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Investigation
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DATE: July 10, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey

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I. SUMMARY

In this final determination, the Department of Commerce (Department) finds that certain oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the respondents in this case, Borusan Istikbal Ticaret (Istikbal) and Borusan Mannesmann Boru Sanayi ve Ticaret (BMB) (collectively Borusan), and Çayirova Boru Sanayi ve Ticaret A.Ş. (Çayirova) and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş. (YIIP) (collectively Yücel). We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

1. Duty Drawback
2. Constructed Value Selling Expenses for Yücel
3. Constructed Value Selling Profit for Yücel
4. Borusan's Home Market Sales
5. Standard J55 and Upgradeable J55
6. Borusan's Export Price Sales
7. Differential Pricing Analysis: Thresholds for the Results of the Ratio Test

8. Treatment of Borusan's Second-Quality Pipe
9. Misclassification of Borusan's Steel Coil Purchases

II. BACKGROUND

On February 25, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of OCTG from Turkey.[1] The Department conducted verifications of Borusan from March 3, 2014, through March 14, 2014, and March 31, 2014 through April 4, 2014.[2] The Department conducted verifications of Yücel from March 3, 2014, through March 14, 2014.[3] On March 25, 2014, we rejected submissions from Borusan and Maverick Tube Corporation (Maverick) because they contained untimely filed new factual information.[4] On March 27, 2014, one of the petitioners,[5] Maverick, requested that the Department conduct a hearing in this investigation, which the Department conducted on June 13, 2014.[6]

We placed Tenaris S.A.'s (Tenaris) and Oil Country Tubular Ltd.'s financial statements on the record for parties to comment.[7] In response to our placing the financial statements on the record, Maverick and Borusan submitted comments.[8]

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[1] *See Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 10484 (February 25, 2014) (*Preliminary Determination)* and accompanying Preliminary Decision Memorandum.

[2] *See* Memoranda to the File entitled "Verification of the Sales Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and its affiliates in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey" dated May 14, 2014, (Borusan EP Verification Report), "Verification of the Sales and Further Manufacturing Responses of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and its affiliates in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey" dated May 16, 2014, (Borusan CEP Verification Report), and "Verification of the Cost Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey" dated May 14, 2014, (Borusan Cost Verification Report)

[3] *See* Memoranda to the File entitled "Verification of the Sales Response of Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş., Ltd., in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey" dated May 31, 2014, (Yücel Sales Verification Report) and "Verification of the Cost Response of Çayirova Boru Sanayi ve Ticaret A.Ş. Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey" dated May 14, 2014 (Yücel Cost Verification Report).

[4] *See* Memorandum to the File entitled "Antidumping Duty Investigation of Certain Oil Tubular Goods from Turkey: Rejection of Documents" dated March 25, 2014. *See also* Letter from Minoo Hatten to Borusan dated March 25, 2014, and Letter from Minoo Hatten to Maverick dated March 25, 2014.

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

[6] *See* hearing transcript, filed on the record June 25, 2014.

[7] See Memorandum to the File entitled "Certain Oil Tubular Goods from Turkey: Certain Oil Country Tubular Goods from the Republic of Turkey – Placing Tenaris S.A. Financial Statements on the Record" dated May 12, 2014, and Memorandum to the File entitled "Certain Oil Tubular Goods from Turkey: Certain Oil Country Tubular Goods from the Republic of Turkey – Placing Oil Country Tubular Ltd. Information on the Record" dated June 11, 2014.

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from Maverick, and Yücel, and a rebuttal brief from Borusan in May and June 2014.[9] We rejected Maverick's case brief because it contained untimely filed new factual information and argument and gave Maverick the opportunity to resubmit its case brief after having removed the new factual information and argument.[10] Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, we changed the weighted-average margins from those presented in the *Preliminary Determination*.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[11] Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day. Thus, the revised deadline for the final determination in this investigation is July 10, 2014.

In our *Preliminary Determination* we found that Istikbal and BMB are affiliated pursuant to section 771(33)(F) of the Act because they are under common control, and in accordance with 19 CFR 351.401(f) and the Department's practice, we treated BMB and Istikbal as a single entity. At verification we confirmed that our preliminary finding was correct. Therefore, for the final determination we continue to find that Istikbal and BMB are affiliated and we are continuing to treat them as a single entity (Borusan).[12]

In our *Preliminary Determination* we found that Çayirova and YIIP are affiliated pursuant to section 771(33)(F) of the Act because they are under common control, and in accordance with 19 CFR 351.401(f) and the Department's practice, we treated Çayirova and YIIP as a single entity. At verification we confirmed that our preliminary finding was correct. Therefore, for the final determination we continue to find that Çayirova and YIIP are affiliated and we are continuing to treat them as a single entity (Yücel).[13]

III. CRITICAL CIRCUMSTANCES

The Department preliminarily found that, pursuant to section 733(e)(1) of the Act, critical circumstances do not exist for imports of OCTG from Turkey.[14] Section 735(a)(3) of the Act

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[8] *See* Maverick's submissions dated May 19, 2014, June 18, 2014, and June 19, 2014. *See also* Borusan's submission dated May 19, 2012, June 12, 2014, and June 18, 2014. We rejected Maverick's comments because they contained untimely filed new factual information. *See* Memorandum to the file entitled "Request for Action on Certain Barcodes in IA ACCESS" dated June 25, 2014. Maverick refiled the comments after removing the untimely filed new factual information.

[9] *See* Case Brief from Maverick, dated May 27, 2014, Resubmitted Redacted Case Brief from Maverick, dated June 11, 2014, and Case Brief form Yücel dated May 27, 2014. *See also* Rebuttal Brief from Borusan dated June 3, 2014, Rebuttal Brief from Maverick dated June 3, 2014, and Rebuttal Brief from Yücel dated June 3, 2014.

[10] *See* Letter from Minoo Hatten to Maverick, dated June 10, 2014. *See also* Resubmitted Redacted Case Brief from Maverick, dated June 11, 2014.

[11] *See* Memorandum for the Record, "Deadlines Affected by the Shutdown of the Federal Government," October 18, 2013.

[12] *See* Preliminary Decision Memorandum at 8 through 12. *See also* Borusan EP Verification Report.

[13] *See* Preliminary Decision Memorandum at 8 through 12. *See also* Yücel Sales Verification Report.

[14] *See Preliminary Determination*, 79 FR at 10485.

provides that, notwithstanding a negative preliminary determination, the Department will determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For this final determination, for the reasons explained below, we determine that critical circumstances exist for the "all other" producers and exporters of OCTG from Turkey, but not for Borusan or for Yücel.

History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.[15] No parties have made any claims regarding completed AD proceedings for OCTG from Turkey, and the Department is not aware of the existence of any active AD orders on OCTG from Turkey in other countries. As a result, the Department does not find that there is a history of injurious dumping of OCTG from the Turkey pursuant to section 735(a)(3)(A)(i) of the Act.

Knowledge that Exporters Were Dumping

In accordance with section 735(a)(3)(A)(ii) of the Act, the Department generally bases its decision with respect to the importer's knowledge on the margins calculated in the final AD determination and the ITC's preliminary injury determination.[16] The Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.[17] In this investigation, Borusan reported both EP sales and CEP sales, and Yücel reported EP sales. The final weighted-average dumping margin calculated for Yücel, 35.86 percent, exceeds the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP sales). Therefore, we determine that there is sufficient basis to find that importers should have known that Yücel was selling the merchandise under consideration at LTFV. Because the Department calculated a *de minimis* rate for Borusan, we find that there is not a sufficient basis pursuant to section 735(a)(3)(A)(ii) of the Act to find that importers should have known that Borusan was selling the

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[15] *See*, *e.g.*, *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

[16] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico,* 77 FR 17422, 17425 (March 26, 2012).

[17] *Id.*

merchandise under consideration at LTFV, leading us to determine that critical circumstances do not exist for Borusan.

Consistent with section 735(c)(5) of the Act and Department practice, we based the weighted-average dumping margin for all other producers and exporters on calculated rates that are not zero, *de minimis* or based entirely of facts available. For this final determination, the only rate that is not zero, *de minimis* or based entirely on facts available which has been calculated for an individually examined respondent is the weighted-average dumping margin for Yücel. Accordingly, for this final determination we have assigned Yücel's weighted-average dumping margin of 35.86 percent to all other producers and exporters. Therefore, the record supports imputing importer knowledge of sales at LTFV to importers of subject merchandise from the "all other" producers and exporters, as well, based on this margin.

Finally, since the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of OCTG from Turkey,[18] the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of OCTG at LTFV by Yücel and the "all other" producers and exporters.

Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later. Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed. In addition, the Department normally uses the longest period for which information is available up to the effective date of the preliminary determination.[19]

The petitioners maintain that importers, exporters, or foreign producers, through industry media and conferences, had reason to believe that the petitions were likely to be filed two months before they were filed. As such, the petitioners argue that the comparison period should begin in May 2013, not in July 2013, when the petitions were filed.[20] Furthermore, supported by import data published by the Department's Bureau of Census and the ITC, the petitioners claim that imports of OCTG from Turkey increased by 25.76 percent between the base and comparison periods.[21]

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[18] *See Certain Oil Country Tubular Goods From India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam: Determinations*, 78 FR 52213 (International Trade Commission August 22, 2013).

[19] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom*, 58 FR 37215, 37216 (July 9, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9746 (March 4, 1997), and accompanying Issues and Decision Memorandum at Comment 10.

[20] *See* the petitioners' letter to the Secretary of Commerce regarding "Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Turkey" dated December 18, 2014 (Critical Circumstances Allegation), at pages 5-8.

[21] *Id.*, at 8

The petitioners presented evidence which they claim shows that certain parties considered these proceedings likely or even "imminent." The evidence also refers specifically to AD and countervailing duty proceedings. Specifically, the petitioners presented evidence of the following:

- March 2013 – Two trade lawyers publish an article in Global Trade Monitor (GTM), a publication of their own law firm, stating proceedings against Korea may come as soon as the end of the month. Their analysis also presents data for India, Turkey, Ukraine, and Vietnam.[22]
- March 2013 – The president of the American Institute for International Steel (AIIS) mentions the possibility of proceedings against India, Turkey, Vietnam, and "others" during an AIIS luncheon in Houston.[23]
- April 2013 – An article in American Metal Market (AMM) reports that proceedings against Korea are imminent and mentions the possibility of proceedings against "other Asian" and "Eastern European" countries.[24]
- May 2013 – Another article in AMM reports that proceedings against Korea will be filed in July and mentions the possibility of proceedings against other significant exporters of OCTG to the U.S. market.[25]
- June 2013 – A third AMM article reports that a "suspension deal" is possible for Korea and that the end of June (the end of the fiscal quarter) will be a "decisive day" for the U.S. industry to decide whether proceedings should be filed against Korea, India, Turkey, Ukraine, and Vietnam.[26]

After reviewing the information the petitioners submitted to support their claims that parties had advance knowledge of the petitions, at the preliminary determination we found that parties did not have reason to believe that petitions were likely until they were filed in July 2013. In this final determination, we continue to find that the evidence provided by petitioners is speculative and also demonstrates that much doubt still existed about the potential filing of the petitions. For example, while the GTM article states proceedings against Korea and potentially other countries, including Turkey, might be filed by "the end of the month," it also notes "rumors" of such filings might be "empty threats."[27] Likewise, the AMM articles use words such as "imminent" when discussing proceedings against Korea, but also refer to the U.S. industry as "mulling" the possibility of filing a petition. The articles also quote industry insiders noting that such "rumors" have been circulating for years and that U.S. producers must first decide whether their profits will prevent an affirmative injury determination before filing. In sum, we continue to find that the evidence does not rise to the level of showing that importers or foreign exporters or producers had reason to believe, prior to the filing of the petitions, that a proceeding was likely. Therefore, we relied on the periods before and after the filing of the petitions in July in determining whether imports have been massive (*i.e.*, December 2012 through June 2013 compared with July through January 2014).

[22] *Id.*, at Exhibit 1.
[23] *Id.*, at Exhibit 2.
[24] *Id.*, at Exhibit 4.
[25] *Id.*, at Exhibit 3.
[26] *Id.*, at Exhibit 5.
[27] *Id.*, at Exhibit 1.

Yücel provided shipment data from April 2010 through February 2014, and Borusan provided shipment data from April 2010 through January 2014. After analyzing the data submitted, we determine that imports from Yücel were not massive (*i.e.*, did not increase by more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h), and pursuant to section 735(a)(3)(B) of the Act. On this basis, we determine that critical circumstances do not exist for Yücel.

As noted above, because the statutory criteria of section 735(a)(3)(A)(ii) have not been satisfied with respect to Borusan, we did not examine whether imports from Borusan were massive over a relatively short period pursuant to section 735(a)(3)(B) of the Act. Thus, we determine that critical circumstances do not exist for Borusan.

After accounting for shipment data for the two mandatory respondents, we determine imports from all other producers and exporters were massive pursuant to section 735(a)(3)(B).[28] As noted above, because we also find that the remaining statutory criteria of section 735(a)(3) of the Act is met with respect to the all other producers and exporters, we determine that critical circumstances exist for all other producers and exporters.

IV. SCOPE OF THE INVESTIGATION

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

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

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

[28] *See* Memorandum to the File, "Monthly Shipment Quantity and Value Analysis for All Other's Critical Circumstances," concurrently dated with this memorandum.

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

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

V. MARGIN CALCULATIONS

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

Yücel

- We revised our calculation of Yücel's duty drawback adjustment by using updated DIIB data, accounting for production yield, and applying the duty drawback adjustment only to U.S. sales which were reported to Turkish customs as OCTG.
- We revised Yücel's Constructed Value (CV) selling expenses by applying non-OCTG pipe selling expenses to non-OCTG pipe cost of sales.
- We used a surrogate profit rate to calculate CV profit.

Borusan

- We adjusted the total cost of manufacturing (TOTCOM) to allocate a portion of second quality pipe cost to OCTG.
- We used the revised further manufacturing general and administrative and expense ratios identified in the U.S. verification report that allocate expense over the cost of goods sold, less the cost of the imported subject merchandise.

VI. DISCUSSION OF THE ISSUES

Duty Drawback

Comment 1: The petitioners argue that the Department should reverse its preliminary determination to grant duty drawback adjustments for Borusan and Yücel under section 772(c)(1)(B) of the Act because the Turkish duty drawback system does not require the necessary linkage between imports and exports that is required under U.S. law[29] and the

[29] *See* Maverick's Case Brief at 35. Section 772(c)(1)(B) of the Act, which states that "{t}he price used to establish export price and constructed export price shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States…"

Department's two-prong test,[30] which has been consistently upheld by the courts.[31] This linkage under the two-prong test, the petitioners argue, requires that the import duty and rebate are directly linked to, and dependent upon, each other, and that there be sufficient imports of material to account for drawback received on exports of subject merchandise. The petitioners further note that the courts have upheld that it is the responsibility of the respondent to prove that it has met the Department's requirements for a drawback adjustment[32] which, the petitioners argue, the respondents have not done.

The petitioners draw a comparison between the U.S. duty drawback system and the Turkish duty drawback system in arguing that the Turkish system fails to meet the requirements for duty drawback under U.S. law. The petitioners note that respondents have claimed a duty drawback adjustment based on their qualification for exemption from certain import duties and from the Resource Utilization Fund Tax ("KKDF") through a Turkish program known as the Inward Processing Regime or the Domestic Processing Regime ("IPR"). According to the petitioners, the Turkish system cannot directly link the input and the product exported, because the Turkish system allows any merchandise that falls within the same eight-digit Harmonized Tariff Schedule (HTS) classification to be substitutable. The petitioners argue that the goods for which respondents are claiming a duty drawback (*i.e.*, hot-rolled coil which is not API-5CT grade) cannot be used in the production of subject merchandise, which requires API-5CT grade hot-rolled coil. Therefore, according to the petitioners, such imports are not equivalent goods and cannot establish a link between the product imported and the product exported.

The petitioners argue that neither Yücel nor Borusan has demonstrated that all of the imports of hot-rolled coil for which they are claiming an adjustment were useable in the production of OCTG. For instance, the petitioners note that Yücel explicitly stated that it domestically sourced all coil useable in its production of OCTG, and yet it applied a duty drawback adjustment to every U.S. sale based on its imports of hot-rolled coil not useable in the production of OCTG. Because the IPR allows for duty drawback claims to be based on non-useable imports, the petitioners argue, which is contrary to the U.S. suspension system which requires that imported inputs be fungible or commercially interchangeable, *i.e.* useable, the IPR fails prong two of the

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[30] *See* Maverick's Case Brief at 36-37. The Department's two-prong test for granting duty drawback to which the petitioners refer is 1) The import duty and rebate must be directly linked to, and dependent on, one another, or in the context of an exemption from import duties, the exemption is linked to the exportation of the subject merchandise, and 2) The company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback received on the export of subject merchandise. As an example, the petitioners cite to *Sorbitol From France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982) (*Sorbitol from France*), noting that the Department denied a duty drawback claim because "the import levy and the export restitution payments are not directly linked to, or dependent upon, one another within the context of the European Communities regulations."

[31] *See* Maverick's Case Brief at 36-37. The petitioners cite to *Saha Thai Steel Pipe v. United States*, 635 F.3d 1335 (CAFC 2011); *Wheatland Tube Co. v. United States*, 30 CIT. 42, 46 (2006); *Viraj Group, Ltd. v. United States*, 162 F. Supp. 2d 656, 665 (CIT 2001); *Chang Tieh Industry Co., Ltd. v. United States*, 840 F. Supp. 141,147 (CIT 1993); *Far East Machinery Co., Ltd. v. United States*, 688 F. Supp. 610, 612 (CIT 1988) (*FEMCO*); *Huffy Corp. v. United States*, 10 CIT 215-216 (1986).

[32] *See* Maverick's Case Brief at 37-38. The petitioners cite to *Allied Tube & Conduit Corp. v. United States*, 25 CIT 23, 23, 132 F. Supp. 2d 1087, 1093 (2001); *Allied Tube & Conduit Corp. v. United States*, 29 CIT 502, 507 (2005) (*Allied Tube*); *Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1359 (CIT 1999) (*Rajinder Pipes*); *Primary Steel, Inc. v. United States*, 17 CIT 1080, 1090,834 F. Supp. 1374, 1383 (1993).

Department's two-prong test. The petitioners further argue that Borusan failed to submit the documentation and evidence necessary to satisfy the Department's two-prong test, because Borusan's calculation of exemptions from customs duties and KKDF taxes for CEP and EP sales were based on all imported coil and not just API-5CT coil. According to the petitioners, this is particularly evident in Borusan's adjustment for CEP sales because, although Borusan is able to tie the U.S. sale back to U.S. exports for its EP sales, it calculated an average adjustment on all imports and spread that amount across all CEP sales. In doing this, the petitioners argue, Borusan did not establish the direct link between U.S. sales of subject OCTG and the amount of their claimed duty drawback adjustments.

Borusan argues that the petitioners have not offered any new facts or explanation that would cause the Department to depart from its finding that the duty drawback adjustment is warranted. Borusan claims that, for the last sixteen years, in every dumping proceeding against Borusan on standard pipe, a duty drawback adjustment has been granted. Borusan, citing to *Welded Pipe 08-09* and *Welded Pipe 11-12*,[33] claims that the Department has previously addressed all issues presented by the petitioners in the current investigation and concluded that the duty drawback program did provide for the required linkage between the import and rebate.

Borusan also argues that the petitioners' comparison of the Turkish and the U.S. duty drawback systems is irrelevant because the issue of whether or not the two systems are the same has never been a requirement under the U.S. law.

Borusan also argues that none of the cases that the petitioners cite is relevant to the Turkish duty drawback system or to Borusan, in particular. Specifically, Borusan claims that, in *Sorbitol From France,* the court found that the import levy and the export restitution payments were not directly linked to or dependent upon each other within the context of the European Community regulations, much unlike the Turkish Law as implemented by Borusan that undeniably matched the imports and exports and ensured the quantity imported was sufficient to cover the exports.[34] Borusan also claims that *U.S. Steel Corp.*, where the court found that the party failed to directly connect the sales invoice with the license authorizing participation in the duty drawback program, is not applicable to Borusan's fact pattern because Borusan demonstrated for both EP and CEP sales that the inward processing certificate that contained imports of J55 coil was matched to an export declaration that included a shipment of OCTG.[35] Furthermore, Borusan argues that the only reason for the calculation of an average for the CEP calculation was that, even though the import was linked to the export, the export could not be linked to the sale to the final customer. Borusan also claims that *Rajindir Pipes*, where the court upheld the Department's rejection of the duty drawback claim because the respondent did not establish the link between imports and exports and did not provide in a timely fashion information necessary

[33] *See* Borusan's Rebuttal Brief at 34-35, referencing *Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Antidumping Duty Administrative Review*, 75 FR 64250 (October 19, 2010) (*Welded Pipe 08-09*) and accompanying IDM at comment 3, and *Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) (*Welded Pipe 11-12*) and accompanying IDM at 17-19.

[34] *See* Borusan's Rebuttal Brief at 39-40 (citing *Raquette Freres and Raquette Corp. v. United States*, 583 F. Supp 599 (Ct. Int'l Trade 1984)).

[35] *See* Borusan's Rebuttal Brief at 40 (citing *U.S. Steel Corp.*, No. 08-00216, Slip Op. 12-48 (Ct. Int'l Trade Apr. 11, 2012)).

to substantiate the claim, is not applicable to Borusan because it provided the link between imports and exports and provided all information in a timely manner.[36] Borusan also claims that *OCTG India Prelim,* in which the Department denied the duty drawback claim submitted by one company because it was not dependent on the quantity imported but allowed the claim submitted by another company because the imports and exports were linked according to the norms established by the Government of India, is also irrelevant to the current case because the government of Turkey does require the linking between imports and exports and Borusan has demonstrated that it complied with that requirement.[37]

Borusan also argues that several points argued by the petitioners are not applicable to Borusan. Specifically, Borusan claims it did not utilize the provision for equivalent goods because everything it claimed for duty drawback was tied to a specific import of raw material used for OCTG. Borusan also claims that it never exported material it claimed the duty drawback on prior to the importation of the raw material, and that the Department tied every export license to an import certificate for hot-rolled coil at verification.

Borusan also argues that the Department verified at length that the two-prong test has been satisfied. Specifically, Borusan claims that the Department verified that Borusan kept track of all imports of hot-rolled coil that were used to produce pipe sold in the domestic market and that duties were paid on those imports, that the Department traced the total duty drawback claimed to the official Turkish customs online account and that it matched the imports and exports for duty drawback purposes, that the Department reviewed the inward processing certificates (DIIBs) whose import quantities were accepted by the Turkish customs online system, and import declarations and invoices from suppliers of imported coils demonstrating that imports were of J55 grade hot rolled coil for use in OCTG production. Borusan also claims that it provided a list of exports that were matched against the specific DIIBs and demonstrated through Turkish customs declaration forms and customer invoices for shipments of OCTG to the United States the individual products that were being charged against the DIIB.

Yücel argues that the Department was correct to grant a duty drawback adjustment, just as it has done repeatedly and the courts have upheld since 1986.[38] Yücel argues that, because there is no direct linkage requirement under the IPR, the courts have found in every instance that the IPR satisfies the requirements of U.S. law.[39]

Yücel notes that the petitioners attempt to distinguish between a drawback system, in which duties are paid and rebated, and a suspension system, in which duties are exempted on condition of export. However, Yücel argues, this distinction provides no support to their argument that there must be a linkage between imports and exports, because while one system may or may not

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[36] *See* Borusan's Rebuttal Brief at 41 (citing *Rajinder Pipes*, 70 F. Supp. 2d 1350).
[37] *See* Borusan's Rebuttal Brief at 41 (citing *OCTG India Prelim*).
[38] *See* Yücel's Case Brief at 3 (citing *Certain Welded Carbon Steel Pipe and Tube Products From Turkey: Final Determination of Sales at Less Than Fair Value*, 51 FR 13044 (April 17, 1986) (granting drawback adjustment at comment 7); *Steel Concrete Reinforcing Bar from Turkey; Preliminary Affirmative Determination of Sales at Less than Fair Value*, 79 FR 22804 (April 24, 2014) and accompanying preliminary decision memorandum at 17-18; *Allied Tube*, 29 CIT 502, 374 F. Supp. 2d 1257).
[39] *See* Yücel's Case Brief at 3-4 (citing *FEMCO*, 699 F.Supp. at 312 (where the court allowed some degree of latitude in matching specifications of imports and exports).

provide a better model for linkage, both systems are subject to the drawback adjustment under U.S. law.[40]

Yücel further notes that the petitioners' contention that the courts require a direct link between import licensing, which shows participation in a duty drawback system, and each sales invoice also provides no support to their argument, because the Department has verified that every one of Yücel's U.S. sales of OCTG was used to close one of the DIIBs in effect during the POI.

Yücel argues that the court was clear in *FEMCO* that fungibility is not a requirement for drawback, as it would be too burdensome to trace imported raw material through to exported products, nor is it a requirement for the imported raw material to be useable in the exported product.[41] Therefore, Yücel argues, the IPR's concept of equivalency of goods which operates on an 8-digit HTS number level is fully compliant with U.S. law, even though it does not meet the standard of commercial interchangeability the petitioners propose. Morover, Yücel contends that U.S. Customs and Border Protection (CBP) would agree with a standard of commercial interchangeability based on HTS classification.[42] Furthermore, Yücel argues, because this HTS classification under the IPR does not distinguish between grades of steel (*i.e.* J55 and non-J55), the petitioners incorrectly argue that OCTG should be segregated from other types of pipe. Yücel notes that its hydrostatically tested pipe products would fall under the same HTS category as OCTG.

The petitioners further argue that the respondents have erroneously included in their claims for duty drawback exemptions from KKDF taxes which are not specific to imports. The petitioners argue that, because the KKDF is tied to the financing used by the importers and not tied to the type of product imported, the KKDF should not be eligible for a duty drawback adjustment. The petitioners argue that, as required by the Department, the respondents have not demonstrated that taxes were actually owed for the claimed imports and whether they were actually paid on imports used in domestic products.[43]

Borusan, citing *Welded Pipe 11-12*, claims that the Department addressed the petitioners' arguments regarding the KKDF tax exemption and found that it was contingent upon the re-export of the subject merchandise and functions as an import duty. Borusan argues that in this proceeding, the Department verified both the duty drawback exemption and the KKDF tax and that the verification report supports the same result as in the welded pipe reviews.

Yücel argues that, because the Department has repeatedly investigated and upheld Turkey's drawback system and has explicitly considered not only import duties but also KKDF as eligible for drawback treatment, the Department should also grant Yücel's claimed KKDF exemption in the duty drawback adjustment.

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[40] *See* Yücel's Case Brief at 4-5 (citing *Saha Thai Steel Pipe (Public) Company v. United States*, 33 CIT 1541, 1544 (2009)).
[41] *See* Yücel's Case Brief at 6 (citing *FEMCO*, 699 F.Supp. at 312).
[42] Yücel cites to HQ W231519 (January 7, 2010).
[43] *See* Petitioners' Case Brief at 52-55 (citing *Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 63 FR 6899, 6909 (February 11, 1998); *Welded Carbon Steel Standard Pipe and Tube from India*, 51 FR 9089 (March 17, 1986)).

Yücel further argues that the Department correctly included exemptions of KKDF in the duty drawback adjustment consistent with Department practice,[44] and because Yücel established that all of its imports of coil were on terms consistent with requirements of the KKDF.

The petitioners argue that, with respect to the requirement that there be sufficient imports of raw material to account for the duty drawback received for the export of the manufactured product (the second prong), the Department's practice is to consider how a duty drawback program is applied to the specific company claiming the adjustment.[45] The respondents have not established, the petitioners argue, whether the Turkish IPR uses a fixed rate ratio, the company's production records, or some other rate to determine that the correct amount of the claimed imported raw materials were actually used to produce the resulting OCTG. The Department, the petitioners note, has routinely reduced the amount of duty drawback to reflect the average actual usage rates of raw materials used by the respondent. The petitioners argue that neither respondent has established which standard has been used. In fact, because Yücel did not produce OCTG from imported coil, the petitioners argue, it would be impossible to conclude that its own production records were used to determine this ratio.

Borusan, citing to *Welded Pipe 2008-2009*, claims that it demonstrated that it had sufficient imports to account for the duty drawback claimed on exports of the subject products, and that the petitioners were wrong that the home market (HM) price or cost must include the duties.

Borusan further argues that the petitioners' assertion that it overstated its duty drawback on its CEP sales is incorrect because Borusan calculated the amount by matching the DIIBs to the exports of merchandise under investigation sold to each CEP company to derive the actual amount of duty drawback claimed on those CEP sales. Borusan notes that it was not possible to tie each export from Borusan to each sale made by the CEP companies to the unaffiliated customer, so it calculated the duty drawback specifically for each CEP company separately. Borusan also claims that it demonstrated that it tracked the imports and exports, and ensured, through the yield factor and eligibility ratio, that the quantity of imports was sufficient to cover the quantity it exported. Borusan also claims that it demonstrated that it took into account the grade of the coil when matching imports for exports, and that it is in fact proof of the tie between imports, duties, and exports. Borusan also claims that the Department also verified that Borusan had accounted for scrap and properly calculated the amounts to account for the fact that scrap enters duty free so it is taken into account when calculating the duty drawback owed on finished goods. Borusan also claims that the Department was able to trace the exports through the online customs system back to the export documents and the inward processing license against which exports were being matched and to the actual sales documents and entry into the United States.

Yücel argues that the petitioners falsely accuse it of not providing support for its yield ratios used in the DIIBs, and that Yücel's production records of OCTG, which were verified by the

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[44] *See* Yücel's Case brief at 7 (citing to *Welded Pipe 11-12* at Comment 4).

[45] *See* Petitioners' Case Brief at 39 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7513 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 2; *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 7; *Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994)).

Department, do in fact indicate a yield ratio which is almost identical to the projected ratio used in the DIIBs.

The petitioners argue that the Department should calculate Yücel's duty drawback adjustment based on DIIB data supplied in Yücel's supplemental questionnaire response. The petitioners allege that the updated DIIB data Yücel included in its case brief is untimely new factual information. For this reason, the Department should reject Yücel's duty drawback claim based on this new factual information. The petitioners argue that the continuously changing DIIB import and export data on which Yücel bases its duty drawback adjustment is evidence that its claim for duty drawback is based on internal tabulations rather than data finalized and accepted by the Turkish government and indicates Yücel's inability to demonstrate a link between its imports and exports which, the petitioners argue, is necessary to claim a duty drawback adjustment. The petitioners further argue that Yücel's claim that every U.S. sale is in the DIIB database and every U.S. sale was used to close a DIIB is not true, because not one export was tied to a specific import.

Yücel alleges that the Department erroneously reduced its drawback adjustment by comparing fifteen months of exports of OCTG to twelve months of claims for drawback satisfaction. Yücel argues that, because every sale exported to the United States during the POI, whether by invoice date or by contract date, was used to meet the export commitment of the DIIB, Yücel is entitled to the full amount of the drawback adjustment under the IPR and the drawback adjustment should be applied to either twelve months of exports and twelve months of DIIB data or fifteen months of exports to fifteen months of DIIB data.

The petitioners argue that the Department should follow its normal practice of adding exempted duties to cost of production (COP) regardless of whether it grants a duty drawback adjustment.[46] In addition, the petitioners argue, the cost duty drawback adjustment should be made on the same basis that the sales duty drawback adjustment is calculated and specific to OCTG sales to the United States, because there is no evidence on the record that non-OCTG sales did not have exempted duties for which the respondents may be making additional claims for their products.

Finally, Yücel argues that, because it did not incur any liabilities from imports of coil used in the production of OCTG (because all coil used for OCTG was domestically sourced), no cost adjustment is warranted.

Department's Position: In the Preliminary Determination, we granted adjustments for duty drawback to Borusan and Yücel, pursuant to section 772(c)(1)(B) of the Act. In this final

[46] The petitioners cite to *Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012) and accompanying Issues and Decision Memorandum at Comment 4 ("It is the Department's practice to correspondingly increase the COP for duty drawback costs associated with the exempted duties, even though such costs were not actually paid and recorded in the company's normal books and records."); *Saha Thai Steel Pipe Co. v. United States*, 635 F.3d 1335, 1340-41 (CAFC 2011) ("It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import duties."); *Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 7503 (February 14, 2003) and accompanying Issues and Decision Memorandum at Comment 4. *See* Petitioner's Case Brief at 57.

determination, we continue to find that Borusan and Yücel are entitled to claimed adjustments for duty drawback.

To satisfy section 772(c)(1)(B) of the Act, which states that EP shall be increased by "the amount of any import duties imposed by the country of exportation… which have not been collected, by reason of the exportation of the subject merchandise to the United States," and to confirm the respondents' entitlement to a duty drawback adjustment, we have employed a two-prong test to ensure that 1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.[47]

In previous proceedings involving other products from Turkey, we found that the requirements under the IPR via DIIB documentation, if met by Turkish companies, satisfied the statute with respect to duty drawback adjustments under U.S. law.[48] For this LTFV investigation, each respondent demonstrated that it sufficiently met the requirements of the IPR to be entitled to exemptions on import-related duties and taxes based on exports, including exports of OCTG to the United States. Accordingly, we are granting Borusan and Yücel a duty drawback adjustment for this final determination based on each company's fulfillment of the requirements under the IPR to be entitled to exemptions from import-related duties and taxes.

In order for Turkish companies to qualify for exemptions from paying customs duties and KKDF on imported inputs for finished pipe exports under the IPR, each respondent demonstrated that it applied for or "opened," and the Turkish Government maintained, DIIBs, which is the official mechanism under the IPR by which companies justify, and the Turkish Government affirms, entitlement to such exemptions. Each respondent demonstrated that when it opened the DIIBs, it documented 1) projected quantities of imports, which qualify based on an 8-digit level HTS number (which include API-5CT coil used for OCTG), and 2) projected quantities of exports of various types of finished pipe (including OCTG) based on an approved production yield loss ratio also documented in the DIIB. Each respondent also demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export-contingent.[49] We note there is no indication that the IPR requires subject imports must be actually consumed in the production of, or even possess the technical specifications necessary to produce, reported exports. Finally we also note that there is no indication that the IPR requires that imports precede the exports, but only that there be sufficient export quantities of finished pipe to account for the quantities of imported coil.

Because each respondent has demonstrated that the Turkish Government approved and maintained DIIBs through the IPR which documented exports of OCTG to the United States, we

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[47] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006). The courts have affirmed this test. *See Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

[48] *See*, *e.g.*, *Welded Pipe 11-12* and accompanying IDM at 17-19.

[49] *See* Borusan Sales Verification Report at 21 through 23, and verification exhibits, 14, 15, and 16; and Yücel Sales Verification Report, at pages 13-14 and Exhibit 7.

find that each respondent participated in the IPR for purposes of considering their entitlement to duty drawback adjustments.

Furthermore, although neither company demonstrated final, approved duty and KKDF exemption amounts, because not all of the DIIBs with final import and export amounts had been closed and approved as of the latest DIIB information on the record, each respondent demonstrated that it met the requirements of the IPR via the DIIB documentation process, and there is nothing to indicate that they were not entitled to exemptions under the IPR. We note that the updated DIIB data Yücel provided in its case brief was not untimely-filed new factual information because it is the same DIIB data, aside from minor clerical errors, which Yücel provided during the sales verification. Moreover, our calculation of Yücel's duty drawback adjustment for the final determination will be based on the DIIB data we obtained at the sales verification, not the DIIB data in Yücel's case brief.

Contrary to the petitioners' argument, we do not believe that a comparison to the U.S. drawback system somehow undermines the legitimacy of Turkey's drawback system. In addition, we agree with Borusan and Yücel that none of the cases that the petitioners cite is relevant to the Turkish duty drawback system.

With respect to Yücel's allegation that we erred in the preliminary determination by comparing 15 months of DIIB export (U.S. sales) data to 12 months of DIIB drawback data (POI), we believe our analysis and calculations for the preliminary determination accurately portray how we intended to treat Yücel's duty drawback. The operational lives of the two DIIB certificates at issue were not tied to our POI and none of the imported materials was used to produce OCTG. In order to convert Yücel's duty drawback amount to a per-unit adjustment of OCTG sales for the POI, we deliberately chose to use the total drawback derived from the two DIIB certificates at issue. The imported materials covered by these certificates came in over a 12-month period while the OCTG exports were made over a 15-month period. We will not change this aspect of our methodology in our calculations for the final determination.

We are revising the calculations of Yücel's duty drawback adjustment for this final determination. As noted above, section 772(c)(1)(B) of the Act states that the U.S. price should be increased by the amount of import duties that have not been collected by reason of the exportation of subject merchandise to the United States. When applying for a DIIB, the Turkish government requires that companies project the volume of imports and exports by 8-digit HTS category. Our analysis of Yücel's DIIBs Nos. 1650 and 4040 indicates that Yücel projected that exports of OCTG would amount to only a portion of its total exports of all pipe products. Although our analysis of DIIB Nos. 1650 and 4040 indicates that Yücel's reported total volume of pipe product exports included the volume of its U.S. sales of OCTG, Yücel reported that most of these exports of OCTG were non-OCTG pipe products (*e.g.*, HTS nos. other than 73.06.29.00) to the Turkish government. Indeed, the volume of pipe product exports identified as OCTG by Yücel to the Turkish government on these DIIBs appears to be only a portion of the volume of all its sales of OCTG to the United States. Accordingly, for this final determination, we find that Yucel is only entitled to a duty drawback adjustment equal to the amount of any import duties imposed by the Turkish government which were not collected by reason of the portion of its OCTG exports as it reported to be OCTG to the Turkish government. Therefore, we are

modifying our calculation of Yücel's duty drawback adjustment to reflect only the import duties exempted based on the volume of exports of OCTG to the United States it reported to the Turkish government in the DIIBs and for which exemptions were claimed under the IPR.[50]

For Borusan we are granting the duty drawback adjustment as it was reported. We are satisfied that Borusan fulfilled the requirements for receiving the duty drawback adjustment. Specifically for Borusan's CEP sales, we are not making any adjustments to Borusan's calculation, because the calculation is already on as specific a basis as possible. Borusan calculated the adjustment amount it reported by matching the inward processing certificate to the exports of CEP sales of merchandise under investigation to derive the actual amount of duty drawback claimed on those exports to each CEP company separately. However, because it was not possible to tie each export from Borusan to each sale made by the CEP companies to the final customer, Borusan allocated the total adjustment amount for each CEP company over all sales the CEP company made to the final customer.

Finally, we will not adjust either respondent's COP for exempted duties. The record indicates that Yücel did not incur any actual or contingent duties which would serve as a basis for such a cost adjustment, because all coils used to produce OCTG were obtained from Turkish sources. As such, no adjustment to Yücel's costs for exempted duties is deemed appropriate.

Moreover, however, this issue does relate to Borusan because the company purchased hot-rolled coils from both domestic and imported sources. In calculating its reported costs, Borusan included an amount for exempted import duties. It would be inappropriate to add the calculated duty drawback adjustment directly to the control-number (CONNUM)-specific cost. The reported direct material cost (DIRMAT) in the cost file includes not only the amount paid for imported coils, but also the amount paid for domestically-sourced coils. The price of the domestically-sourced coils in a country that has an import duty scheme is affected by the import duty. Under an import duty regime, there is a presumption that domestic prices will increase to reflect world market prices, plus the amount of the duties imposed on imports (*i.e.*, the "duty wall").[51] Thus, Borusan's reported DIRMAT includes the imported coils without duty, plus the higher-price domestically sourced coils. Both sources of coils must be considered when accounting for the exempted duties or in making an adjustment to DIRMAT. In reporting the adjustment to its costs for exempted import duties, Borusan appropriately calculated the percentage of exempted import duties missing from the reported DIRMAT field, and applied the percentage increase to DIRMAT. Adding the calculated duty drawback adjustment directly to the CONNUM-specific cost would be incorrect because this assumes that the reported DIRMAT is calculated based only on imported coils and ignores the domestically-sourced coils. Finally, the petitioners assert that the respondent is assuming that none of its remaining sales included exempted duties because the allocation is over total cost of goods sold. Borusan's calculation, however, does not rely on the total cost of goods sold and makes no such assumption about sales.

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[50] For details on our calculation, *see* Memorandum to the File regarding "Certain Oil Country Tubular Goods from the Republic of Turkey - Final Determination Analysis Memorandum for Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş." dated concurrently with this memorandum (Yücel Final Analysis Memorandum).

[51] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64696 (October 20, 2010) and Accompanying Issues and Decision Memorandum at Comment 8.

For this final determination, therefore, we have made no changes related to the inclusion of exempted duties in cost for either Yücel or Borusan (with the exception of correcting a minor error in Borusan's duty cost adjustment, as discussed at Comment 9).

Constructed Value Selling Expenses for Yücel

Comment 2: Yücel alleges that the Department erroneously applied non-OCTG pipe selling expenses to the total cost of sales for all products in its calculation of CV selling expenses for Yücel. Yücel argues that the Department should apply non-OCTG pipe selling expenses to non-OCTG pipe cost of sales, or total selling expenses for all products to total cost of sales for all products. Yücel also alleges that the Department erroneously failed to increase the CV selling expense ratio by imputed credit. Yücel argues that such an adjustment is consistent with Department's practice.[52] Yücel argues that the calculation of the amount for imputed credit was verified by the Department during the sales verification. Yücel further argues that once the correction is made to the CV selling expense ratio, the Department must recalculate the CV Profit ratio using the revised CV selling expenses.

The petitioners argue that we should not make any modifications to the Department's calculations for Yücel. The petitioners argue that Yücel's claim that its calculation of imputed credit was verified by the Department is false and disregards the Department's correction of Yücel's calculation earlier in the proceeding. The petitioners argue that such disregard for the Department's instructions demonstrates that Yücel has failed to cooperate to the best of its ability and, therefore, the Department should apply adverse inferences. The petitioners further argue that the support Yücel provided for its claims provides no justification for the Department to make revisions to its calculations.

Department Position: For the preliminary determination, we applied non-OCTG pipe selling expenses to the total cost of sales for all sales in the calculation of CV selling expenses for Yücel. For the final determination, we will make the change requested by Yücel and apply non-OCTG pipe selling expenses to non-OCTG pipe cost of sales.[53] We did not add imputed credit to CV selling expenses because, according to section 773(a)(6)(A) of the Act, we should increase price (only) "by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States." Yücel cites to *Steel Pipes from Thailand* and *Newspaper Presses from Germany* as support for its claim that it is our practice to add imputed credit to CV selling expenses. However, in accordance with our normal practice, in neither proceeding did we add imputed credit to CV selling expenses. Furthermore, because we corrected Yücel's calculation

[52] Yücel cites to *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 64 FR 56759, 56770 (October 21, 1999), at Comment 7 (*Steel Pipes from Thailand*); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001) and accompanying Issues and Decision Memo at Comments 4 and 10 (*Newspaper Presses from Germany*). *See* Yücel's Case Brief at 8-9.

[53] For details on our revised calculation, *see* Memorandum to the File regarding "Certain Oil Country Tubular Goods from the Republic of Turkey - Preliminary Determination Analysis Memorandum for Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş." dated concurrently with this memorandum (Yücel Final Analysis Memorandum).

of credit expenses in the preliminary determination, we will make no changes for the final determination.

Constructed Value Profit for Yücel

Comment 3: The petitioners argue that, of the three options available to the Department under the statute to calculate CV profit for Borusan (if its home market is found to be non-viable) and Yücel, the Department should select the method which presents the best available data. The petitioners argue that the use of data connected with the sale of non-OCTG pipe products, which have different physical characteristics, different costs of production, and are sold in different markets with different forces driving demand and price, which equates to much lower profitability compared to OCTG, would result in distorted margin calculations. For this reason, the petitioners argue, the Department should rely on Tenaris' 2012 financial statements, because Tenaris is an established global producer of OCTG, and its data and its profit margins, which are in line with other OCTG producers with viable home markets, are representative and reflective of those experienced by an OCTG producer selling over a broad period of time. The petitioners further argue that Tenaris has a consistent margin history and its 2012 profit margin of 23 percent represents the best information available regarding the profit that the respondents would otherwise earn if they had a viable home or third-country market. Alternatively, the petitioners argue, the Department should use the domestic industry's 2010 operating margin of 13.6 percent in its calculation of CV profit.

Borusan strongly objects to the Department's placing on the record Tenaris' financial statements, a company which is the parent company of Maverick, because, had it been done by U.S. Steel or Maverick, it would have been deemed untimely. Such action, Borusan argues, circumvents the intent of the Department's regulations and creates the appearance of bias on the part of the Department. Borusan further argues that such action contrasts with its practice of conducting independent research on possible surrogate values and then placing that information on the record for the parties to comment on, which, had this been done, the Department would have found numerous publically-available financial statements to place on the record. In addition, Borusan argues, the Department has not explained why it has taken such action. Further, Borusan argues that the Department's inclusion of the original cover letter from counsel to U.S. Steel, when placing this information on the record, suggests that the reason was for the furtherance of the legal positions advocated by U.S. Steel.

Borusan further argues that Tenaris' financial statements are not relevant to the Department's calculation of CV profit, because the statute requires that CV be based on sales in the foreign country under investigation. It is clear, Borusan argues, that Tenaris is not a producer of OCTG in Turkey and its financial data do not represent amounts normally realized by exporters or producers in Turkey on domestic sales of pipe and tube products, just as the Department concluded in OCTG from Korea. Borusan points out that Maverick's claim that Borusan's profits on other pipe products are not of the same general category of products is made without any supporting citation of precedent from the Department's thirty-year history of investigating and reviewing pipe cases.

Yücel argues that the petitioners' arguments concerning the use of the Tenaris financial statements are fatally flawed. Yücel argues that Tenaris does not segregate the profitability attributable to seamless and welded OCTG even though these two products have no commonality of production processes or raw material and the demand for seamless is quite different from the demand for welded. Yücel explains that, while Tenaris produces a wide range of OCTG products, they themselves only produce a limited range of welded OCTG and have neither the ability to produce seamless OCTG, nor the finishing capabilities which would enable it to produce the higher-value-added OCTG. Yücel asserts that the higher value OCTG drives Tenaris' profitability. Indeed, Yücel argues that its OCTG production has more in common with its other hydrostatically tested pipes than it does with the seamless OCTG produced by Tenaris.

Yücel also argues that section 772(e)(2)(B)(iii) of the Act precludes the use of the Tenaris profit ratio. Specifically, Yücel argues that section 772(e)(2)(B)(iii) of the Act requires that the profit ratio of such a third party be capped at the profit ratio of producers of the same general category of products in Turkey and there is no information on the record of this proceeding which would allow the Department to calculate such a profit cap. Moreover, Yücel argues that the SAA states that the Department will not impute a profit cap on the basis of facts available unless the respondent has been uncooperative.[54]

Department Position: As an initial matter, we note that because we have determined that Borusan has a viable home-market, we have calculated CV profit for Borusan pursuant to section 772(e)(2)(A) of the Act. For a detailed discussion of our decision concerning Borusan's home-market viability, see comment 4.

For the Preliminary Determination, in calculating CV profit under section 772(e)(2)(B)(i) of the Act, we calculated Yücel's profit based on its home-market sales of non-OCTG pipe products.[55] However, for the final determination we calculated CV profit using the 2012 audited consolidated financial statements of Tenaris.

Yücel does not have a viable home or third-country market to serve as a basis for normal value (NV). Accordingly, NV must be based on CV. In the absence of a viable comparison market, we are unable to calculate a CV profit using the preferred method under section 772(e)(2)(A) of the Act for Yücel.[56] When the preferred method is unavailable, section 772(e)(2)(B) of the Act establishes three alternatives for determining CV profit**.** They are:

> (i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review … for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for …

[54] Yücel cites to Statement of Administrative Action accompanying the Uruguay Round Agreements Act, as reprinted in 1994 U.S.C.A.A.N. (SAA) at 841 (1994). *See* Yücel's Case Brief at 14.
[55] *See Preliminary Decision Memorandum* at 25.
[56] *Id.*, at 4177 ("where the method described in section 773(e)(2)(A) cannot be used [. . .] because there are no home market sales of the foreign like product . . .").

> profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or (iii) the amounts incurred and realized … for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise {(*i.e.*, the "profit cap")}.

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit.[57] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[58] Thus, we have discretion to select from any of the three alternative methods, depending on the information available on the record.

The specific language of both the preferred and alternative methods appears to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) production and sales of the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit from available record evidence, we may not be able to find a source that reflects both of these factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, etc., judged against the above criteria, will provide guidance in determining which profit source to rely upon.

In this case, based on available data, we are faced with several imperfect options for CV profit that reflect at least one of the criteria noted above. We must, therefore, weigh the value of the available data and, in particular, determine which competing requirement is more relevant for this case based on the record before us. With each of the statutory alternatives in mind, we have evaluated the data available and weighed each of the alternatives to determine which surrogate data source most closely fulfills the aim of the statute. We note that we could not rely on alternative (ii), *i.e.*, profit for other exporters or producers subject to the investigation, Borusan, because of concerns regarding business proprietary information (BPI).[59] For Yücel, we therefore weighed the alternatives available under subsection (i), *i.e.*, the actual profits incurred and realized by Yücel in connection with the production and sale, for consumption in the foreign

[57] *Id.*, at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.")

[58] SAA at 840.

[59] *See*, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at comment 26 (declining to use Mabe's CV profit figure as a profit cap so as to avoid disclosing Mabe's business-proprietary information).

country, of merchandise that is in the same general category of products, and available alternatives under subsection (iii), *i.e.*, any other reasonable method to determine the appropriate data to use to calculate CV profit.

In weighing the alternative information and determining which source to use, we first determined which products fit within the "same general category of products as subject merchandise." The term "general category of products" is not defined in the statute. However, the SAA provides that the term "encompasses a category of merchandise broader than the foreign-like product." In that regard, we considered whether subject merchandise and other pipe products such as line pipe, structural pipe, standard pipe, and downgraded merchandise are similar enough to be considered within the general category of product. Additionally, we considered whether a subset of non-OCTG pipe products, namely hydrostatically-tested non-OCTG pipe products, are similar enough to be considered as being within the same general category of products. Determining which products are sufficiently similar to OCTG to be considered within the same general category of product is imperative under alternative (i), which bases profit on what is realized from the production and sale of merchandise in the same general category of products as subject merchandise. It is equally important under alternative (iii) because it goes directly to the question of how to evaluate the surrogate financial information of Tenaris, Borusan, Ratnamani Metals and Tubes (Ratnamani), Maharashtra Seamless Ltd. (Maharashtra), Bhushan Steel Ltd. (Bhushan), Oil Country Tubular Ltd. (OCTL), as well as, general information related to the general profitability of the U.S. and Turkish pipe and tube producers.

In assessing whether a given product is in the same general category of products as the subject merchandise for purposes of calculating a CV profit, we evaluated the products in question from both a production and sales perspective, as profit is a function of both cost and price. Differences between the physical characteristics of products, differences in production processes, quality, testing and certification requirements, how the products will be used, and the market conditions associated with the industries and customers who purchase and use the different products all materially impact the profit earned on the different products. We have considered all of these points, and after careful consideration, we believe that line, structural and standard pipe products are not in the same general category of products as OCTG. Similarly, we believe that the hydrostatically tested subset of non-OCTG pipe products does not represent the same general category of products as OCTG. While we recognize that non-OCTG pipe products and OCTG oil casing and tubing are all tubular products of circular cross section that can be made by either the welded or seamless process and can be made in the same pipe-making mill, the chemical, physical and mechanical characteristics of each product can differ significantly.[60] Likewise, even though certain non-OCTG pipe (*i.e.* line pipe), can be used in the oil and gas industry, the line pipe is used for the transport of oil and gas from the point of production and to distribute to consumers, while OCTG is used "down hole" for oil and gas exploration and production.

[60] *See* Maverick's May 19, 2014 submission at Exhibit Q of Attachment 2, and, Specification for Casting and Tubing – API SPECIFICATION 5CT, Ninth Edition, July 2011, Effective Date: January 1, 2012, Copyright American Petroleum Institute. See excerpts placed on the record in petitioner's rebuttal comments on product characteristics and product matching dated August 12, 2013. See also, Steel Products Manual – Carbon Steel Pipe, Structural Tubing, Line Pipe, Oil Country Tubular Goods, April 1982, Published by the American Iron and Steel Institute.

Regarding the differences, OCTG casing and tubing performance requirements are very different from the noted non-OCTG products, as OCTG pipes are subjected to external collapse pressures, internal pressures, and tension strength requirements when used in vertical oil wells,[61] whereas, standard pipe and line pipe products are primarily intended for the conveyance of fluids and gases.[62] Moreover casing, which is the overwhelming majority of OCTG consumed, is used as a structural support in an oil well to protect the hole that has been vertically drilled.[63] It must be sufficiently strong in collapse strength to resist pressures from the outside of the well, and also must resist pressures that can exist from inside the well.[64] In addition, it must have sufficient joint strength to support its own weight and threading sufficient to resist well pressures. Tubes must have sufficient tension strength to carry its own weight, the weight of a tubing string (i.e., the series of pipes attached together and forming the entire string), and any oil within the tubing.[65] To obtain these performance requirements requires different steel possessing different characteristics than the steel used to produce non-OCTG products (i.e., the steel grades used to produce OCTG are not used to produce non-OCTG). While OCTG may be made on the same "lines" or in the same production cost centers as non-OCTG pipes, it uses different grades of steel to fulfill different performance requirements. We disagree with Yücel that because OCTG and some line pipe are both hydrostatically tested we can conclude that the products are in the same general category of merchandise. Hydrostatic testing tests outward pressure and leaks. While OCTG is hydrostatically tested, OCTG must also meet grade specifications on inward pressure and tensile strength.

Comparing these differences further, the destructive and non-destructive testing requirements are much greater for OCTG casing and tubing because of the stresses to which the products are subjected.[66] Indeed, the quality standards, testing and certification for OCTG are substantially different from those of line pipe and standard pipes. We also note that these differences are so significant that how the pipes are connected to each other also changes. Line pipe is connected by welding pipes together while OCTG casing and tubing are connected in different ways (e.g., inset ends and couplings) because of the stresses that are placed on the joint connections.[67] For casing, the ends are threaded and subsequently connected by an assortment of couplings, depending on the environmental requirements of the application.[68] For tubing, the ends usually will be upset, which is a hot-forging process used to increase the metal thickness of the ends, and which will be subsequently threaded. Hence, they will possess mechanical and physical characteristics unlike those of the other products and will be subjected to more demanding testing requirements. The performance measures, production processes, alloys, and physical and mechanical characteristics of OCTG casing and tubing products differ in such significant ways from those of standard pipe and line pipe that these products should not be considered to be of the same general category of product for purposes of section 773(e)(2)(B) of the Act. In summary, OCTG casing and tubing are subjected to extreme pressures not characteristic of standard pipe and line pipe applications. Accordingly, because we have determined that non-

[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

OCTG pipe products (as well as the subset of hydrostatically-tested non-OCTG pipe products) are not in the same general category of products as OCTG, we are unable to calculate CV profit pursuant to section 772(e)(2)(B)(i) of the Act, i.e., the actual profits incurred and realized by Yücel in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products.

The record shows that OCTG and non-OCTG are sold to different end users for use in different applications, and that these different end users are subject to distinct forces which drive prices, demand, and profitability. OCTG demand is driven by oil and gas exploration and production, which has been strong globally over the past few years, while demand for non-OCTG pipe products has been stagnant over the past few years. Strong demand translates into higher prices and higher profits. We also noted that in the Tenaris 2012 financial statements the company stated that "in 2012, our sales of premium casing and tubing products rose 27% year on year."[69] Additionally, record evidence indicates that end users in the construction sector are generally unable and unwilling to pay the price premium paid by end users in the oil and gas exploration and production sector.[70] Moreover, according to Tenaris, "historically, most of Projects sales were of line pipe for onshore pipelines and equipment for petrochemical and mining applications, but now, we are positioning ourselves as a supplier of mainly OCTG and offshore line pipe, very similar to the rest of the Tubes segment"[71] and "{i}n the Middle East and Africa, sales decreased mainly due to lower shipments of line pipe products and lower selling prices."[72]

We note that, while we do not consider line pipe and standard pipe to be in the same general category of products as OCTG, we do find that the same general category of products that encompass the subject casing and tubing would not be limited to just those products. This category would include other tubular products that are used in the exploration and production of oil and gas. These would be products that would exhibit the same fundamental characteristics for "down hole" applications and would include subject OCTG, non-scope OCTG, such as stainless products, and drill pipes. However, we do not have CV profit information on the record pertaining to any of these products that would be considered the general category of product.

Given the conclusion that Yücel's hydrostatically-tested non-OCTG pipe products are not within the same general category of products as subject merchandise, we could not rely on alternative (i) to calculate CV profit for Yücel. Therefore, we have evaluated the alternative sources of potential surrogate profit information. In evaluating the different alternatives available under section 772(e)(2)(B)(iii) of the Act, we followed the analysis established in Pure *Magnesium from Israel*.[73] In *Pure Magnesium from Israel*[74] we set out three criteria for choosing among surrogate data under section 772(e)(2)(B)(iii) of the Act: 1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; 2) the extent to which the financial data of the surrogate company reflect sales in

[69] *See* page 6 of Tenaris S.A.'s 2012 annual report, which was placed on the record by the Department on May 9, 2014 ("Tenaris S.A.'s 2012 Annual Report").
[70] *See* Maverick's May 19, 2014 submission at Exhibit Q of Attachment 2.
[71] *See* page 11 of Tenaris S.A.'s 2012 Annual Report.
[72] *See* page 27 of Tenaris S.A.'s 2012 Annual Report.
[73] *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (Sept. 27, 2001) (*Pure Magnesium from Israel*) and accompanying decision memorandum at Comment 8.
[74] *Id.*

the home market and do not reflect sales to the United States; and, 3) the contemporaneity of the data to the POI. In *CTVs from Malaysia*, we added a fourth criterion of the extent to which the customer base of the surrogate and the respondent were similar (e.g., original equipment manufacturers vs retailers). These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case under subsection (iii).

As stated above, in this case, we have on the record financial data for six companies from which to select a CV profit, as well as the aggregate profit rate for the U.S. producers and the overall profit rates for certain Turkish producers. Tenaris is a multinational company that produces and sells OCTG worldwide. Tenaris S.A. has OCTG manufacturing plants in many countries around the world. The Tenaris consolidated financial statements are for 2012, which overlaps with half of the POI, and they predominantly reflect production and sales of OCTG.[75] Less than 50 percent of its sales were to the North American market,[76] which includes the United States, Canada and Mexico. Thus, over 50 percent of its sales were to non-US customers. The financial statements indicate that Tenaris' sales are generally made to end users, with export sales done through a centrally managed global distribution network.[77] Tenaris' financial statements indicate that it has some integrated steel making, but it also purchases steel coils and plate products for fabrication into its end products, similar to Yücel.[78] Also, contrary to Yücel's assertion, Tenaris produces a sizable amount of welded OCTG. Specifically, approximately 70 percent of Tenaris' tube production was seamless while the remainder was welded.[79]

We note that we are unable to fully analyze the financial information of Ratnamani, Maharashtra, and Bhushan because we do not have the complete financial statements on the record and the limited information which we do have lacks the requisite details. Nonetheless, record evidence shows that, based on the incomplete financial statements, all three appear to produce OCTG products and non-OCTG products. However, we are unable to approximate what percentage of their production and sales activities are from OCTG versus non-OCTG products.[80] While we have the complete financial statements of OCTL, excerpts from the company's website indicate that the company is actually a processor which performs finishing operations on OCTG tubing and casing produced by other manufacturers, rather than a producer of OCTG on its own (i.e., the company purchased green tube and performed finishing operations).[81]

We note that we cannot use the generalized information pertaining to the overall profitability of certain Turkish pipe and tube producers because we only have the companies' overall sales and

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[75] *See* pages 12 and 15 of Tenaris S.A.'s 2012 Annual Report. *See also*, Maverick's May 19, 2014 submission at Exhibit J of Attachment 1 (explaining that, in FY 2011, 85 percent of Tenaris' revenue was attributable to the Tubes segment which consists of the "production and selling of both seamless and welded steel tubular products and services and services mainly to the oil and gas industry, particularly of oil country tubular goods (OCTG) used in drilling operations and certain other industrial operations").

[76] *See* page 15 of Tenaris S.A.'s 2012 Annual Report.

[77] *See* page 80 of Tenaris S.A.'s 2012 Annual Report.

[78] *See* page 21 of Tenaris S.A.'s 2012 Annual Report.

[79] *See* page 5 of Tenaris S.A.'s 2012 Annual Report.

[80] *See* Maverick's May 19, 2014 submission at Exhibits K, L, M, and N of Attachment 1

[81] *See* Attachment to Memo to the File entitled "Certain Oil Country Tubular Goods from Turkey - Placing Oil Country Tubular Ltd. Information on the Record," dated June 11, 2014.

profit figures and have no way of further analyzing the profit figures.[82] Also, because we lack any details about the products sold by these Turkish producers, or to which markets the sales relate, they cannot even be used as a possible profit cap under alternative (iii). Additionally, while we are unable to use Borusan's producer level financial statements due to BPI concerns,[83] we determine that it would not be appropriate to use the public consolidated financial statements of Borusan and its subsidiaries. Specifically, it would not be appropriate to use Borusan's public consolidated financial statements because of the fact that the statements primarily reflect the results of operations for products other than OCTG. We also note that neither Borusan's producer level nor consolidated financial statements are usable as a profit cap.[84] We also determine that it would not be appropriate in this case to use the aggregate profit data of the U.S. producers because the data is impacted by allegedly dumped merchandise.

In weighing the above facts in line with the criteria set out in the statute and in *CTVs from Malaysia*, we consider the Tenaris financial statements the best option under alternative (iii) for determining CV profit in this case. As OCTG is a very specialized premium product used exclusively in the oil and gas exploration industry with significant quality differences, different end uses, different end customers, and different demand patterns than those of non-OCTG pipe, it is important that we rely on a source that closely reflects such a product. We believe, due to the nature of this product, that it is more compliant with the statute to calculate profit using a company that mainly sells either the identical product or, alternatively, merchandise in the same general category of products. Because Tenaris is an OCTG producer that sells a broad range of OCTG, and in virtually every market in which OCTG is sold, we find that its average profit experience is representative of sales of OCTG across a broad range of different geographic markets. As the profit from its financial statements is predominantly of OCTG, it reflects more precisely the profit on the subject merchandise. While we would prefer to use the financial statements of an OCTG producer who primarily produces and sells OCTG in Turkey, the record is devoid of such information.

We are unable to calculate a profit cap for Turkey under section (iii) because we do not have home market data for other exporters and producers in Turkey of the same general category of products. As discussed previously, the summary information that we have on the record concerning the sales and profits of certain Turkish producers does not segregate the information by product or market.[85] Despite Yücel's arguments that the lack of information which may be used to calculate a profit cap precludes us from relying on (iii) absent a finding that Yücel has been uncooperative, we note that the SAA recognizes that situations may exist in which we, due to the absence of data, are unable to use clauses (i) and (ii) and also are unable to calculate a profit cap. *See* SAA at 841, as reprinted in 1994 U.S.C.C.A.N. at 4177. It states that "[t]he Administration also recognizes that where, due to the absence of data, Commerce cannot determine amounts for profit under alternatives (1) and (2) or a 'profit cap' under alternative (3),

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[82] *See* Attachment 1 of Borusan's submission dated May 19, 2014.

[83] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at comment 26 (declining to use Mabe's CV profit figure as a profit cap so as to avoid disclosing Mabe's business-proprietary information) .

[84] We note that, for the same reasons neither of Borusan's financial statements is an appropriate source for the calculation of CV profit, neither set of Borusan's financial statements is suitable for use as a profit cap.

[85] *See* footnote 30 and accompanying text.

it might have to apply alternative (3) on the basis of 'the facts available'. This ensures that Commerce can use alternative (3) when it cannot calculate the profit normally realized by other companies on sales of the same general category of products."

We also disagree that the Tenaris' profit figure is aberrational or unrepresentative. Rather, the Tenaris profit information is directly on point, because it reflects the merchandise under investigation and the industry in which the merchandise is sold. As Tenaris sold OCTG in significant quantities in virtually every market in which OCTG is sold, its profit is representative of sales of OCTG across a broad range of different geographical markets.

While Yücel claims that Tenaris' profitability is driven by the higher value seamless OCTG and that Yücel only produces a limited range of the lower value welded OCTG, it should be noted in this regard that we have previously rejected the argument that sales of one type of OCTG (*i.e.*, seamless OCTG) should not be used to calculate CV profit for sales of another type of OCTG (*i.e.*, welded OCTG). Specifically, in *Oil Country Tubular Goods from Argentina*, the respondent argued that we should not use the financial statements of Siderca S.A.I.e. ("Siderca") as a basis for CV profit because Siderca sold only seamless OCTG whereas the respondent sold only welded OCTG. The respondent claimed that this meant that Siderca's "production processes, costs and commercial environments are very different." We rejected this argument, finding that "{w}elded and seamless OCTG are both OCTG products"[86] and that it was entirely appropriate, therefore, to calculate CV profit based on seamless OCTG.

As stated above, we consider it more appropriate to have a profit reflective of the specialized OCTG products. We analyzed the differences between OCTG pipe products and hydrostatically tested non-OCTG pipe products, as well as the financial statements of the possible surrogate companies. We believe it is compliant with the statute to calculate profit using a company that mainly produces and sells the merchandise under consideration. Thus, for the final determination, we calculated a profit using the 2012 audited consolidated financial statements of Tenaris.

Borusan's Home Market Sales

Comment 4: The petitioners argue that Borusan's home market (HM) sales are artificially constructed and engineered to conceal Borusan's dumping and the Department should disregard them for the purpose of calculating normal value for the final determination.

The petitioners argue that the Department should find that Borusan engineered its HM sales to create a fictitious market for the sole purpose of concealing its dumping activities. The petitioners argue that 773(a)(2) of the Act prevents the Department from considering any "pretend sale or offer for sale" or "sale or offer for sale intended to establish a fictitious market." Citing *PQ Corp.*, the petitioners argue that the provision is intended to "prevent parties from manipulating dumping margins by either setting up pretend sales, or offering merchandise at a

[86] See the Final Results and Rescission in Part of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, (Oil Country Tubular Goods from Argentina) 68 FR 13262 (March 19, 2003) and the accompanying Issues and Decision Memorandum at comment 1.

price that does not reflect its actual market price."[87] The petitioners argue that, although the statute specifies one example of a fictitious market situation, the relevant legislative history indicates that "the purpose of this provision is to highlight one particular example of a fictitious market,"[88] and, therefore, the Department may still find a fictitious market exists in other circumstances.

The petitioners argue that Borusan's home market appears out of nowhere and then disappears just as quickly, calling into question the legitimacy of these sales. The petitioners claim that Borusan had no established pattern of selling OCTG to customers in the HM and the large majority of its HM sales of OCTG throughout its entire history of OCTG HM sales were carefully positioned to sit squarely within the POI. The petitioners also argue that the customers to whom Borusan sold OCTG in the HM during the POI further indicate that the HM sales were concocted and constructed to establish a fictitious home market. The petitioners claim that the majority of HM customers that were in the business of selling prime merchandise ultimately could not offload the OCTG and cancelled the sales. Furthermore, the petitioners claim that the only customer(s) that did not cancel the sales of OCTG were those with longstanding relationships with Borusan that were in the business of selling scrap and seconds, and that, after having allegedly denied selling OCTG at deep discounts to the customer(s) absorbing Borusan's scrap and seconds prior to the investigation period, Borusan agreed to do so at the first rumors of an impending investigation to mask its dumping and create a home market. The petitioners also argue that the quantity and timing of the HM OCTG sales further call into question the legitimacy of the sales. The petitioners claim that the low HM sales volume relative to the U.S. sales is suspect. The petitioners add that a large portion of the HM sales were made after rumors of a potential investigation circulated and upon examination seem to have been carefully plotted and timed with a regularity. The petitioners add that the HM sales seem to have an apparent premeditated uniformity of products in contrast to the sales to the United States which were of a greater product variety dictated by the diverse product need in any single oil and/or gas drilling project due to difference in drilling locations, depths, and durations. The petitioners also claim that the details of the sales transaction do not make sense commercially and the way that the U.S. sales match to HM sales is also suspicious and cannot be explained by mere happenstance but only by careful planning.

Alternatively, the petitioners, citing sections 773(a)(1)(B)(i) and 771(15) of the Act and the SAA argue that the Department should find that Borusan's HM sales were made outside the ordinary course of trade for OCTG and should, thus, disregard Borusan's sales to customers in its HM in the Department's calculation of a dumping margin. The petitioners argue that Borusan's HM sales were not made in the ordinary course of business because they allegedly appear to be overruns or seconds, were not sold for use in oil and gas applications in Turkey, were made in unusual quantities, were made pursuant to unusual terms of sale that were characterized by promotional motivations according to which the sales were cancelled, and were motivated by an incentive to suppress normal value comparison prices.

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[87] *See PQ Corp. v. United States*, 652 F. Supp. 724, 729 (Ct. Int'l Trade 1987) (*PQ Corp.)*

[88] *See* Petitioners' Case Brief at 5 (citing Omnibus Trade and Competitive Act of 1988, S. Rep No. 100-71 at 126 (1987)).

Specifically, the petitioners allege that the HM sales that Borusan made to certain domestic distributors were overruns initially intended for sale to other customer(s) but were made to those distributors to enable them to bid on and obtain certain sales contracts and that the sales were made pursuant to an agreement that they could return the merchandise and BMB would cancel the sales. The petitioners also allege that the HM sales made to a customer that absorbs all of Borusan's scrap and seconds were of products that were not of a sufficiently high quality to serve in Turkish oil and gas applications (*i.e.*, seconds).

The petitioners argue that the products that Borusan sold in the HM were not for use in oil and gas applications as they do not appear to be capable of being employed in an oil or gas well. The petitioners claim that Borusan's explanation that its products were for use in geothermal applications is insufficient to overcome the fact that Borusan's products were simply not employed in Turkish oil and gas field applications. The petitioners question Borusan's claim that it has no basis to believe that the merchandise it sold in the HM was not intended for export because Turkey's domestic industry consumes very small quantities of welded pipe, the welded pipe sought for procurement must meet certain high quality specifications, and the welded pipe must be finished (*i.e.* threaded, coupled and sometimes heat treated). The petitioners claim that the record indicates that the welded pipe Borusan sold in the HM was not finished by Borusan, by the customer(s), or by a third party on behalf of Borusan or the customer(s). The petitioners argue that historically the scope of the OCTG cases has been specifically crafted and intended to cover pipes for use in the drilling of oil and gas and that the scope in this case applies to products intended for use in the oil and gas industry and makes no mention of geothermal applications. The petitioners argue that the geothermal and oil and gas markets are not the same and should not be treated as such. Specifically, the petitioners claim that in the geothermal sector the product requirements, especially regarding finishing, are much more lax than in the oil and gas market. The petitioners claim that competition in the geothermal sector is based on price and that for OCTG to be commercially viable in the Turkish geothermal sector it has to be offered at deep discounts. The petitioners conclude that, the fact that pipe which was produced to OCTG standards but offered at a considerable discount to make it competitively priced in the geothermal sector indicates that the any sale made to the geothermal industry is outside the ordinary course of trade.

The petitioners next argue that Borusan's sales to HM customers have been irregular both in frequency and in amount, and that this pattern of sales and Borusan's claim that it ceased HM sales based on its plans to establish a threading and coupling facility do not make commercial sense, further indicating that the sales were made outside the ordinary course of trade. The petitioners claim that it does not make commercial sense to invest in a threading facility capable of threading and coupling OCTG to API standards if Borusan's customers in the geothermal market do not require that the threading be performed by an API-licensed threader. The petitioners also claim that ceasing sales in a growing market in anticipation of the completion of a finishing facility does not make commercial sense if indeed there was a legitimate home market for Borusan's product. Finally, the petitioners argue that the creation of a threading facility has no impact on Borusan's HM sales made during the POI.

The petitioners argue that Borusan's HM sales were made pursuant to unusual terms of sale with promotional motivations and, as such, were made outside of the ordinary course of business.

The petitioners claim that Borusan's statement that it made HM sales to domestic distributors to enable them to bid on, and obtain, contracts for anticipated drilling projects clearly indicates the promotional nature of the sales at issue. The petitioners also claim that the additional sales term (that the distributors could return the merchandise and Borusan would cancel the sales if the distributors were unable to secure sales supplying the geothermal industry) and Borusan's statement that it accepted the unusual sales term in order to promote itself as a supplier of pipes in what it was expecting to become a viable HM for geothermal applications further supports the promotional nature of the sales and, as such, were made outside the ordinary course of trade.

The petitioners argue that the irregular volume, timing, and pattern of Borusan's HM sales indicate that they were made solely to mask dumping activity and avoid potential antidumping duties. As such, the petitioners claim that they were made outside the ordinary course of trade and the Department should nullify them.

Borusan argues that there is no lawful basis to disregard its HM sales and that the Department should continue to use the HM sales to calculate normal value because the record shows that Borusan had a viable HM consisting of legitimate sales of prime quality OCTG made to an established distributor of pipe and tube products, at prices above the cost of production, and consisting of products that are identical or similar to the OCTG exported to the United States.

Borusan argues that its HM is viable because its HM sales quantity exceeds 5 percent of its U.S. sales quantity. Borusan further argues that the legitimate nature of its HM sales is supported by the fact that the HM sales were thoroughly verified by the Department and no discrepancies of any kind were noted in the verification report and that the record includes sales documentation for nearly all HM sales. Borusan also argues that, contrary to the petitioners' allegations, its reported HM sales were of prime OCTG and not overruns or seconds and that the Department verified that the purchase orders, the mill test certificates, and the invoices all confirmed that the merchandise as ordered, sold, and released to the customer was of API 5CT certified OCTG.

Borusan also argues that the merchandise it sold in the HM falls within the scope of this investigation. Borusan argues that its HM customer is a distributor and, therefore, it does not know to whom it was ultimately sold or for what specific end-use. Borusan argues that it never stated that the merchandise sold in the reported HM sales was for use in geothermal applications but, rather, in response to Maverick's assertion that there is no viable domestic market for welded OCTG in Turkey, it stated that welded OCTG is consumed in Turkey for both oil and gas and geothermal applications. Borusan further argues that, even if the OCTG it sold in the HM was used in geothermal applications, it is sold as API 5CT OCTG pipe that falls within the scope of the merchandise covered by the investigation because nothing in the scope requires that the merchandise have a specific end-use.

Borusan argues that, contrary to the petitioners' assertions, there is nothing suspicious regarding the timing of the HM sales. Borusan explained that it produces only plain end pipe and the customer must arrange for threading and coupling prior to sale to the end-user. Borusan claims that in late 2012, the high cost of third party threading led the HM customer to request price discounts that Borusan was unwilling to grant. Borusan claims that instead of selling plain-end OCTG at a loss, it decided to invest in its own threading and coupling capacity so that it can sell

threaded and coupled pipe in the HM and that the investment was fully verified by the Department. Borusan argues that this decision is not evidence of an attempt to conceal dumping but a refusal to sell at prices below cost of production, which is normal and rational commercial behavior, and a sound and logical commercial decision.

Borusan also argues that, contrary to the petitioners' assertions, there is no record evidence supporting that Borusan's HM sales were made at deep discounts or that OCTG prices in Turkey differ depending on if the ultimate end-use of the product is oil and gas or geothermal applications. Borusan also argues that OCTG sales for geothermal applications do not have any exceptional characteristics that would place them outside the ordinary course of trade in Turkey. Borusan adds that the record demonstrates that its HM sales were sold above the cost of production.

Borusan argues that the Department should reject the petitioners' allegations that Borusan's home market is fictitious because it is untimely and neither the law nor the facts support it. Borusan argues that the fictitious market allegation is untimely because it must be made before the Department closes the record so that it can request information relevant to the fictitious market analysis. Borusan claims that the petitioners alleged a fictitious market for the first time in their case brief after the preliminary determination and verification. Borusan also argues that, according to section 773(a)(2) of the Act, the fictitious market provision is concerned with attempts to manipulate domestic sales prices of the foreign like product after the issuance of an antidumping duty order and, because there was no order on OCTG from Turkey during thePOI, the provision is inapplicable. Borusan claims that the petitioners did not cite to, nor is Borusan aware of, any instances where a fictitious market analysis was conducted in the context of an investigation. Borusan argues that, even if the provision was applicable to investigations, the fictitious market analysis focuses on whether the foreign producer is manipulating the normal value by artificially lowering its price of certain foreign like products while offsetting those price reductions with increased prices on other sales of different forms of the like product. Borusan claims that the petitioners have not and cannot allege that HM OCTG sales have moved in opposite directions, and that they have not explained how the Department would evaluate such price movements absent an antidumping duty order.

Borusan also argues that, instead of applying the fictitious market criteria in the statute and the Department's practice to facts in the investigation, the petitioners claim that the Department should instead examine whether Borusan has engineered its sales to customers in the home market specifically to avoid a finding of dumping by allegedly carefully timing the sales to fall within the POI once the first rumors of a petition circulated. Borusan argues that it could not have timed the HM sales, as they were made prior to the filing of the petition, and that the rumors about an impending petition had been circulating for two years prior to the HM sales. Borusan also claims that the petitioners attempt to support their assertion by misrepresenting the facts of the record. Specifically, Borusan points out that, contrary to the petitioners assertions, Borusan did not sell OCTG in the HM at deep discounts but stopped selling OCTG in the HM because of requests to grant deep discounts which Borusan did not want to grant. Borusan did not cancel HM sales because the customers were unable to find customers for the product and because the product was of such poor quality that they could not be used for the intended purpose, but because the customers requested unacceptable discounts after failure to win certain

supply contracts on which they had been bidding. Borusan also argues that the petitioners' claim that the cancelled HM sales were of poor quality merchandise is not supported by the facts on the record because, as the Department verified, the cancelled HM sales were produced to be sold to the United States through its regular sales channels, were never shipped to the HM customer, and, after the HM sales were cancelled, the OCTG was ultimately sold to the United States, proving that the merchandise was of prime quality.

Borusan also claims that the petitioners' remaining arguments questioning the legitimacy of Borusan's sales are irrelevant to a fictitious market analysis. Specifically, Borusan argues that the petitioners' claim that Borusan's sales barely exceed the five percent threshold is incorrect because its HM sales are well above the threshold. Borusan also argues that the fact that a significant quantity of HM sales was booked on the last day of 2012, which the petitioners claim was a time when rumors of an impending petition were rampant, is normal because Borusan operates on a calendar year and it is expected that it would finalize and book as many pending sales orders as possible at year's end. Borusan also argues that the petitioners' claim that the fact that most sales were made at the end of the month in the POI is also insignificant because the calculation of normal value is based on a twelve-month average price and, therefore, the actual day of the month on which the sales were made is not significant. Borusan also argues that, contrary to what the petitioners insinuate, selling a smaller range of sizes in the home market than in the United States on a regular basis is also insignificant when examining otherwise legitimate sales. Borusan also argues that the petitioners' assertion that it is suspicious that several HM sales were made at the same exact quantity ignores the fact that the specific quantity is equal to the loading capacity of a truck. Borusan also argues that the petitioners did not explain how multiple HM sales transactions of identical merchandise on the same date would affect the viability analysis, since it is based on total quantity sold and not the number of transaction, nor would it affect any other element of the dumping analysis.

In response to the petitioners' claims that certain HM sales match to a relatively large quantity of U.S. sales, Borusan argues that because the quantity Borusan sold in the HM is significantly less than what it sold in the United States, such matches are inevitable. In response to the petitioners' allegations that matches involving similar merchandise resulted in merchandise adjustments (DIFMER) that lower normal value, Borusan argues that the amount and direction of the DIFMER adjustment is a function of the Department's matching hierarchy, which was developed by the Department after receiving comments from parties including the petitioners and also the variable cost of manufacturing, which was verified by the Department.

Borusan argues that the petitioners failed to demonstrate that its HM sales are outside the ordinary course of business. Borusan argues that the petitioners' allegation that Borusan's HM sales were overruns and seconds is a complete fabrication. Borusan claims that the Department verified that the HM sales that were not cancelled were of prime OCTG. Borusan explains that, contrary to the petitioners' assertion, this merchandise was never intended to be sold to the United States, nor was it overruns (pipe that exceeded the amount ordered by customers due to overproduction). The merchandise that was produced for sale in the United States was also prime merchandise and not overruns and this merchandise was sold to HM customers after the U.S. customer(s) canceled the orders. The HM customer(s) canceled the sales and the merchandise was finally sold to the United States to the customer(s) that had initially ordered it.

Borusan claims that nothing in the specific facts supports the petitioners' assertion that the HM sales were of seconds or overruns. Borusan also argues that the fact that the HM customer that did not cancel the purchases of OCTG purchases seconds from Borusan does not support that the OCTG it purchased was of second quality. Borusan claims that the customer's website specifically advertises the sale of prime OCTG.

Borusan argues that there is no basis to the petitioners' assertion that any sales of OCTG for use in geothermal applications are outside the ordinary course of trade. Borusan claims that it does not know the ultimate use of the OCTG it sold in the HM because the customer is a distributor and has declined to reveal its customers (*i.e.*, the end user) to Borusan. Borusan argues it has submitted to the record evidence supporting its claim that welded OCTG was both imported and consumed in Turkey in both geothermal and oil and gas applications and that the consumption exceeded the imports, proving that domestically-produced welded OCTG is also consumed in Turkey. Borusan also claims it has provided for the record a market study suggesting that the domestic market, including the oil and gas sector, accepts welded OCTG, particularly J55, as long as it is price-competitive with seamless. Borusan also claims that information contained in an affidavit the petitioners procured and placed on the record supports that welded OCTG produced by Borusan has been accepted for use in the domestic market for oil and gas applications. Borusan also claims that there is no basis for the petitioners' assertion that any sales of OCTG ultimately consumed in geothermal applications would be outside the ordinary course of trade in Turkey. Borusan argues that nothing in the scope of the investigation limits the merchandise under consideration to only OCTG that is consumed in oil and gas applications. Borusan claims that the word "including" in the scope's description of OCTG as "(…) hollow steel product of particular cross-section, including oil and well casing and tubing (…)" makes clear that the scope is not limited to only oil well casing and tubing. Borusan, citing *King Supply Company*,[89] also argues that any end-use, as contained in scopes, is illustrative unless an actual end-use limitation is expressly stated.

Borusan also argues that, according to the Department's regulations, sales may be found as being outside the ordinary course of trade if "based on the evaluation of circumstances particular to the sale in question, that such transactions have characteristics that are extraordinary for the market in question."[90] Borusan claims that the petitioners fail to provide any evidence that that sales of OCTG for geothermal applications have characteristics that are extraordinary for the Turkish OCTG domestic market. Borusan claims that the petitioners assertion that, based on record evidence, there are substantial price differences between OCTG sold to the oil and gas sector and to OCTG sold to the geothermal sector, is incorrect because the record evidence it refers to does not compare OCTG sold to the oil and gas sector and to OCTG sold to the geothermal sector but seamless OCTG to welded OCTG. Borusan claims that the purpose of the evidence it placed on the record was to demonstrate that customers in the geothermal market prefer lower priced welded pipe than higher priced seamless pipes and it, under no circumstance, could be interpreted as comparing prices of welded OCTG sold to the oil and gas sector to welded OCTG sold to the geothermal sector. Borusan claims that the same record evidence recommends acceptable price ranges for both end use sectors and that, allegedly, there is not a material difference between the two and it most definitely does not suggest that the prices of welded

[89] *See King Supply Company v. United States*, 674 F.3d. 1343 (Fed. Cir. 2012 1987) (K*ing Supply Company)*
[90] *See* Borusan's Rebuttal Brief at 24 (citing 19 C.F.R. § 351.102(b)(35)).

OCTG sold to the geothermal sector are so different from prices of OCTG sold to the oil and gas sector to justify a finding that the sales of OCTG sold to the geothermal sector are outside the ordinary course of trade. Borusan also argues that the petitioners' assertion that sales of OCTG to the geothermal industry are outside of the ordinary course of trade because the industry standards in the geothermal sector are less rigorous because the geothermal industry does not require API certified threading as the oil and gas industry requires is irrelevant. Borusan claims that the argument is irrelevant because it ignores the fact that Borusan sold prime plain end OCTG only and not threaded OCTG in both the HM and the U.S. market and, therefore, threading standards have no bearing on whether HM sales are outside the ordinary course of trade.

Borusan argues that the timing of the sales do not support a finding that they were outside the ordinary course of trade. Borusan claims that, contrary to the petitioners' assertions, it could not have predicted accurately the filing of the petition and the timing of the filing of the petition. Borusan also claims that the petitioners assertions that the HM disappeared midway through the POI because it had been established strictly for the investigation purposes are untrue and that record evidence, as verified by the Department, proves that Borusan's decision to stop selling in the HM temporarily was for commercial reasons (*i.e.*, creating in-house threading capability and refusing to sell at prices below cost of production) and was unrelated to the dumping investigation.

Borusan argues that the petitioners' assertions that the Borusan's HM sales were made pursuant to unusual terms and were ultimately cancelled and, therefore, are outside the ordinary course of trade are incorrect. Borusan claims that the sales that were cancelled were never reported in the HM sales database and are not used to calculate the normal value and, therefore, there is no need for them to be examined to determine whether they are outside the ordinary course of trade or not. Borusan continues its argument by stating that all of the HM sales Borusan reported were made pursuant to usual commercial terms and were of prime OCTG and fully verified by the Department.

Borusan argues that the petitioners' claim that Borusan's HM sales were made solely to mask dumping is entirely unsupported. Borusan claims that the petitioners' assertion that Borusan sold in the HM suddenly when rumors of the impending investigation circulated is unsubstantiated because rumors allegedly had been circulating since 2010. Borusan further claims that the legitimate nature of the HM sales has been completely verified by the Department and that the HM sales were of prime API certified OCTG at prices above cost to an established, unaffiliated distributor of pipe in the domestic Turkish market.

Department Position: As described above, the petitioners have raised a number of issues related to Borusan's reported HM sales which we examined. We have not found, however, any basis on which we should disregard the reported HM sales. For this final determination, therefore, we will continue to use Borusan's HM sales as a basis for Borusan's normal value.

Section 773(a)(1) of the Act and 19 CFR 351.404(b)(2) state that a HM is viable if the aggregate quantity of HM sales of the foreign like product is equal to 5 percent or more of the aggregate quantity of U.S. sales of subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, the

Department may base NV on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, is in the usual commercial quantities and in the ordinary course of trade, if such a price is representative, and the administering authority does not determine that a particular market situation in such other country prevents a proper comparison with the export price or constructed export price. We determine that Borusan's reported HM sales quantity (net of returns) exceeds the 5 percent home market viability threshold, satisfying the statutory and regulatory threshold of home-market viability on a volume basis.[91] Based on this comparison, we determine that Borusan had a viable HM during the POI.

Borusan's HM sales, as verified by the Department and as supported by the record of this case, appear to be legitimate sales of prime merchandise identical to that sold in the United States. Further, notwithstanding the petitioners' arguments, the scope of the investigation does not specify an end use, and, therefore, the reported HM sales are within that scope regardless of the application (geothermal or oil and gas) for which they are sold/purchased.

In examining whether sales are outside the ordinary course of trade, beyond considering whether the sales should be disregarded pursuant to sections 773(b)(1) or (f)(2) of the Act, we usually compare the subset of HM sales at issue to other HM sales considered to be within the ordinary course of trade. This comparison tests whether there are extraordinary characteristics with respect to the subset of sales at issue that render them outside the ordinary course of trade. The fact pattern in this case indicates that the HM sales constitute the complete set of sales of OCTG and that there is no other set of sales of OCTG we consider ordinary to which we can compare them in determining whether Borusan's HM sales of OCTG during the POI are outside the ordinary course of trade. Also, our examination of Borusan's HM sales during the POI, independent of comparison to other sales, does not reveal any unusual characteristics that would lead us to the conclusion that they were outside the ordinary course of trade.

Finally, although there is no statutory or regulatory deadline for raising a fictitious market allegation, the petitioners' allegation is untimely as it was made for the first time in their case brief and, therefore, too late for us to gather the information necessary to conduct a fictitious market analysis, which is quantitatively and qualitatively different from the information we seek in the normal course of an antidumping investigation.[92] In addition, the petitioners have not substantiated their allegation by engaging in a fictitious market analysis as required by the statute. According to the statute, a fictitious market analysis usually involves examining movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country to determine whether movement in such prices appears to reduce the amount by which the NV exceeds the EP (or the constructed export price) of the subject merchandise.

Upgradeable J55 and Standard J55

Comment 5: The petitioners claim that standard J55 and upgradeable J55 should be reported as different grades and reported as having different costs. The petitioners claim that the two have

[91] *See* Borusan's supplemental questionnaire response, dated February 7, 2014, at exhibit A-43.
[92] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27357 (May 19, 1997).

distinct physical and chemical properties, hot-rolled coil costs, production techniques, production costs, final sales prices, and that they are treated differently by the respondents and their customers. The petitioners allege that without accounting for these differences, the Department allows the differences to be averaged, resulting in less accurate comparisons between U.S. sales and comparison market sales and costs, and ultimately less accurate dumping margins.

The petitioners claim that standard J55 and upgradeable J55 have different chemical and physical properties which are related to the products' different end uses. The petitioners claim that while standard J55 maintains the same grade in the finished OCTG, the upgradable J55, when finished, becomes a different grade of higher tensile strength. The petitioners claim that this grade transformation of upgradeable J55 is achieved through the use of specially designed hot-rolled coil which has a different chemical composition than the coil used for standard J55 and heat treatment. The petitioners argue that if the chemical structure of the pipe is not significant then there would be no need to identify the grades in the CONNUM at all because the grade reflects only the chemical composition of the pipe.

The petitioners claim that customers pay a premium for both hot-rolled coil used for the manufacture of upgradeable J55 and for upgradeable J55 pipe, thereby increasing material and production costs. The petitioners claim that these higher costs should be accounted for in the CONNUM because weight-averaging them with the lower cost of standard J55 would be wrong and distortive.

The petitioners allege that the customers distinguish between standard J55 and upgradeable J55 and specify in their request for pricing and when ordering which of the two they are purchasing. The petitioners add that the producers also distinguish between the standard J55 and upgradeable J55 in their product codes and that Yücel reported them separately in its response. Therefore, the petitioners contend, whether a grade is upgradeable or not is commercially significant.

Borusan argues that, although raised by the petitioners multiple times throughout this investigation, the Department decided this issue in the preliminary determination and should reach the same conclusion. Borusan claims that the Department has not requested a separate reporting of this information and, thus, it would be inappropriate to even consider changing the hierarchy now. Borusan also claims that its upgradeable J55 meets all the requirements of API 5CT J55 technical specifications and, therefore, there is no basis for requiring separate reporting for upgradeable J55 and the Department has not done so.

Department Position: We are continuing to treat standard J55 and upgradeable J55 as of the same grade for the final determination. API does not set chemical limits for all in J55 with the exception of phosphorus and sulfur. Therefore, upgradeable J55 which may possess different chemical elements meets all the requirements of API 5CT J55 technical specifications and therefore there is no basis for requiring separate reporting for upgradeable J55. Borusan and Yücel stated that both standard J55 and upgradeable J55 are API certified as J55 in Turkey and enter as such in the United States. Borusan also stated that both standard J55 and upgradeable J55 were stenciled as API certified J55 in Turkey. Nothing justifies the creation of a separate grade for control number (CONNUM) construction purposes as the chemistry differences

between the two does not make them so distinguishable that they should be treated as different products.

Borusan's Export Price Sales

Comment 6: The petitioners argue that Borusan has falsely claimed that it does not know that its EP sales were destined for a country other than the United States and that even if that were true, the record supports the conclusion that Borusan should have known. The petitioners allege that Borusan actively concealed facts from the Department to ensure that these sales remained in the U.S. sales database and did not constitute a viable third country comparison market. The petitioners claim that Borusan did not fully explain its relationship with its U.S. customer who, according to petitioners, has no operations or facilities in the United States. The petitioners also claim that when they presented evidence contradicting Borusan's story, the Department should have accepted the information and investigated the matter further.

The petitioners argue that the Department should not have rejected the petitioners' submission concerning Borusan's EP sales as untimely but should have accepted the submission because there was good cause to do so and the submissions proved that Borusan clearly mislead the Department and failed to report affiliation information it should have reported in its questionnaire. The petitioners claim that Borusan has not denied that the EP sales were destined for a country other than the United States and that Borusan refutes it should have known that its EP sales were destined for a country other than the United States. While the petitioners agree with the Department that the information it rejected from the record does not lead to the undeniable conclusion that Borusan is affiliated with a U.S. customer, they argue that Borusan should have reported it in its original questionnaire response because the questionnaire instructs respondents to identify all parties involved in the production or sale of the merchandise under investigation which the Department may consider affiliated with their company. The petitioners claim that, therefore, the Department should not have rejected the information as untimely because it is not the petitioners' fault that the extent of the relationship, which Borusan should have disclosed in its original questionnaire response, was not developed on the record within the applicable deadline for the submission of new factual information. The petitioners acknowledge that the Department questioned Borusan at verification about the relationship between Borusan and its U.S. customer, but they claim that the record does not reflect the full extent of that relationship. The petitioners claim that, by concealing information, Borusan prevented additional investigation of the nature of the relationship and that once the petitioners learned that a marriage connected the two companies, it took several weeks to find proof of this marriage and for other information to be discovered. The petitioners claim that without the initial knowledge of this familial relationship there was no reason to investigate this relationship and that the petitioners' inability to discover this information by the new factual information deadline stems from Borusan's refusal to provide information requested in the original questionnaire. The petitioners argue that the Department should reconsider its rejection of their submissions and incorporate them in its final determination.

The petitioners argue that even without accepting the petitioners' submissions on Borusan's EP sales, the Department should find that Borusan's EP sales were not U.S. sales because there is overwhelming evidence that Borusan knew, or should have known, that its EP sales were not

destined for the United States. The petitioners claim that Borusan knows that the OCTG is ultimately not going to the United States because the sales contracts allegedly indicate that the final destination is not the United Sates, the customer(s) address(es), as listed on all documentation on the record, is/are not in the United States, and that sales negotiations and payment did not involve the United States but were arranged between Borusan in Turkey and customers and banks outside the United States. Thus, the petitioners conclude, there is no connection of these sales to the United States.

The petitioners claim that the only reason these EP sales appear to be related to the United States is that they were shipped through the United States on their way to the final destination, perhaps because the shipping costs for this route were lower or because the customer elected to have the merchandise finished in the United States. The petitioners argue that neither scenario demonstrates that the OCTG was destined for the Unites States or makes these transactions U.S. sales. The petitioners claim that it is Borusan's obligation to submit evidence to justify its reporting and treatment of the sales and it has failed to do so and, therefore, the Department should exclude these sales from the U.S. sales database for the final determination.

The petitioners argue that if the subject merchandise is exported to the United States, it does not become a U.S. sale by definition. The petitioners claim that if subject merchandise is sent to a third country through the United States, it is not a U.S. sale. In support, the petitioners state that the Department has excluded such sales from the U.S. sales database in *Salmon from Chile* because the information indicated that the consignee, acting on behalf of the exporter, at the time of sale knew the transactions in question were Canadian sales.[93] The petitioners also cite *Rubber Thread from Malaysia*,[94] where the Department did not calculate a margin on merchandise that was re-exported from the United States before the goods were sold to an unaffiliated party from the United States even though the merchandise entered the United States for consumption and even though, at the time of entry, the exporter did not know whether the merchandise would be sold in the United States or Canada. The petitioners argue that similarly in this investigation, the record does not establish that the goods were ever sold to a U.S. customer and that the U.S. customer(s) of the EP sales has/have no presence in the United States. Further the petitioners argue that Borusan has not denied that the goods were actually re-exported to a third country and that it has not bothered to ask the close customer(s).

The petitioners also cite the scope determination on green tube from the People's Republic of China (PRC) where the Department found that green tube produced in the PRC, but heat treated in a third country, was of PRC origin.[95] The petitioners argue that, similarly, Turkish OCTG finished in the United States and allegedly re-exported to a third country remains a Turkish

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[93] *See* Petitioners' Case Brief at 73 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63
FR. 31,411; 31,424-25 at Comment 17 (June 9, 1998).

[94] *See* Petitioners' Case Brief at 73 and 74 (citing *Extruded Rubber Thread From Malaysia, Final Results of Antidumping Duty Administrative Review,* 62
FR, 33,588, 33,599 (June 20, 1997) at Comment 31

[95] *See* Petitioners' Case Brief at 74 (citing Memorandum from Patrick Edwards, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary, re: *Oil Country Tubular Good from the People's Republic of China: Final Scope Ruling on Green Tubes Manufactures in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China (Feb.* 7, *2014).*

product and is not transformed into U.S. OCTG and that entering a product into the United States does not make the product of U.S. origin.

The petitioners claim that the current fact pattern is distinguishable from *Graphite Electrodes*[96] because the issue in that case was whether the respondent must know that its merchandise, that otherwise meets the definition of a U.S. sale, entered the United States for consumption in order to include those transactions in its U.S. database. The petitioners also argue that the *Frozen Fish Fillets*,[97] *Antifriction Bearings*,[98] and *Stainless Round Wire*[99] cases are not on point with the fact pattern and issue in question in this investigation.

Borusan argues that, as the Department rejected the petitioners' February 26, 2014, submission on this issue as untimely submitted factual information and explicitly stated that the petitioners had not shown how this alleged affiliation leads to the conclusion that Borusan and this importer are affiliated, the Department should reject the petitioners' argument as unsubstantiated conjecture contradicted by the record. Borusan argues that the petitioners' assertion is untrue as confirmed by the verification report and that the reason that Borusan did not report the relationship at issues is that few people in the company were aware of it. Borusan also argues that the relationship does not meet the 5 percent affiliation threshold under U.S. law.

Borusan also argues that the petitioners' assertion that Borusan knew or should have known that the EP sales were destined for a country other than the United States and, thus, should be excluded from the U.S. sales database is unsupported by the record. Borusan claims that the facts of the record clearly demonstrate that the EP sales were sold to an independent party prior to importation, that the independent party entered the merchandise for consumption in the United States, that at least some of the material was actually sold in the United States, and that Borusan has no way of knowing whether the remaining material was sold in the United States. Borusan concludes that there is no basis to exclude the EP sales from the U.S. sales database. Borusan, citing to *Graphite Electrodes*, *Fish Fillets From Vietnam*, *Antifriction Bearings*, and *Stainless Round Wire*, claims that the legal doctrine the Department applies to determine U.S. sales is that an arm's-length sale to an unrelated purchaser in the United States is a U.S. sale.

Department Position: For the final determination we are continuing to include Borusan's EP sales in the U.S. sales database and will use them in the margin calculation because sales to an unaffiliated party delivered to a U.S. destination and where title transferred in the United States are U.S. sales.

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[96] *See* Petitioners' Case Brief at 75 (citing Issues and Decision Memorandum accompanying *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part,* 76 FR 56,391 (September 13, 2011) *("Graphite Electrodes")* at Comment 2.

[97] *See* Petitioners' Case Brief at 75 and 76 (citing Issues and Decision Memorandum accompanying *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews,* 74 FR 29,473 (June 22, 2009) at Comment 5.

[98] *See* Petitioners' Case Brief at 76 (citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 23,360, 28,395 (June 24, 1992).

[99] *See* Petitioners' Case Brief at 76 (citing *Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012,* 78 FR 41,366 (July 10, 2013).

Section 771(33) of the Act, states that the Department shall consider the following to be affiliated:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
(B) Any officer or director of an organization and such organization;
(C) Partners;
(D) Employer and employee;
(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and
(G) Any person who controls any other person and such other person.

Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

We verified that the petitioners' alleged affiliation pertains to an indirect owner of less than five percent of the manufacturer (*see* section 771(33)(E) of the Act) who has a daughter who is married to the purported owner of the unaffiliated EP customer/importer.[100] One former employee of Borusan currently works for the unaffiliated EP customer/importer in the logistics department.[101] Neither of these two facts leads to the conclusion that Borusan and the EP customer/importer are affiliated pursuant to the affiliation requirements of section 771(33) of the Act.

The record of this investigation indicates that all of Borusan's EP sales were sold to a company with an address outside of the United States. However, as noted in our verification report, all of the OCTG at issue was delivered by Borusan to the United States and was entered for consumption in the United States by the EP customer. Moreover, there is no information on the record that indicates that any of the OCTG at issue was subsequently re-exported. We verified this information and reviewed all supporting documentation for these purchases and sales.[102] In *Hiep Thanh Seafood* (frozen fish fillets from Vietnam), the CIT upheld our definition of "sales for exportation to the United States" within the context of section 772(a) of the Act, as "any sale to an unaffiliated party in which merchandise is to be delivered to a U.S. destination, regardless of whether any underlying paper work may indicate possible subsequent export to a third country."[103] Therefore, although it could be inferred from the customer's address that some of the merchandise may be subsequently exported to a third country, other information on the

[100] *See* Borusan EP Verification Report at 3 and 4, and Exhibit 3.
[101] *See* Borusan EP Verification Report at 4.
[102] *See* Borusan CEP Verification Report at 10, 11, and Exhibit 2.
[103] *See Hiep Thanh Seafood Joint Stock Co. v. United States*, 821 F. Supp. 2d 1335 (CIT 2012) (affirming Commerce's second remand results); *see also Final Results of Redetermination Pursuant to Hiep Thanh Seafood Joint Stock Co. v. United States*,
Consol. Court No. 09-00270, Slip Op. 11-74, (June 23, 2011), at 6 (available at http://enforcement.trade.gov/remands/11-74.pdf).

record leads us to conclude that these sales are properly included in the U.S. sales database. Due to the business proprietary nature of the information upon which we based our analysis and decision, we have discussed this issue in further detail in the Analysis Memorandum for Borusan.[104]

Differential Pricing Analysis: Thresholds for the Results of the Ratio Test

Comment 7: The petitioners argue that when the differential pricing test is not run on all three bases, *i.e.*, purchaser, region, and time period, the Department should alter the threshold under which it determines whether, if any, alternative comparison method should be considered. The petitioners allege that when the Department, for whatever reason, does not have the information to run the Cohen's *d* test on a particular basis, fewer sales will pass the Cohen's *d* test and, therefore, the thresholds should be altered to account for that fact. The petitioners claim that if only two of the three bases are evaluated, the threshold should be 22 percent and 44 percent rather than 33 percent and 66 percent, respectively, and that the Department should adopt this alteration for the final determination.

Borusan argues that the petitioners' assertion that the Department should alter these thresholds because all sales are made to a single region and, therefore, there are no regional price differences, has no foundation in law or reason and should, therefore, be rejected.

Department Position: According to section 777A(d)(1)(B)(i) of the Act, the Department examines whether there exists a pattern of prices that differ significantly by purchaser, region or time period As stated in the Preliminary Decision Memorandum, the Department used the Cohen's *d* test to evaluate whether prices have been made which differ significantly by one, two or all three of these bases. The ratio test aggregates the results of the Cohen's *d* test and provides an overall evaluation of whether there exists a pattern of prices that differ significantly, as required by the statute, for all three bases (*i.e.*, region, time period, and purchaser). In any given situation, a respondent may have made U.S. sales which do not allow for differences to exist by any one of these three bases (by region in the case of Borusan), or even when the Department evaluates sales by each of these three basis, no sales may be found to have passed the Cohen's *d* test.

The petitioners' suggestion to adjust downward the 33 percent and 66 percent thresholds when the Department has no evidence of prices that differ significantly by one of these three basis would be tantamount to assuming that there exists a pattern of prices that differ significantly for that basis which amounts to an additional 11 percent of the respondents' U.S. sales beyond that identified for the other two bases. This assumption is not supported by the record. To extend the petitioners' suggestion to its illogical conclusion, if the Department would find no evidence of prices that differ significantly by all three bases, then both thresholds would be adjusted to zero and the Department would find that a pattern of prices exists even though no sales passed the Cohen's *d* test. Because, regardless of the fact pattern of a particular situation, the Department is always evaluating whether there exists a pattern of prices that differ significantly by purchaser,

[104] Memorandum to the File entitled "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey - Analysis Memorandum for Borusan" (Analysis Memorandum for Borusan) dated July 10, 2014.

region or time period, the thresholds which use the results of the Cohen's *d* and ratio tests also should remain unchanged. The results of the Cohen's *d* and ratio tests represent the pattern of prices that differ significantly for all sales, and are not attributable to, or subject to, segregation by purchaser, region or time period. Therefore, altering the thresholds based on the given fact patterns would not reflect the results of these tests.

Treatment of Borusan's Second-Quality Pipe

Comment 8: In Borusan's cost accounting system, OCTG that is identified after the production process as second-quality merchandise is valued based on its full production costs, in the same manner as prime OCTG.[105] The petitioners argue that the Department should make an adjustment to Borusan's reported costs (*i.e.*, by allocating a portion of the second-quality production costs to prime OCTG) because the respondent has misclassified its second-quality pipe products as co-products instead of by-products. According to the petitioners, the treatment of Borusan's second-quality pipe as a co-product of prime pipe is not appropriate, as it leads to an understatement of the reported costs, permitting for the inappropriate allocation of prime production costs to by-products which it believes are merely "happy accidents" of the production process. The petitioners identify the five factors the Department considers to determine whether a product is a by-product or a co-product. Those factors include: 1) how the company records and allocated cost in the ordinary course of business; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls the production of the product in question; and 5) whether the product requires significant further processing after the split off point from primary production.[106] The petitioners argue that Borusan, despite allocating full production costs to non-prime pipe, does not treat such secondary products as prime products because its records do not allow it to identify the original identity (*i.e.*, OCTG, line pipe, etc.) of downgraded pipes. According to the petitioners, the allocation of full production costs to these secondary pipe products is inconsistent with Borusan's treatment of these products in its inventory records.

The petitioners argue that the significance of these downgraded products relative to other joint products indicates the second-quality pipes are, indeed, mere by-products of the primary production process. According to the petitioners, the pipes at issue are downgraded after the completion of the production process, indicating that their production is not intentional. Moreover, the petitioners argue, the products require no further processing after their discovery and classification. The petitioners conclude that the Department should, accordingly, find that Borusan's second-quality pipes are by-products of prime OCTG production and make an adjustment to increase the cost of the prime product.

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[105] *See* Borusan's January 24, 2014 Supplemental Section D Response at page 12.

[106] *See* Resubmitted Redacted Case Brief from Maverick, dated June 11, 2014. The petitioners cite *Final Determination of Sales at Less than Fair Value; Furfural Alcohol from South Africa*, 60FR 22,550 (May 9, 1995); *Final Results of Antidumping Administrative Review; Elemental Sulphur from Canada*, 60 FR 8,239, 8241-42 (March 4, 1996); *Notice of Final Determination of Sales at Less than Fair Value; Pure Magnesium from Israel*, 66 FR 43,949 (September 27, 2001); *Final Determination of Sales at Less than Fair Value; Structural Steel Beams from South Africa*, 67 FR 35,485 (May 20, 2002) (*Structural Beams from South Africa*); *Final Determination of Sales at Less than Fair Value and Affirmative Final Determination of Critical Circumstances; Certain Orange Juice from Brazil*, 71 FR 2,183 (January 13, 2006).

Borusan responds that the second-quality pipes are not by-products and there is no basis for reallocating the cost of these pipes to adjust the costs of prime OCTG. The respondent argues that the Department should continue to rely on the company's normal cost accounting system, which allocates full production costs to the second-quality material detected after production. Borusan asserts that the Court of Appeals in *IPSCO Inc. v. United States*, 965 F.2d 1056, 1060 (Fed. Cir. 1992) (*IPSCO*) held that "off grade" pipe is properly classified as a co-product of OCTG because both grades of pipe are produced in the same manufacturing process and the producer therefore "expend{s} the same materials, capital, labor, and overhead" in producing the prime and off grade pipe. Borusan notes that the second-quality pipe to which it allocates full costs is downgraded after the production process is complete. Borusan argues that, under the rule in *IPSCO*, its second-quality pipe is, therefore, properly considered a co-product because it incurs the same material and fabrication costs as the prime OCTG.

The respondent continues that, while the petitioners cite a number of cases where the Department has applied the five criteria to determine whether a product is a by-product or co-product, only one of those cases – *Structural Beams from South Africa* – involves a steel product. Moreover, in that case, Borusan argues, the product at issue was not finished, second-grade material, but slag that was generated during the production of a primary raw material, molten iron ore. Borusan argues that, in line with IPSCO, the cost of producing one ton of steel in a given production process is the same regardless of final grade determined after production has completed. According to Borusan, there is no "split-off" point for the second-quality pipe that has undergone the same process as the prime grade material. Borusan also contends that, even if the petitioners' argument were valid, an adjustment is not necessary, as the quantity of second-quality pipe generated during the POI is small and the proposed adjustment so minor.

Department's Position: As discussed above, in Borusan's cost accounting system, OCTG that is identified after the production process as second-quality merchandise is valued based on its full production costs, in the same manner as prime OCTG. We agree with the petitioners that an adjustment should be made to allocate a portion of the manufacturing costs of Borusan's second-quality OCTG to prime OCTG production. As a preliminary matter, we disagree with the petitioners that a discussion of co-products is relevant in this case. Joint products – a term which includes by-products and co-products - are multiple products generated simultaneously in a single production process. These products incur undifferentiated joint costs until a "split-off point," after which the joint products become separately identifiable. Often, the joint products then undergo separate processing activities. In pipe making, however, there is no "split-off" point during the production process. Rather, pipes are made sequentially on a production line and costs and production activities are generally identifiable to individual products.

The issue here is whether the downgraded second-quality pipe can still be used in the same applications as the subject merchandise (*i.e.*, whether it is still OCTG). The downgrading of a product from one grade or quality to another will vary from case to case. Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used in the same applications as the prime product. In the latter case, the downgraded product's market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and

qualities between grades, the Department has adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.[107]

Whether a product can be used for its originally intended use is an important distinction, because if a product cannot be used in the same applications as the prime product, and the market value of the downgraded product as a result is not sufficient to recover production costs, we need to consider then the proper valuation and allocation of costs to the downgraded merchandise. In so doing, we have sought guidance from generally accepted accounting principles (GAAP) as they relate to the valuation of inventories. In order to avoid the overstatement of inventory accounts on the balance sheet, GAAP does not allow companies to value products held in inventory at an amount greater than their market price. This principle is known as the "lower of cost or market" (LCM) rule, and it attempts to measure the loss in value, for presentation on the balance sheet, of a company's inventory. The LCM rule recognizes that it is not always appropriate to value an inventory item at its allocated production costs if there is evidence that the market value of that item cannot recover those costs. That is, an item's allocated cost is not necessarily always the most accurate or representative benchmark of its true value. Given that the market value of a downgraded product may be significantly impaired when compared to the prime product, we do not consider it reasonable in such instances to assign full production costs to the merchandise. We believe that, under these circumstances, a more appropriate methodology is to assign a value to the downgraded products based on the price at which they can be sold in the marketplace. This approach is a well-established, GAAP-compliant practice in cost and financial accounting. It has also been upheld by the Courts. For example, the CIT affirmed the Department's valuation of by-products at their market value in *E.I. Dupont*.[108] Similarly, in *PSC VSMPO*, the CAFC upheld the Department's valuation of a certain co-product based on its market price.[109]

With this distinction in mind, we have reviewed the information on the record of this case related to Borusan's downgraded merchandise that is detected after the production process. The company's second-quality OCTG cannot be used in the same applications as the subject OCTG products. Pipes that are downgraded after production on the OCTG lines do not meet the strict technical requirements specified in the API 5CT standards for these products and are therefore unsuitable for use in oil or gas well applications. Downgraded merchandise is classified in Borusan's inventory records without reference to grade or product dimensions. The second-quality pipes are sold by Borusan without specification or certification and are limited to use in construction. In addition, the sales (*i.e.*, market) price of Borusan's second-quality pipe products is considerably less than the full production costs that the company assigns to them in the normal course of business. The difference between the costs assigned to these products and the sales revenue earned on the second-quality merchandise is in large part due to the fact that these

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[107] *See Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 78 FR 65272, (October 31, 2013) and accompanying IDM at comment 10.

[108] *See E. I. DuPont De Nemours & Co., Inc., ICI Americas Inc., and Hoechst Celanese Corporation v. The United States*, 932 F. Supp. 296, 301 (CIT 1996) (*E.I Dupont*), where the Court opined that "assigning {recycled} pellets the cost of virgin chips would overstate the actual cost of PET film."

[109] *See PSC VSMPO-AVISMA Corporation and VSMPO-Tirus, U.S., Inc. v United States*, 688 F.3d 751 (CAFC 2012) (*PSC VSMPO*). We note that while the co-product issue *per se* is not relevant in the instant case as it was in the CAFC decision, *PSC VSMPO* is germane in that it addresses the issue of product valuation methodologies based on market prices.

products are not certified OCTG and simply cannot be used in the same applications as the specialized, high-value OCTG products. As discussed above, we find that under these circumstances it is more appropriate, considering the guidance on inventory valuation provided for by GAAP, to value the second-quality products at issue using a market-price based approach.

Borusan asserts that the Department should continue to rely on the company's normal books and records, which allocates manufacturing costs to second-quality products detected after production in the same manner as OCTG products. However, the statute provides that the Department will rely on such records only if they "….reasonably reflect the costs associated with the production and sale of the merchandise."[110] The allocation to downgraded second-quality merchandise of full production costs improperly results in the shifting of costs away from OCTG products and overstates the inventory value of the non-OCTG second-quality pipe products. We believe it is unreasonable to assign full OCTG production costs to merchandise that fails to meet OCTG quality standards. The downgraded second-quality merchandise is not good production (*i.e.*, it is not certified OCTG and cannot be used as such). While the net market value of the second-quality merchandise should be used to offset OCTG production costs, the net total costs incurred (*i.e.*, total OCTG production costs less the market value of downgraded second quality non-OCTG production) should be allocated to good OCTG production. Consequently, the company's normal books and records do not "reasonably reflect" the costs associated with the production and sale of the merchandise (*i.e.*, OCTG).

As for Borusan's reliance on *IPSCO* to support its assertion that "off grade" OCTG is properly considered a co-product (and thus should be allocated the same manufacturing costs as prime products), we note that the facts in that case are different from those on the current record. For example, in *IPSCO*, the issue related to cost allocation between prime OCTG products and "limited service" OCTG, both of which were subject to the antidumping order. While these products were of different quality, the limited service pipes were still suitable for use as OCTG in "down hole" drilling applications, a fact highlighted by the Court and distinguishable from the current case.

For this final determination therefore, we have adjusted Borusan's reported costs to value the downgraded second-quality products at their sales price, while allocating the difference to good OCTG production.

Misclassification of Borusan's Steel Coil Purchases

Comment 9: Borusan reported an amount for exempted import duties and exempted KKDF taxes as part of its COP. To do so, Borusan divided the total exempted duties and taxes on imported hot-rolled coil by the value of hot-rolled coil purchases during the POI, and applied the resulting ratios to the reported direct material costs.[111] The petitioners argue that the Department should adjust Borusan's reported duty and tax ratios to correct for an error in the value of hot-rolled coil purchases that was discovered during the cost verification.

[110] *See* section 773(f)(1)(A) of the Act.
[111] *See* Borusan's December 20, 2013 Section D Response at pages 28-29.

Department's Position: We agree with the petitioners and have adjusted Borusan's duty and tax ratios accordingly.

VII. 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 determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 10, 2014
(Date)