Cost Calculation Memo"). As such, in performing the sales-below-cost test, we compared each home market sale to the quarterly average cost of production for the quarter in which the sale was made. See Borusan Preliminary Cost Calculation Memo and Toscelik Final Cost Calculation Memo. We then determined whether those sales that failed the cost test provided for cost recovery over the POR. See Id.. In light of the CIT's decisions in SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353 (CIT 2010) and SeAH II, where the Court ruled that the Department should perform the cost recovery test using a non-indexed annual weighted average cost of production, we developed a new approach for testing for cost recovery when using our alternative quarterly cost methodology. See Preliminary Results. Under this new approach, we calculate CONNUM-specific weighted-average annual prices using only those sales that fail the cost test and compare the resulting annual weighted average of the below-cost sales to the annual weighted average costs per CONNUM. If the annual weighted-average of the below-cost sales per CONNUM is above the annual weighted-average cost per CONNUM, we restore all of the below-cost sales of that CONNUM to the normal value pool of sales available for comparison with U.S. sales. This approach complies with the statutory mandate at section 773(b)(2)(D) of the Act to use a weighted-average cost for the period. It also conforms with the SAA, which explains that "the determination of cost recovery is based on an analysis of actual weighted-average prices and costs during the period of investigation or review . . . ." H.R. Rep. No. 103-316 at 832.

Notably, while section 772(b)(2)(D) of the Act provides that sales below cost at the time of sale shall be considered to provide for the recovery of cost over a reasonable period of time if they are "above the weighted average per-unit cost of production for the period of...review," the statutory text does not explicitly state whether the comparison should be based on individual sales or the weighted average sales prices of each CONNUM. The SAA clarifies this ambiguity by specifically directing the Department to use weighted-average prices as part of the cost recovery test. SAA, H.R. Rep. No. 103-316 at 832 (explaining that the Department bases its cost recovery test "on an analysis of actual weighted-average prices and costs"). Finally, we disagree with Borusan that the CIT rejected the use of weighted-average prices for the cost

recovery test in the SeAH II. In SeAH II, the CIT criticized a supplementary analysis the Department prepared which compared the total aggregate sales prices of all products with the total cost of all products. See SeAH II, No. 09-248, Slip. Op. 11-33 at 27-29. Importantly, the Department did not use this supplementary analysis in its cost recovery test in the current case. Instead, we have used the approach (i.e., non-indexed annual weighted average costs of production) that the CIT upheld in SEAH II for our cost recovery test in this case. For the reasons stated above, we have continued to use the weighted average below-cost prices in performing the cost recovery test for the final results.

Comment 3: Duty Exemption Calculation

U.S. Steel argues that the Department should recalculate Borusan's per-unit exempted duty amounts using the quantity of hot-rolled steel coils consumed rather than the quantity of hot-rolled steel coils purchased during the POR. According to U.S. Steel, the Department's established practice is to calculate the cost of manufacture, including exempted duty amounts related to the material inputs used in the manufacture of the merchandise under consideration, using the production quantity, rather than the purchase quantity.

Moreover, U.S. Steel alleges that Borusan incorrectly calculated total exempted duties. According to U.S. Steel, on pages 32 and 33 of its first supplemental section D response of December 17, 2010 (Public Version), Borusan calculated its per-unit duty exemption amounts by first dividing the total amount of duties exempted by the total quantity of hot-rolled steel coils that it purchased from domestic and imported sources during the POR. Borusan then divided the per unit duty exemption amount by the official yield rates used by the Government of Turkey for its drawback program. U.S. Steel argues that the total exempted duties should have been divided by the total quantity of hot-rolled coils consumed during the POR, rather than the total quantity hot-rolled steel coils purchased during the POR.

In its rebuttal brief, Borusan disagrees with U.S. Steel's argument that the exempted duty amount on imported hot-rolled steel coils should be calculated on a consumption basis. According to Borusan, it purchased far more hot-rolled steel coils than it consumed during the POR. Therefore, Borusan argues that its calculation method, which divided the duty exemption amount by the total quantity of coils purchased, reflects the average cost of the coils.

The Department's Position:

While we agree with Borusan that the total exempted duty amount on imported hot-rolled steel coils should be allocated to the hot-rolled steel coils purchased during the POR, we disagree that it should be allocated over the total quantity of the imported and domestically purchased hot-rolled steel coils. Instead, the exempted duty amount should be allocated over the total value of imported and domestically purchased hot-rolled steel coils. Because the duties are assessed based on the value of the hot-rolled steel coils imported, they should likewise be allocated over the value of coils consumed.

In the underlying analysis, we first calculated the exempted duties by multiplying the total value of the imported coils by the duty rate (i.e., duty percentage) on imported coils. See Memorandum from Laurens Van Houten to Neal M. Halper, Director of the Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results-Borusan Mannesmann Boru Sanayi ve Ticaret A.S." dated December 5, 2011 ("Borusan Final Cost Calculation Memo"). Once the total exempted duties were determined, in the second step we calculated an exempted duty rate by dividing the total exempted duties by the total value of domestic and imported coils purchased during the POR. See Borusan Final Cost Calculation Memo. Third, we applied this calculated rate to the consumption value of the coils reported in the Borusan's cost database. See Id. This methodology is consistent with the Department's practice. See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review, 75 FR 18788, 18792 (April 13, 2010) (noting that the Department made duty exemption adjustments "as a ratio of the exempted duty amounts to total purchases of the respective input."), unchanged in Circular Welded Carbon Steel Pipe and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 75 FR 64696 (October 20, 2010). Thus, for the final results we allocated the total exempted duty over the total value of hot-rolled coils purchased during the POR and subsequently applied this exempted duty rate to the consumption value of the coils reported in Borusan's cost database.

Comment 4: Inadvertent Assignment of Surrogate Costs

According to Borusan, for CONNUMs with no production during a particular quarter, the Department used the cost of the most similar CONNUM as a surrogate. Borusan claims that in a few instances the Department inadvertently assigned a surrogate cost to a CONNUM in a quarter for which Borusan reported both production and costs, which resulted in two costs being counted for the same CONNUM. Thus, Borusan argues that the Department should delete the cost that was created using the most similar CONNUM in those quarters in which the original CONNUM was produced and a cost was reported.

No other parties commented on this issue.

The Department's Position:

We agree with Borusan that the Department inadvertently assigned a surrogate cost to a CONNUM in a quarter for which Borusan reported both production and costs. Therefore, we have corrected that error for the final results to avoid two costs being counted for the same CONNUM by not assigning a surrogate cost to the CONNUM in question.

Comment 5: The Department's Treatment of Borusan's Reported "N" in its VATH Field

U.S. Steel comments that the Department should exclude Borusan's reported "N" in the value added tax paid ("VATH") fields when calculating Borusan's comparison market program. U.S. Steel claims that it is the Department's practice to classify such sales (e.g., home market sales

which the producer knew at the time of sale were intended for export) as export sales and exclude them from the home market sales database.

No other parties commented on this issue.

The Department's Position:

The Department agrees with U.S. Steel that when a shipment is intended for export from the comparison market, we exclude them from the Department's comparison market calculations.[3] Here, the sales that Borusan reported "N" in the VATH fields were sales specifically intended for export and not for the Turkish market.[4] Thus, for the final results, we will exclude the sales Borusan reported as "N" in the VATH fields from the Department's comparison market calculations.

Comment 6: Borusan's Home Market Adverting Expenses

U.S. Steel asserts that Borusan failed to demonstrate that the expenses it reported in the home market advertising expense ("ADVERTH") field were advertising expenses related specifically to its customers and the sale of subject merchandise. More specifically, U.S. Steel claims that Borusan's reported expenses were for promotional materials, such as lighters, hats, T-shirts, and advertising to newspapers and magazines and, thus, not specifically related to the sale of subject merchandise. U.S. Steel argues that these expenses should be treated as indirect selling expenses for the final results.

Borusan maintains that it adequately reported its advertising expenses on behalf of its customers and that its expenses are directly related to the sale of subject merchandise. Specifically, Borusan claims that it promotes all of Borusan's pipe products, including subject merchandise, mostly through advertisements in industrial magazines and newspapers, billboards, printed documents, promotional materials provided to end-users, such as pens, t-shirts and hats, and seminars for end-users. Borusan argues that its advertisement expenses are used to promote all of its pipe products and that standard pipe is central to Borusan's product line.

The Department's Position:

The Department's normal practice with regard to determining whether advertising expenses are direct or indirect selling expenses is to apply a two-pronged test.[5] First, the Department must determine if the advertising expenses are directed at the customer's customer.[6] Second, the

[3] See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 75 FR 49467,49470 (August 13, 2010) and unchanged in Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review, 75 FR 76700 (December 9, 2010).
[4] See the Borusan's September 3, 2010, section B response at B-6.
[5] See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at 6.
[6] Id.

Department must determine if the advertising expenses are related to sales of the subject merchandise.[7] We agree with petitioners that Borusan has not shown that its advertising expenses are specifically related to the sale of subject merchandise. Borusan admits that its advertising covers non-subject pipe products. In addition, Borusan indicated that it was not possible to identify which costs are related to subject merchandise.[8] Therefore, we have treated these expenses as indirect selling expenses for the final results.

Comment 7: Zeroing of Dumping Margins in Administrative Reviews

Borusan contends that the Department unreasonably interprets the terms "dumping margin" and "weighted average margin" differently in administrative reviews and investigations. Borusan argues that the Department's disparate interpretation of section 771(35)(A)-(B) of the Act is contradictory and unreasonable and cannot be defended.

Borusan contends that the Department did not explain why it is appropriate to have one meaning for these terms in investigations and another in administrative reviews.

Borusan also asserts that SKF USA Inc. v. United States, 263 F.3d 1369, 1381-82 (Fed. Cir. 2001) ("SKF I") is directly analogous to this case. Borusan argues in that case the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") found unreasonable the Department's different interpretation of a statutory term, depending upon the context.

Borusan also points to a recent Federal Circuit decision on zeroing in administrative reviews as evidence that the Department's different interpretations of the relevant statutory terms are unreasonable. Borusan specifically cites to Dongbu Steel Co., Ltd. v. United States, 635 F.3d 1363 (Fed. Cir. 2011) ("Dongbu").

Borusan next discusses a recent administrative review determination issued after Dongbu. See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011), and accompanying Issues and Decision Memorandum at Comment 1. In that review, Borusan notes that the Department relied upon another Federal Circuit decision -- SKF USA Inc., v. United States, 630 F.3d 1365 (Fed. Cir. 2011) ("SKF II"). However, Borusan argues that SKF II has no precedential effect because the Federal Circuit did not reach the second step in the analysis articulated by the Supreme Court in Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984) ("Chevron").

Borusan argues that although SKF II upheld zeroing in administrative reviews after the Department changed its policy in investigations, the appeal was completed before the Department's interpretation of the relevant statutory provision became inconsistent. Moreover, Borusan asserts that the Federal Circuit clearly recognized in Dongbu that Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) ("Corus II") did not resolve the concern

[7] Id.

[8] See Borusan's January 26, 2011, Supplemental Response at 12.

over the disparate interpretation of the same statutory provision.

U.S. Steel contends that Borusan's argument that the Department should not zero because of the Department's interpretation of the relevant terms in investigations differs from the interpretation used in administrative reviews is without merit. U.S. Steel also takes issue with Borusan's reliance on the recent Federal Circuit decision in Dongbu. U.S. Steel argues that the use of zeroing for both investigations and reviews is required because of the inherent differences in each proceeding. U.S. Steel claims that section 777A(d) of the Act would be meaningless unless zeroing is used because the margin result would be exactly the same regardless of the comparison methodology used.

U.S. Steel also makes the case that Congress intended the Department to engage in zeroing, otherwise Congress would not have provided three different statutory comparison methodologies. Moreover, U.S. Steel contends that the Supreme Court and the Federal Circuit have repeatedly held that the significance of every clause of a statute must be considered. See, e.g., TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001). As stated by U.S. Steel, the only way that the methodologies result in a difference is when zeroing is applied. U.S. Steel contends that the use of zeroing is currently before the Supreme Court in United States Steel Corporation v. United States (No. 10-1433 and Nucor Corporation v. United States (No. 10-1439).

Even if zeroing is not required by statute, U.S. Steel contends that the use of zeroing is reasonable and has been upheld by the courts. See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342-45 (Fed. Cir. 2004) ("CAFC Timken"). In addition, U.S. Steel asserts that the use of zeroing in administrative reviews has been affirmed notwithstanding the Department's change in the use of zeroing in investigations. Moreover, U.S. Steel contends that Borusan's reliance on Dongbu is misplaced, because the Federal Circuit was asking for an explanation of the Department's decision and did not find that the Department had committed an error by using zeroing in an administrative review. More to the point, U.S. Steel asserts that the unique procedural circumstances surrounding Dongbu undercut Borusan's reliance on that decision.

In response to Borusan's brief, Allied Tube and TMK argue that the definition of dumping margin under section 771(35) of the Act is mutually exclusive and does not include negative margins. Allied Tube and TMK state that they agree with Borusan that the meaning of the term "dumping margin" does not differ from investigations to administrative reviews. Allied Tube and TMK also reference a passage from Corus II, where the Federal Circuit stated that the term "dumping margin" is "the result of the comparison of NV and EP, whether in the context of investigations or reviews."

Allied Tube and TMK disagree with Borusan's cite to U.S. Steel v. United States, 621 F.3 1351 (Fed. Cir. 2010) ("U.S. Steel Corp.") and other cases that found the statutory term "dumping margin" may include both a positive margin and a negative margin. Allied Tube and TMK contend that neither the CIT nor the Federal Circuit addressed the exclusive language of the term "dumping margin" in these cases. According to Allied Tube and TMK, the statute requires that only a positive margin be considered as a statutory dumping margin. In other words, Allied

Tube and TMK essentially argue that the plain language of the statue requires zeroing in that it precludes the Department from considering a negative margin as a "dumping margin."

Furthermore, Allied Tube and TMK contend that although the WTO requires its members to account for both positive and negative margins, U.S. law permits only positive margins as statutory dumping margins. Allied Tube and TMK cite to the SAA which states, "WTO dispute settlement panels will not have any power to change U.S. law or order such a change." See SAA, H.R. Rep. No. 103-316 at 659. Moreover, Allied Tube and TMK cite to the first act of U.S. Congress on July 4, 1789, where Congress established the authority and independence of the U.S. government to impose import duties on "goods, wares, and merchandise imported into the United States." Therefore, Allied Tube and TMK maintain that the WTO does not have authority to strike down U.S. law.

Next, Allied Tube and TMK argue that the offset of positive margins by negative margins in administrative reviews is inconsistent with section 751(a)(2) and 777A(d) of the Act because the Act requires entry specific assessment based on an entry specific dumping margin. Therefore, Allied Tube and TMK contend that the Department must determine the normal value and export price for each entry, and the dumping margin for each entry. Additionally, Allied Tube and TMK contend that the entry specific determination of the dumping margin "shall be the basis for assessment of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties."

Furthermore, Allied Tube and TMK argue that section 777A(d)(2) of the Act reiterates the requirement that in administrative reviews duties be determined on individual U.S. entry transactions. Allied Tube and TMK reason that the language of the U.S. dumping law equates the dumping margin of the individual transaction in reviews with the antidumping duty assessment for that individual entry transaction, and thus precludes the offset of the dumping margin for an individual entry transaction by other margins that were computed for other entry transactions.

Moreover, an offset of positive margins would in effect result in the U.S. Government owing an importer of fairly traded merchandise a payment, which the Federal Circuit previously found as a result not contemplated by Congress. Therefore, according to Allied Tube and TMK, the intent of Congress and the plain language of the statute requires the imposition of an antidumping duty whenever the individual entry transaction specific U.S. import price is less than the normal value, even when the weighted-average of all U.S. import prices in the aggregate is greater than the weighted-average normal value.

Finally, Allied Tube and TMK argue that if the Department determined the dumping margin for a review based on the weighted-average price of an aggregate of U.S. import transactions as presently occurs in investigations, "the dumping margin for each such entry" or individual transaction would not be "the basis for assessment of antidumping duties on entries of merchandise covered by the determination" as required by the statute. Therefore, the Department is even more constrained from offsetting the margin for one individual entry

transaction in a review by the margin for another individual entry transaction margin in a review by the specific statutory mandate requiring the determination of the antidumping duty assessment based on the dumping margin for each individual entry transaction.

The Department's Position:

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. We disagree with the respondents that the Department's "zeroing" practice is an inappropriate interpretation of the Act. Because no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of section 771(35) of the Act. See, e.g., CAFC Timken, 354 F.3d at 1342; see also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) ("Corus I").

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

The Federal Circuit explained in CAFC Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." See CAFC Timken at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., CAFC Timken, 354

F.3d at 1343; Corus I, 395 F.3d at 1343; Corus II, 502 F.3d at 1375; and NSK Ltd. v United States, 510 F.3d 1375 (Fed. Cir. 2007) ("NSK").

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins During an Antidumping Investigations; Change in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007) (collectively, "Final Modification for Antidumping Investigations"). With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department's interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word "exceeds" in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an "on average" level for the comparison. The Department then aggregates the results from each of the averaging groups to determine the aggregate dumping margins for a specific producer or exporter. At this aggregation stage, negative averaging group comparison results offset positive averaging group comparison results. This approach maintains consistency with the Department's average-to-average comparison methodology, which permits export prices above normal value to offset export prices below normal value within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated. For this reason, the offsetting methodology adopted in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is the product of an average-to-average comparison or an average-to-transaction comparison.

In U.S. Steel Corp., the Federal Circuit considered the reasonableness of the Department's interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using

average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act.[9] Specifically, in U.S. Steel Corp., the CAFC was faced with the argument that, if zeroing was never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring. See U.S. Steel Corp., 621 F.3d at 1363. The Court then affirmed as reasonable the Department's application of its modified average-to-average comparison methodology in investigations in light of the Department's stated intent to continue zeroing in other contexts. Id.

In addition, the Federal Circuit recently upheld as a reasonable interpretation of ambiguous statutory language the Department's continued application of "zeroing" in the context of an administrative review completed after the implementation of Antidumping Duty Proceedings: Calculations of the Weighted Average Dumping Margins During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006) ("Zeroing Notice"). See SKF II, 630 F.3d at 1365. In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is consistent with the Federal Circuit's recent decision in SKF II.

Furthermore, in Corus I, the Federal Circuit acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations. See Corus I, 395 F.3d at 1347. That is, the Court explained that the holding in CAFC Timken – that zeroing is neither required nor precluded in administrative reviews – applies to antidumping duty investigations as well. Thus, Corus I does not preclude the use of zeroing in one context and not the other.

Moreover, we disagree with Borusan that the Federal Circuit's recent decision in Dongbu requires the Department to change its methodology in this administrative review. The holding of Dongbu, and the recent decision in JTEKT Corporation v. United States, 642 F.3d 1378 (Fed. Cir. 2011) ("JTEKT"), was limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews.[10] However, the Federal Circuit did not hold that these differing interpretations were contrary to law.[11] Importantly, the panels in Dongbu and JTEKT did not overturn prior Federal Circuit precedent affirming zeroing in administrative reviews, including SKF II.[12] Unlike the determinations examined in Dongbu and JTEKT, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the

[9] See U.S. Steel Corp., v. United States, 621 F. 3d 1351 (Fed. Cir. 2010) ("U.S. Steel Corp.").
[10] See JTEKT, 642 F.3d at 1384-85.
[11] See Id.
[12] See Id.

Final Modification for Antidumping Investigations – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu, JTEKT, U.S. Steel Corp., and SKF II.

Additionally, we note that the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act ("URAA"). See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in implementing a WTO report. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g). The process may lead the United States to implement the WTO reports to varying degrees, depending on a host of factors. For example, in United States – Antidumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil, WT/DS 382/R (Mar. 25, 2011), the United States has not yet employed the statutory procedure set forth at 19 U.S.C. 3533(g) to implement the panel's finding. In other situations, such as in United States – Measures Relating to Zeroing and Sunset Reviews, Recourse to Article 21.5 of the DSU by Japan, WT/DS322/RW (Apr. 24, 2009), and United States – Final Anti-Dumping Measures on Stainless Steel From Mexico, WT/DS344/AB/R (April 30, 2008), the United States has determined that steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review.

The Department also notes that it has published a proposed revised calculation methodology to eliminate "zeroing" in administrative reviews. See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010) ("Proposed Calculation Methodology"). The Proposed Calculation Methodology is only a proposal that remains subject to review of comments from the public and statutory consultation requirements involving Congressional committees, among others. 19 U.S.C. 3533(g)(1). It does not provide legal rights or expectations for parties in this administrative review. Viraj Forgings Ltd. v. United States, 206 F. Supp. 2d 1288, 1293 (CIT 2002) (rejecting the plaintiff's reliance on a proposed rule as basis for receiving a zero margin). The Proposed Calculation Methodology further makes clear that, in terms of timing, any changes in methodology will be prospective only, and "will be applicable in . . . all {administrative} reviews pending before the Department for which a preliminary result is issued more than 60 business days after the date of publication of the Department's Final Rule and Final Modification." See Proposed Calculation Methodology, 75 FR at 82535. Additionally, the Proposed Calculation Methodology would not apply to the present administrative review because normally, "{a} final rule or other modification . . . may not go into effect before the end of the 60-day period beginning on the date which consultations {between the Trade Representative heads of the relevant departments or agencies, and appropriate Congressional committees}. . . begin." 19 U.S.C. 3533(g)(2). Because the final

results in this administrative review will be completed prior to the effective date of the final rule, any change in the treatment of non-dumped sales, pursuant to the Proposed Calculation Methodology (if implemented) would not apply to this administrative review.

The Department disagrees with Borusan's claim that SKF I precludes disparate interpretations of the same statutory term. As an initial matter, the Department is not prohibited from interpreting the same statutory term differently. In fact, the Federal Circuit has held that, based upon a reasonable explanation, the Department may interpret the same statutory term differently depending on the context in which that term is being interpreted. See FAG Kugelfischer Georg Schafer AG. v. United States, 332 F.3d 1370, 1373 (Fed. Cir. 2003) (upholding the Department's different interpretations within the same proceeding of the term "foreign like product," contained in section 771(16) of the Act). Furthermore, as recognized by the Federal Circuit, the Department has previously identified real differences between investigations and administrative reviews. See JTEKT, 642 F.3d at 1384-1385 (where the Department pointed to differences between investigations and administrative reviews).

Finally, the Department disagrees with Allied Tube and TMK's and U.S. Steel's argument that the statute requires zeroing. The Federal Circuit has conclusively and repeatedly held that zeroing is not statutorily mandated under the Act. See, e.g., Timken, 354 F.3d at 1342 (explaining that the Department is neither required nor precluded from using zeroing in administrative reviews) and Corus I, 395 F 3d. at 1347 (explaining that the Department is permitted, but not required, to use zeroing in antidumping duty investigations). Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the U.S. sales transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

Toscelik

Comment 8: Application of Quarterly Costs

Toscelik disagrees with the Department's preliminary finding that selling prices of pipe were not reasonably correlated with the COM of pipe during the POR. Toscelik believes that the COM for pipe for the third quarter of the POR is materially distorted because of a one-time accounting charge, and this distortion should be taken into account when performing the linkage analysis in determining whether to use quarterly costs.

According to Toscelik, the direct material cost of the pipe COM represents the weighted average cost of hot-rolled steel coils purchased as well as those produced at its Osmaniye ("OSM") production facility. Toscelik claims that its OSM facility became operational in November 2009, and did not achieve full production until December 2009. Toscelik further claims that because the OSM plant became operational in 2009, it was charged with depreciation of the production plant for the entire year because Turkish accounting conventions require that assets be charged with a full year of depreciation in the first year they are put into use. According to

Toscelik, the company's cost accounting system allocated the annual depreciation entirely to the production during the last two months of 2009, with 83 percent of the depreciation of the OSM facility allocated to the products produced in December 2009. Toscelik notes that ordinarily the monthly depreciation load would be eight percent (i.e., one-twelfth of the annual depreciation), thus Toscelik claims that the December 2009 OSM depreciation assigned to the hot-rolled steel coils produced was over ten times the normal amount. As a result, Toscelik argues that the cost of OSM-produced hot-rolled steel coils was grossly overstated, which then caused the weighted-average COM of pipe for the third quarter ("Q3") of the POR (November 2009 to January 2010) to be substantially distorted. Toscelik argues that the distortion of the Q3 COM of pipe invalidates the COM-to-price comparison of pipe between the second and third quarter of the POR as well as between Q3 and the fourth quarter ("Q4") of the POR. Toscelik further argues that it would be unreasonable to expect that a producer's selling price would reflect a one-time accounting charge in the month in which the charge occurred.

Toscelik also claims that a quarterly analysis of the correlation between prices and cost of pipe is weak because it only compares three data points (i.e., the change from the first quarter to the second quarter, the second quarter to the third quarter and the third quarter to the fourth quarter of the POR). Toscelik argues that if we refine the cost/price analysis to a monthly basis, the Department would be comparing eleven data points and would find a much higher and more obvious correlation of the hot-rolled steel coil purchase cost and the pipe selling prices. Toscelik claims that using monthly data for determining linkage does not preclude the Department from using quarterly data for the cost of production of pipe.

Toscelik claims further that because conversion costs are constant across the POR, the hot-rolled steel coil purchases are a reliable substitute for pipe COM when performing the linkage test. Toscelik claims that in all months except December, the purchase unit value of hot-rolled steel coil is virtually identical to the unit value of the self-produced hot-rolled steel coils. Toscelik provided charts which show the hot-rolled steel coil purchase cost and pipe selling price each month of the POR with hot-rolled steel coil purchases lagging one month. Toscelik argues that the charts show a nearly perfect correlation between the hot-rolled steel coil purchase cost and the pipe selling price.

Finally, Toscelik states that it explained the facts above in its December 27, 2010, supplemental section D response and had proposed an alternative analysis comparing the hot-rolled steel coils purchased during the POR to the selling price of the merchandise under consideration ("MUC"). Toscelik argues that the purchased hot-rolled steel coil is a reliable surrogate for the COM of pipe and should be compared to the selling price of the MUC in performing the linkage analysis. Toscelik claims that such a comparison shows that there is a reasonable correlation between the pipe selling price and the hot-rolled steel coil purchase price. Moreover, Toscelik argues that the price to sales correlation is much closer in the present POR than it was in the previous POR when the Department applied quarterly cost. For all of the above reasons, Toscelik believes that the Department should find that costs and prices of pipe are reasonably correlated and, therefore, the Department should use its quarterly cost methodology for its margin calculations for the final results.

In its rebuttal brief, U.S. Steel argues that the Department properly relied upon the costs recorded in Toscelik's normal books and records in conducting the linkage test, and did not apply its quarterly cost methodology. According to U.S. Steel, the Department's analysis revealed that for four of the five CONNUMs examined, there was no evidence of correlation or linkage because prices and costs moved in opposite directions for the majority of the quarters examined. Furthermore, U.S. Steel claims that for the few quarters where prices and costs did move in the same direction, the prices increased by less than half as much as the costs. For support, U.S. Steel cites to the Preliminary Results and the Memorandum from Laurens van Houten to Neal M. Halper re Cost of Production and Constructed Value Calculation Adjustments, May 31, 2011 ("Toscelik's Cost Calculation Memo") at 3 (Public Version).

U.S. Steel also disagrees with Toscelik's arguments that the Department should ignore Toscelik's self-produced hot-rolled steel coils during the third quarter of the POR in conducting its linkage test. U.S. Steel argues that it would be improper for the Department to ignore Toscelik's reported self-produced hot-rolled steel coil costs because those are the actual costs that are recorded in Toscelik's normal books and records for producing the MUC. U.S. Steel cites to the Final Results of the Antidumping Duty Review: Brass Sheet and Strip from the Netherlands, 65 FR 742 (January 6, 2000), and the accompanying Issues and Decision Memorandum at Comment 4, where the Department has stated that "it is the Department's practice to rely upon a company's normal books and records where they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing and selling the subject merchandise." U.S. Steel claims that Toscelik has not demonstrated how its normal books and records fail to reflect the cost of producing and selling the MUC, nor has it argued that the cost associated with the self-produced hot-rolled steel coils should be removed from its reported costs when the Department performs the sales-below-cost test. U.S. Steel argues that it is too late for Toscelik to claim a start-up adjustment.

U.S. Steel argues further that removing the cost of Toscelik's self-produced hot-rolled steel coils from the linkage test is improper because it would defeat the very purpose of the linkage test and the application of the quarterly cost methodology. U.S. Steel claims that the purpose of using quarterly costs is to avoid distortions, and thereby, increase the accuracy of the dumping margin. U.S. Steel argues that besides showing that there was a significant increase in costs between quarters, a respondent must also show that there was linkage between the sales and the COM of production of the MUC during the POR. According to U.S. Steel, linkage is necessary to ensure that sales made in the shorter cost averaging period actually reflect the costs incurred by the respondent during the period. U.S. Steel argues that in order for the linkage analysis to be meaningful, the Department must compare the COM that a respondent incurred (i.e., the cost the Department will actually use in its sales below cost test and margin analysis) to the respondent's sales prices. U.S. Steel believes that by removing or ignoring the cost of the self-produced hot-rolled steel coils during the third quarter of the POR, the linkage test would not perform its intended function of ensuring that sales prices of pipe charged in a given quarter reflect costs of pipe in the quarter. U.S. Steel argues that the fact that Toscelik can show that its purchased hot-rolled steel coils are correlated with its prices of pipe is a meaningless exercise that has

nothing to do with the decision as to whether quarterly costs should be used.

Finally, U.S. Steel claims that Toscelik's reliance on the Department's correlation analysis in the previous review is completely misplaced. According to U.S. Steel, the Department has long recognized, and the Court of International Trade (CIT) has affirmed, that each administrative review is a separate segment of a proceeding with its own facts. In support of its claim, U.S. Steel cites to the Final Results of the Antidumping Duty Review: Stainless Steel Sheet and Strip in Coils from Mexico, 76 FR 2332 (January13, 2011), and the accompanying Issues and Decision Memorandum at Comment 10, as well as Shandong Huarong Mach. Co. v. Unites States, 29 CIT 484, 491 (2005). In any event, contrary to Toscelik's assertions, U.S. Steel believes that the correlation between prices of pipe and costs of pipe in the current review is significantly weaker than in the last review. In sum, U.S. Steel urges the Department to rely on the cost information recorded in Toscelik's normal books and records to conduct the linkage test.

Allied Tube and TMK allege that the Department reasonably determined that Toscelik's quarterly prices did not correlate with quarterly costs. Because the statute purportedly does not establish the standards by which the Department may establish quarterly costs, Allied Tube and TMK aver that the Department reasonably exercised its discretion in using the linkage test to find no correlation. Moreover, Allied Tube and TMK argue that the allocation of certain variable depreciation expenses seem reasonably related to production costs and, thus, the allocation of such depreciation expenses based on production in December is appropriate. Finally, Allied Tube and TMK support the allocation of the depreciation expenses by noting that, in its words, Toscelik comported with the appropriate accounting rules.

The Department's Position:

The Department agrees with Toscelik that our linkage analysis in the Preliminary Results was skewed by including a full year's depreciation expense for the new steel coil mill in Q3 COM. There are two interrelated issues in this situation: (1) how to treat the new mill depreciation expense in the quarterly cost database, and (2) whether it is appropriate to depart from our normal annual weighted-average cost calculation methodology and instead rely on our alternative quarterly cost averaging method. These two issues are interrelated because the answer to how we decide to treat the new mill depreciation expense in the quarterly cost database will directly impact the costs used in our analysis to decide whether to depart from our normal annual weighted-average cost calculation methodology.

The new mill depreciation expense at issue was recorded as an actual cost in Toscelik's normal books and records, in accordance with Turkish GAAP, and no party has argued that Toscelik's recording of this cost is unreasonable. Thus, we continue to consider it appropriate to include this depreciation expense in full in the reported costs. In a typical case, where we calculate product-specific costs using our normal annual weighted-average approach, the depreciation expense at issue would be averaged with all other production costs incurred over the annual POR period. See Certain Steel Concrete Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218

(November 7, 2008), and accompanying Issues and Decision Memorandum at comment 3. However, in reporting its quarterly costs, Toscelik included this depreciation expense only in Q3 of the POR, which is the quarter in which it was booked. As such, in the reported quarterly cost database, the third quarter's costs appear unusually high in relation to the other quarters. While we consider it appropriate to include the new mill depreciation expense recorded in Toscelik's normal books and records in full, we consider it to be a type of cost that should be averaged over production during the entire POR, not just in a single quarter. This approach is in line with Toscelik's point that it would be unreasonable to expect that a producer's selling prices in a given quarter would reflect, in full, a one-time accounting charge like the depreciation charge at issue, in the quarter in which the expense was booked. Instead, this type of cost would reasonably be reflected in prices that occur over an extended period of time, like the entire POR. Accordingly, for the final results we have adjusted Toscelik's reported quarterly cost database by spreading the new mill depreciation expense to all quarters of the POR. See Memorandum from Laurens van Houten to Neal Halper "Cost of Production and Constructed Value Adjustments for the Final Results-Toscelik Profil ve Sac Endustrisi A.S.", dated December 5, 2011 ("Toscelik Final Cost Calculation Memo").[13]

After adjusting the quarterly cost database for depreciation, as discussed above, we re-evaluated whether it was appropriate to depart from our normal annual weighted-average cost calculation methodology. In determining whether to depart from our normal annual weighted-average cost calculation methodology, and instead use quarterly cost averaging periods, we evaluate whether the change in COM during the POR is significant and whether there is reasonable linkage between the quarterly average unit costs and sales prices. See Pasta from Italy, Stainless Steel Sheet, and Stainless Steel Coils. We have re-analyzed the significant cost change and linkage analyses for Toscelik using the adjusted quarterly cost database. A significant change for this purpose is defined as a greater than 25 percent change in COM from the high to the low quarter. See Id. We found that the percentage change between the high and low quarter COM exceeded 25 percent for all ten of the most frequently sold home market CONNUMs.[14] Thus, for the final results, we conclude that the change in COM for Toscelik is significant enough to warrant a departure from our normal annual weighted-average cost calculation methodology. In our linkage analysis,[15] we found that the magnitude of the changes in the quarterly costs and sales

[13] While the new mill depreciation expense included in the quarterly database was not specifically identified, we were able to approximate the amount based on the method described in the proprietary Toscelik Final Cost Calculation Memo.

[14] We normally analyze the largest five most frequently sold CONNUMs sold in the home market and the largest five most frequently sold CONNUMs sold in the U.S. See, e.g., See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 77838, 77844 (December 14, 2010); see also Pasta from Italy, Stainless Steel Sheet, and Stainless Steel Coils. However, we noted that none of the CONNUMs sold in the U.S. had sales and costs reported for the same quarters for at least three quarters of the POR. See Toscelik Final Cost Calculation Memo. Without comparable sales prices and costs for at least three quarters, comparison of quarterly prices and cost trends for the linkage analysis proves to be inconclusive. We have therefore used the top ten highest sales volume CONNUMs sold in the home market in our quarterly cost analysis.

[15] To find linkage, we require that more than half of the most frequently sold CONNUMs analyzed show reasonable correlation. See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 77838 (December 14, 2010) and underlying Memorandum from

prices were comparable, that the prices and costs moved in the same direction for the majority of quarters, and that the slope lines for the quarterly costs and sales prices trended consistently. See Toscelik Final Cost Calculation Memo. Our analysis revealed that all ten of the most frequently sold home market CONNUMs show clear evidence of linkage. See Toscelik Final Cost Calculation Memo.

We disagree with Toscelik that we should perform our linkage analysis using monthly costs and price data because using that time period would prevent the Department from making reliable comparisons. We consider it important to use consistent time periods throughout the alternative quarterly cost averaging methodology for the sales-below-cost analysis, price-to-price comparisons, the significance analysis, and the linkage analysis. See Seamless Refined Copper Pipe and Tube from Mexico: Final Determination of Sales at Less Than Fair Value, 75 FR 60723 (October 1, 2010), and accompanying Issues and Decision Memorandum at Comment 2. If the Department performed price-to-price comparisons and tested for significant cost change and below cost sales using quarterly data, but tested for linkage using monthly data, it would result in an inconsistent mix of analyses that do not yield reliable comparisons. In any event, the Department finds this issue moot because we find linkage when using quarterly cost information.

In light of all of the factors discussed above, we have adjusted the cost of all CONNUMs to spread the estimated depreciation expenses over the four quarters of the POR, and we have applied the alternative quarterly cost calculation methodology for Toscelik for the final results.

Comment 9: Financial Expense Ratio Calculation

Toscelik argues that the Department erred in using the group consolidated financial statements in calculating the company's financial expense ratio because the consolidated financial statements are reported in U.S. Dollars, rather than in the transaction currency in which revenues and expenses were recorded (i.e., the Turkish Lira). According to Toscelik, it is the Department's consistent practice to utilize the financial statements of the respondent maintained in the currency of the country in which the respondent operates. In support of its argument, Toscelik cites Final Results of Antidumping Administrative Review: Orange Juice from Brazil, 75 FR 50999 (August 18, 2010), and the Accompany Issues and Decision Memorandum at Comment 12 ("Orange Juice from Brazil"). Toscelik claims that the use of a financial statement expressed in U.S. Dollars would require the Department to make extensive inquires into the auditor's translation methodologies.

If the consolidated financial statements were to be used, Toscelik argues that the Department should (1) offset interest expense with the interest income earned on sales, (2) deduct banking commissions from the numerator of the financial expense ratio, and (3) deduct inventory impairment from the cost of goods sold denominator of the financial expense ratio calculation.

Kristin L. Case to Neal M. Halper, Director of the Office of Accounting, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results dated December 7, 2010, unchanged in Circular Welded Non-Alloy Steel Pipe from The Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 76 FR 36089 (June 21, 2011).

According to Toscelik, it is the Department's practice to offset interest expense by short-term interest income. Notice of Final Results of the Sixteenth Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 76 FR 15291 (March 21, 2011), and the Accompanying Issues and Decision Memorandum at Comment 17. Toscelik claims that the interest income from sales is short term in nature because it does not make any sales under long-term contracts. Toscelik claims that the income from inventory impairment is purely an artifact of the international accounting standard basis of reporting, similar to the market-to-market valuation of derivatives, which the Department excluded from the financial expense calculation. Lastly, Toscelik argues that the Department should exclude banking commissions (i.e., bank charges) from the numerator of the financial expense ratio because the expenses were reported as U.S. direct selling expenses in the sales database. Toscelik cites to the Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 63 FR 35190, 35199 (June 29, 1998), in which the Department stated that "we also agree with Borusan that 'other financial expenses' concern bank commissions, which were reported separately. Accordingly we have not added such expenses to Borusan's interest expense calculation."

U.S. Steel disagrees with Toscelik. According to U.S. Steel, the Department has a long-standing practice of calculating the respondents' financial expenses based on the audited financial statements of the highest level of consolidation available. Notice of Final Results of Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from India, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 7. In further support of its view, U.S. Steel notes that the Department's antidumping duty questionnaire at Section D, III.D.2 clearly states that "if your company is a member of a consolidated group of companies, calculate your financial expense based on the consolidated audited fiscal year financial statements of the highest consolidated level available." U.S. Steel claims that both the CIT and the Federal Circuit have affirmed this practice. See Gulf States Tube Div. of Quanex Corp. v. United States, 981 F. Sup 630, 647 (CIT 1997); Am. Silicon Techs. V. United States, 334 F.3d 1033, 1037-1038 (Fed. Cir 2003). U.S. Steel notes that Toscelik's reliance on the Department's decision in Orange Juice from Brazil is misplaced because the issue in that proceeding concerned whether the Department should include the exchange variation as an offset to the financial expense ratio calculation, not whether the Department should use the financial statements maintained in the currency of the respondent. Finally, U.S. Steel points to Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 67 FR 6488 (February 12, 2002), where the Department used the consolidated financial statements of the Belgian parent company to calculate a Brazilian respondent's financial expense ratio, as additional support. Accordingly, U.S. Steel argues that the Department should continue to calculate Toscelik's financial expense ratio using consolidated financial statements.

U.S. Steel argues further that no adjustments should be made to the financial expense ratio calculated for the preliminary results, which was based on the highest level consolidated financial statements. First, U.S. Steel disagrees that the interest income on sales should be used to offset interest expense in the financial expense ratio because the Department normally treats such an expense as sales revenue. Notice of Final Results of Antidumping Duty Administrative

Review: Stainless Steel Sheet and Strip in Coils from Germany, 70 FR 73729 (December 13, 2005), and the accompanying Issues and Decision Memorandum at Comment 2 (where the Department states that interest income related to sales is "more appropriately treated as sales revenue" and "not an appropriate offset to financial expenses."). Second, U.S. Steel disagrees that inventory impairment should be excluded from the cost of goods sold ("COGS") denominator of the financial expense ratio calculation. U.S. Steel argues that it is the Department's practice to use the COGS as the denominator in both the financial and G&A expense ratios with the knowledge that COGS includes changes in ending inventory. See Notice of Final Determination: Warmwater Shrimp from Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 12 (where the Department states that "the only difference between COM and COGS is the change in ending inventory"). Third, U.S. Steel argues that other finance costs should not be excluded from the total financial expenses, even though Toscelik claims they were banking commissions. U.S. Steel claims that there is nothing on the record to indicate that the "other finance expenses" were bank commissions. U.S. Steel also argues that Toscelik cannot rely on the facts specific to the other respondent in the last review to show that the other finance expenses were in fact bank commissions.

Finally, Allied Tube and TMK disagree with Toscelik. First, Allied Tube and TMK argue that the conversion of currency from the denomination in which most transactions occurred into dollars would not necessarily invalidate the underlying data itself or the financial rations derived from this data. Moreover, if the Department continues to use the consolidated statements, Allied Tube and TMK aver that interest income on sales should not offset interest expenses because sales do not constitute working capital.

The Department's Position:

Toscelik's financial expense ratio is appropriately calculated based on the highest level of consolidated financial statements in which they are a part. We have only adjusted the cost of goods sold denominator to exclude the effect of the inventory impairment reversal.

The Department's long-standing practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available. See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at 25 ("Certain Frozen Warmwater Shrimp from India"); Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) ("Steel Wire Rod from Mexico") and accompanying Issues and Decision Memorandum at Comment 21-22. This practice recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies. See Steel Wire Rod from Mexico, 67 FR 55800 and accompanying Issues and Decision Memorandum at 21-22. It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group. See id. There is a presumption

that consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity. See Article 3A – Consolidated and Combined Financial Statements, 35,281, Reg. §210.3A-02, SEC Handbook, Rules and Forms for Financial Statements and Related Disclosures, as of December 1997. As the Department stated in Notice of Final Determination of Sales at Less than Fair Value: Low Enriched Uranium From France, 66 FR 65877 (December 21, 2001) and accompanying Issues and Decision Memorandum at Comment 14:

> Companies finance operations through various forms of debt transactions, stock transactions, cost sharing and reimbursement schemes, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. In such circumstances, the controlling management of the group coordinates these activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to, debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; sharing or undertaking strategic costs such as research and development; or conversions of debt into equities (or vice versa) to present a group member in a more favorable financial position. The important point here is that the corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions.

Thus, the Department's general rule is to calculate financial expense from the highest consolidated level.

On the issue of financial expenses, the Department stated in Certain Frozen Warmwater Shrimp from India, 72 FR 52055 and accompanying Issues and Decision Memorandum at 26:

> Financial expenses recorded on a respondent's own financial statements, or a lower level consolidation, only reflects the financial position that the management of the group wishes to present for that particular subsidiary. Because the majority of the board of directors, and by extension management, of each group member is ultimately controlled by each successive board of directors, up to the highest level board of directors and management, it is reasonable to conclude that the overall strategic operations are guided from above. The Department recognizes that the very purpose of creating a corporate group is to leverage the strategic and competitive advantages of individual group companies for the betterment of the whole. Thus, the financial position of one group member will not properly reflect the actual financial position of that company. It cannot be ignored that the company is operating as a member of a larger entity, with the support (direct or indirect) to which it is entitled from the group.

> The true economic picture can only be seen when all inter-company holdings (i.e., shares in affiliates and debts between affiliates) and inter-company transactions (i.e., inter-company sales, receivables, payables, etc.) have been eliminated (i.e., removal of the double-counting effect of inter-company transactions). Only after such eliminations does the debt structure of the group become apparent and does the actual cost of borrowing of group companies become visible. Such eliminations also derive a cost-of-sales figure free of inter-company transactions. The consolidated cost of sales is used to allocate the true financial expense to the products produced within the group.

We agree with U.S. Steel that Toscelik misstates the focus of the Department's position in Orange Juice from Brazil. In that case, the issue was whether the Department should include the exchange variation as an offset to the financial expense ratio calculation, not whether the Department should use the financial statements maintained in the currency of the respondent. See Orange Juice from Brazil, and accompanying Issues and Decision Memorandum at Comment 12. We disagree with Toscelik that the use of consolidated financial statements would require the Department to make extensive inquires into the auditor's translation methodologies because the Department places a high reliance on financial statements that were audited by outside independent auditors. See Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010), and accompanying Issues and Decision Memorandum at Comment 8.

We also agree with U.S. Steel that no adjustments should be made to the financial expense ratio calculated for the preliminary results, with the exception of the inventory impairment reversal. First, the interest income on sales should not be used to offset interest expenses in the financial expense ratio because it is treated as sales revenue and therefore accounted for elsewhere in the antidumping duty margin calculation as a circumstance of sale adjustment. See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 73729 (December 13, 2005), and the accompanying Issues and Decision Memorandum at 7. Second, other finance costs should not be excluded from the total financial expenses. There is nothing on the record to indicate that the other finance expenses were bank commissions. Furthermore, it would be inappropriate to rely on the facts specific to the other respondent in a previous review to show that the other finance expenses were in fact bank commissions. The facts of each review are separate and distinct. See Shandong Huarong Mach. Co. v. Unites States, 29 CIT 484, 491 (2005). Third, the inventory impairment reversal should be excluded from the COGS denominator of the financial expense ratio calculation. Inventory impairment is period cost which we typically include in general and administrative expenses. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at 42 (describing inventory write-downs in general and administrative expenses), and Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review, 74 FR 65751 (December 11, 2009), and accompanying Issues and Decision Memorandum at 6-7 (including as facts available inventory

write-downs in general and administrative expenses). As such, neither an inventory impairment nor reversal should be included in the cost of goods sold, but instead should be included in general and administrative expenses. We have therefore adjusted the denominator of the financial expense ratio calculation to remove the inventory impairment reversal for the final results. For the reasons stated above, the Department has continued to rely on the financial expense ratio calculated for the preliminary results, except for the adjustment to the financial expense ratio denominator made for the inventory impairment reversal.

Comment 10: Short-term Borrowing Rate Used to Calculate Imputed Credit Expense

Toscelik contends that the Department's use of the highest level of consolidation for the interest expense ratios applies equally to the interest ratio used to calculate imputed credit expense. Therefore, the Department should recalculate the short-term interest expense rate from the consolidated financials to calculate imputed credit expense. As an alternative, Toscelik argues that the Department should correct Toscelik's calculation of its short-term interest expense rate by excluding the days related to zero-interest transaction in the denominator of the calculation.

U.S. Steel argues that the Department's practice is to use the short term borrowing rate tied to the currency of sale.[16] U.S. Steel also argues that the Department's practice is to use the respondent's short-term borrowing rate of the company that holds title to the subject merchandise and invoices the customer.[17] Furthermore, U.S. Steel contends that credit expenses are not interest expenses and, therefore, the Department cannot calculate imputed credit expense using the short-term interest expense rate. Finally, U.S. Steel argues that the record evidence shows that there is no reason to remove line items that report zero interest expense.

The Department Position:

We agree with U.S. Steel that the Department normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction. See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR at 73444. The fact that the Department uses the highest level of consolidation to calculate interest expense used in the cost of production calculation has no bearing on the short-term borrowing rate used to calculate credit expense. In Appendix I of our Questionnaire issued on July 13, 2010, the Glossary of Terms defines credit expense as,

---

[16] Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 73444 (December 12, 2005) ("Stainless Steel Sheet and Strip in Coils from Mexico"), and accompanying Issues and Decision Memorandum at 3;Import Administration Policy Bulletin 98.2 (February 23, 1998).

[17] Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 39.

> Credit expense is a type of expense for which the Department frequently makes circumstances-of-sale adjustments. It is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. The Department normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction, prorated by the number of days between shipment and payment, to the unit price. If actual payment dates are not kept in a way that makes them accessible, the calculation may be based on the average of the number of days that accounts receivable remain outstanding. (See also **Imputed Expenses.**)

The Department's Policy Bulletin 98.2 regarding imputed credit expenses and interest rates also clearly explains that "{f}or the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction." In this review, Toscelik made its home market sales in Turkish Lira. Therefore, we have used the short-term borrowing rate as reported by Toscelik.

In regards to Toscelik's alternative request to recalculate their short-term borrowing rate, we disagree with their contention that the days related to zero-interest should be excluded from the denominator of the calculation. The short-term borrowing rate worksheet submitted by Toscelik indicates that Toscelik had principle balances for certain short-term loans, although zero-interest was incurred.[18] Therefore, we find it reasonable to include the number of days outstanding and related to each short-term loan in the denominator of the short-term borrowing rate calculation.

Comment 11: Treatment of Warranty and Bank Charges in the Program

Toscelik claims that the Department did not include an adjustment related to a certain variable (i.e., WARRKGH) in the comparison market program and did not convert bank charges to U.S. dollars.

U.S. Steel argues that the Department used the correct variable (i.e., NETKGH) to account for the returns reported in field WARRKGH in the comparison market program. Moreover, U.S. Steel maintains that the Department confirmed that Toscelik reported the sales quantity net of returns in field NETKGH. Finally, U.S. Steel argues that banking charges are properly treated in the Department's calculation and that bank charges are already in U.S. dollars.

The Department's Position:

We agree with U.S. Steel and do not find it necessary to make any corrections to account for returns or the conversion of currency for bank charges. As noted by U.S. Steel, Toscelik reported the sales quantity net of returns in field NETKGH.[19] In addition, bank charges were already reported in U.S. dollars and it was not necessary to convert the bank charges to U.S. dollars.[20]

---

[18] Sections A-D Questionnaire Response at Exhibit 18, dated September 3, 2010.

[19] Sections A-D Questionnaire Response at 42, dated September 3, 2010, and Supplemental Sections A-C Response

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the Federal Register.

Agree ✓ Disagree _____

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

December 2, 2011
Date

at 20, dated January 7, 2011.

[20] Sections A-D Questionnaire Response at Exhibit 20, dated September 3, 2010.