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Investigation
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MEMORANDUM TO: Paul Piquado
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
Welded Line Pipe from the Republic of Turkey

Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of welded line pipe from the Republic of Turkey (Turkey). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Çayirova Boru Sanayi ve Ticaret A.S./ Yücel Boru İthalat-İhracat ve Pazarlama A.S. (collectively, Çayirova) and Tosçelik Profil ve Sac Endustrisi A.S./ Tosyalı Dis Ticaret A.S. (collectively, Tosçelik), the two participating respondents in this case. Moreover, we continued to base the final margin for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret (Borusan Istikbal), the two non-cooperating respondents, on adverse facts available (AFA). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Duty Drawback Comments

1. Duty Drawback
2. KKDF
3. U.S. Exports of Subject Merchandise
4. Unreliability of Reported Duty Drawback Information
5. Deducting Expenses from the Duty Drawback Calculation
6. Making a Duty Drawback Adjustment to Normal Value and/or Capping the U.S. Duty Drawback Adjustment
7. Treatment of Duty Drawback in the Calculation of the Cash Deposit Rate

8. Moot Arguments related to Duty Drawback

Company- Specific Comments

Çayirova

- 9. Çayirova's U.S. Date of Sale
- 10. Çayirova's Pipe Specification for a Home Market Sale
- 11. Çayirova's General and Administrative (G&A) Expenses

Tosçelik

- 12. Tosçelik's Reporting of Home Market Sales
- 13. Tosçelik's Home Market Interest Rate
- 14. Tosçelik's Late Shipment Penalties
- 15. Tosçelik's Net Financial Expense
- 16. Tosçelik's Polyethylene (PE) Coated Product Costs
- 17. Tosçelik's Revised Manufacturing Costs
- 18. Tosçelik's Second Quality Pipe Adjustment
- 19. Moot Arguments for Tosçelik

Borusan Mannesmann and Borusan Istikbal

- 20. Basing the Margin for Borusan Mannesmann and Borusan Istikbal on AFA

Background

On May 22, 2015, the Department of Commerce (the Department) published the Preliminary Determination of sales of welded line pipe from Turkey at LTFV.¹ The period of investigation (POI) is October 1, 2013, through September 30, 2014. In May and June 2015, the Department verified the sales and cost data reported by Çayirova and Tosçelik, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).

We invited parties to comment on the Preliminary Determination. In August 2015, the petitioners,² Çayirova, and Tosçelik submitted case and rebuttal briefs. Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for Çayirova and Tosçelik from those calculated in the Preliminary Determination. For Borusan Mannesmann and Borusan Istikbal, because these companies failed to respond to the Department's initial questionnaire, we continued to base their dumping margins on AFA. For the final determination, we also revised the margins assigned to these companies as

¹ See Welded Line Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 29617 (May 22, 2015) (Preliminary Determination).

² The petitioners in this investigation are American Cast Iron Pipe Company, Energex (a division of JMC Steel Group), Maverick Tube Corporation (Maverick), Northwest Pipe Company, Stupp Corporation (a division of Stupp Bros., Inc.), Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA.

AFA. Consistent with the Department's practice, we are assigning Borusan Mannesmann and Borusan Istikbal the final dumping margin calculated for Çayirova because this is the highest calculated dumping margin on the record of this investigation. For further discussion, see the Issues and Decision Memorandum at Comment 20.

Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Margin Calculations

We calculated export price (EP) and normal value (NV) using the same methodology stated in the Preliminary Determination,³ except as follows:

1. We revised our margin calculations for Çayirova and Tosçelik to take into account our findings from the sales and cost verifications.⁴

³ See Preliminary Determination and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Welded Line Pipe from the Republic of Turkey" (Preliminary Decision Memorandum), at pages 10-16.

⁴ See Memorandum to the File from Alice Maldonado and David Crespo, Senior Analysts, entitled "Verification of the Sales Response of Çayirova Boru Sanayi ve Ticaret A.Ş. (Çayirova Boru) and Yücel Boru İthalat-Ihracat ve Pazarlama A.Ş. (YIIP) (collectively, Çayirova) in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated July 22, 2015 (Çayirova sales verification report); Memorandum to the File from Alice Maldonado and David Crespo, Senior Analysts, entitled "Verification of the Sales Responses of Tosçelik Profil ve Sac Endustrisi A.S. (Tosçelik Profil) and Tosyalı Dis Ticaret A.S. (Tosyalı) (collectively, Tosçelik) in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated July 16, 2015 (Tosçelik sales verification report); and Memorandum to the File from Heidi Schriefer and Robert Greger, Senior Accountants, entitled "Verification of the Cost Response of Tosçelik Profil ve Sac Endustrisi A.S. in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated June 18, 2015 (Tosçelik cost verification report). See also the Memorandum to the File from David Crespo, Senior Analyst, entitled, "Final Determination Calculation for Çayirova Boru Sanayi ve Ticaret A.Ş. and its affiliated exporter, Yücel Boru İthalat-Ihracat ve Pazarlama A.Ş. (Çayirova)," dated October 5, 2015

2. We did not grant Çayirova's duty drawback adjustment for the final determination because Çayirova did not receive any drawback on U.S. exports of subject merchandise during the POI.⁵ See Comment 3.
3. We recalculated Tosçelik's duty drawback adjustment to use only import certificates (also known as "DIIBs") that were closed during the POI and contained reported U.S. exports of subject merchandise. See Comment 3.
4. We based NV for Tosçelik on constructed value (CV), based on our determination that Tosçelik's home market sales listing is so incomplete that it is not reliable. See Comment 12.
5. We revised the conversion costs for Tosçelik's PE coated pipes, based on our findings at verification. See Comment 16.
6. We revised Tosçelik's reported costs to include an amount for the difference between Tosçelik's reported costs and costs maintained in Tosçelik's accounting system. See Comment 17.
7. We revised Tosçelik's reported cost of second-quality pipes to reflect these products' net realizable values, and we allocated the residual manufacturing costs to the prime products during the POI. See Comment 18.
8. Based on the results of our differential pricing analysis for Tosçelik, we used the average-to-average method in making comparisons of EP and NV.⁶

Discussion of the Issues

Duty Drawback Comments

Comment 1: Duty Drawback

Both Çayirova and Tosçelik claimed an adjustment for U.S. duty drawback. In the preliminary determination, we accepted their claims, subject to the following conditions: 1) we allowed only "closed" claims (*i.e.*, claims based on import certificates (also known as "DIIBs")) to which the company was no longer permitted by the Turkish government to add import or export

(Çayirova Final Calculation Memo); the Memorandum to the File from Alice Maldonado, Senior Analyst, entitled, "Final Determination Calculation for Tosçelik Profil ve Sac Endüstrisi A.Ş./Tosyalı Dis Ticaret A.Ş. (Tosçelik)," dated October 5, 2015 (Tosçelik Final Calculation Memo); and the Memorandum to the File from Heidi Schriefer, Senior Accountant, entitled, "Cost of Production and Constructed Value Adjustments for the Final Determination – Tosçelik Profil ve Sac Endüstrisi A.Ş. and Tosyalı Dis Ticaret A.Ş.," dated October 5, 2015.

⁵ See Çayirova Final Calculation Memo.

⁶ See Tosçelik Final Calculation Memo.

information); and 2) the import certificates must have reflected U.S. exports of welded line pipe.⁷ We added duty drawback limited in this manner to U.S. price.

The petitioners argue that the Department should deny Çayirova's and Tosçelik's duty drawback claims for the final determination on two grounds. First, the petitioners note that the Turkish government has not given final approval to any of the import certificates used in the calculations.⁸ According to the petitioners, the plain language of the Act directs the Department to increase U.S. price only for 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." The petitioners argue that the tenses and structure of these terms refer to a completed action by the government, and not a pending application. Therefore, the petitioners argue that, because the respondents' DIIBs are still pending and have not received final approval from the Turkish government, they have not been "not collected." Thus, the petitioners contend that the Act expressly precludes an adjustment here.

Second, the petitioners argue that the Department should deny both respondents' duty drawback adjustments because the imported inputs (*i.e.*, HR coil and slab) could not be used to make the subject merchandise.⁹ The petitioners note that the actual inputs to produce the merchandise exported to the United States were domestically sourced from Turkey. According to the petitioners, the Department has ample precedent under which it limits the drawback claim to remitted duties only applicable to inputs appropriate to the production of subject merchandise,¹⁰ and it should follow that precedent here.

The petitioners argue that if the Department does not agree with either of these two arguments, at a minimum, it should revise the calculation to minimize the distortion created by the Department's current methodology.¹¹ Specifically, the petitioners propose that the Department should allocate the drawback over the total export volume of all "substitutable merchandise" sold by the respondents, not just the export volume used to close the import licenses.

Maverick also disagrees with the duty drawback calculation performed in the preliminary determination.¹² Maverick argues that the respondents' cost-side adjustments for duty drawback allocate the value of the exempted duties over the total cost of goods sold for all products, which results in a much larger adjustment to U.S. price than to cost. Maverick argues that, to resolve this distortion, for cost purposes the Department should allocate the exempted duties only to the products to which they pertain (*i.e.*, costs of goods destined for U.S. export).

⁷ See Preliminary Decision Memorandum, at page 15.

⁸ See the petitioners' brief at 21-31.

⁹ *Id.*, at 15-18.

¹⁰ As support for this assertion, the petitioners cite Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Administrative Review Antidumping Duty, 53 FR 41218 (October 20, 1988) (Standard Pipe from Taiwan 1988) and accompanying Issues and Decision Memorandum at Comment 5.

¹¹ *Id.*, at 34-120.

¹² See Maverick's brief at 2-17.

The respondents maintain that the methodology used in the preliminary determination is consistent with the Department's practice and on this basis it should be continued in the final determination.¹³ The respondents argue that the Department has a long history of relying on closed DIIBs in Turkey AD cases without requiring final government approval. The respondents maintain that there is no evidence that the Turkish government has ever denied approval of any of Çayirova's or Tosçelik's DIIBs, and there is no reason to question the reliability of the actual import and export data used to close them.

The respondents note that the Department regularly grants import substitution duty drawback adjustments, and it did so in the LTFV investigation on OCTG from Turkey.¹⁴ The respondents further note that using exports of welded line pipe to close DIIBs related to imports of materials incorporated into other products is legal under Turkey's substitution drawback program.

Finally with respect to the calculation arguments, the respondents disagree that the Department's methodology is distortive. The respondents note that this methodology assigns products with the highest per-unit material costs the highest duty drawback adjustment.

Department's Position:

For the final determination, we continued to calculate duty drawback using the same methodology employed in the preliminary determination, except as noted in Comment 3 below. Consistent with the Department's practice, we applied our two-prong test to determine whether a duty drawback adjustment is appropriate.

Specifically, 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 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.¹⁵

Based on our analysis, we find that Tosçelik met the requirements of the Department's two-prong test for a duty drawback adjustment; however Çayirova's claim fails the first prong of the Department's test (as noted in Comment 3 below). We find that Tosçelik proved that the relevant import duties and rebates were directly linked to, and dependent upon, one another. Second, Tosçelik demonstrated that there were sufficient imports of raw materials to account

¹³ See Çayirova's brief at 8-12; Tosçelik's brief at 5-7; and Tosçelik's/Çayirova's rebuttal brief at 8-27.

¹⁴ See Certain Oil Country Tubular Goods from Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part, 79 FR 41971 (July 18, 2014) (OCTG from Turkey) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁵ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61723 (October 19, 2006) (2006 Antidumping Methodologies). 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).

for the duty drawback received on the exports of the manufactured product. At verification, we confirmed Tosçelik's eligibility.¹⁶

In previous proceedings involving other products from Turkey, we found that the requirements under Turkey's duty drawback program known as the Inward Processing Regime (IPR), if met by Turkish companies, satisfied the statute with respect to duty drawback adjustments under U.S. law.¹⁷ As noted in OCTG from Turkey,¹⁸

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 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.

While the petitioners argue that requirements under the IPR do not satisfy the U.S. statute for duty drawback adjustments, the same issue has been raised before the Department in other antidumping proceedings involving Turkey, and no party in this case has raised new arguments. Thus, we are following the Department's established methodology, consistent with our practice. See, e.g., OCTG from Turkey and Rebar from Turkey.¹⁹ Accordingly, we are granting Tosçelik a duty drawback adjustment for this final determination based on its fulfillment of the requirements under the IPR for purposes of considering its entitlement to duty drawback adjustments.

In this investigation, we note that both respondents reported both claims that were opened and "closed" (i.e., claims based on import certificates to which the company was no longer permitted by the Turkish government to add import or export information). For the final determination, we continue to allow only "closed" claims.²⁰ We note that this methodology is also consistent with the duty drawback calculation methodology used in Rebar from Turkey.²¹

¹⁶ See Tosçelik sales verification report at pages 16-19.

¹⁷ See, e.g., Welded Carbon Steel Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013) and accompanying Issues and Decision Memorandum at 17-19; see also OCTG from Turkey, and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ See OCTG from Turkey, and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹ See Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, 79 FR 21986 (September 15, 2014) (Rebar from Turkey) and accompanying Issues and Decision Memorandum.

²⁰ See Preliminary Decision Memorandum, at page 15.

²¹ See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 1.

We note, however, that this is a complex area of practice, and therefore the Department expects to continue to evaluate its practice on duty drawback in future cases, and in particular, in subsequent segments of this proceeding in the event the Department issues an antidumping duty order in this case.

Comment 2: KKDF

In the Preliminary Determination, the Department included in its duty drawback calculation amounts not collected by the Turkish government for a “resource utilization fund tax” (also known as “KKDF”). This tax is exempted on imports: 1) used in the production of goods committed to exportation under DIIBs; and 2) paid by credit, letter of credit, or cash against goods.

The petitioners and Maverick argue that the Department should make no adjustment for KKDF for the final determination.²² According to Maverick the KKDF tax does not constitute an import duty within the meaning of the Act,²³ but rather it is merely a tax on financing options.²⁴ Maverick notes that the respondents themselves admit that import duties and KKDF are different and thus the Department should arrive at the same conclusion.²⁵

Maverick acknowledges that, in prior cases, the Department has treated KKDF as duty drawback,²⁶ but it disagrees that the Department has had an adequate basis for doing so. Specifically, Maverick maintains that in Rebar from Turkey the Department failed to: 1) explain its conclusion that the KKDF tax was an import duty; 2) explain how export contingency signifies that a tax is an import duty; or 3) explain its conclusion that KKDF is not a tax on short-term foreign currency loans but is instead an import duty. According to Maverick, the mere fact that imports occurred is insufficient to conclude that the KKDF tax is an import duty.

The petitioners agree with Maverick that KKDF is not an import duty, particularly when compared to the criteria used in prior cases.²⁷ The petitioners assert that, were the Department to apply this same analysis to Turkish VAT, it would also conclude that the VAT should be treated

²² See the petitioners’ brief at 48-57; and Maverick’s brief at 3-8.

²³ While Maverick notes that neither the Act nor the Department’s regulations define “import duties,” the Department must define the term in accordance with a “permissible construction of the statute.” See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837,843 (1984) (Chevron).

²⁴ According to Maverick, the Turkish KKDF decree specifies that KKDF is owed on “consumer loans used by companies or individuals provided by banks and financial companies,” foreign loans obtained from abroad by persons operating in Turkey other than banks and financial institutions, and imports made with acceptance loans, deferred letters of credit and in the form of cash on delivery. See Sections B-C response from Çayirova, dated February 11, 2015 (Çayirova Sections B-C response) at Exhibit 10. See also Sections B-C response from Tosçelik, dated January 28, 2015 (Tosçelik Sections B-C response) at Exhibit 13.

²⁵ Maverick cites to Tosçelik Sections B-C response at page 69 and Çayirova Sections B-C response at page 70.

²⁶ See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 1 (where the Department found the KKDF tax to be import-dependent and export contingent).

²⁷ According to the petitioners, the record of this investigation shows that: 1) KKDF is not import-dependent but rather that it is assessed on all manner of loans other than those related to imports; and 2) KKDF does not apply to all imports from a particular country.

as a duty, a conclusion that is patently absurd. Further, the petitioners note that KKDF: 1) may also apply to domestic transactions; 2) is not levied on imports themselves nor applied to all transactions involving imports (but only to those paid through particular financial vehicles); and 3) paid to a bank or special financial institution, and not at Customs. With respect to this latter point, the petitioners maintain that KKDF and customs duty are distinct given that they are not administered in the same way or collected by the same entity.

Finally, the petitioners and Maverick contend that, even assuming arguendo, KKDF constitutes an import duty in general, the respondents here have failed to adequately support their claims that their import financing qualified for exemption of KKDF, and thus those claims should be denied on that basis alone.²⁸ Specifically, Maverick maintains that nothing on the record shows that the respondents' import purchases were of a type that would incur KKDF, while the petitioners argue that the DIIBs associated with Tosçelik's purchases of scrap contained no exports of subject merchandise to the United States.²⁹

The respondents maintain that KKDF is both import-dependent and export-contingent under Turkish law, and thus it is a legitimate part of the Department's drawback adjustment.³⁰ According to the respondents, Turkey's duty drawback system is a longstanding element of Turkey's customs regime,³¹ and Maverick's and the petitioners' argument that the KKDF is not a tax on imports is controverted by abundant administrative and judicial precedent. Specifically, the respondents note that Turkey's KKDF decree sets the tax at six percent on "imports by acceptance credit, term L/C and cash against goods," and the IPR defines "tax" as "all financial obligations such as taxes, duties, fees, fund payments, etc. which are stipulated for collection during import and export {of} goods."³² According to the respondents, KKDF is clearly a tax because it is a financial obligation stipulated during the importation of goods. The respondents further note that, under the KKDF decree, certificate holders are permitted to import raw materials without cash payment of taxes under the contingency that the taxes be released upon satisfaction of the export commitment.

The respondents state that the suspension of payment of KKDF is an exemption of import taxes, and these taxes are treated like the other import taxes in Turkey (i.e., collection is suspended under operative DIIBs and the contingent liability is extinguished in the same manner as the

²⁸ Maverick cites to Allied Tube v. United States, 25 CIT 23, 29 (2001) (which held that the respondent bears the burden of establishing that both "prongs" of the Department's duty drawback test have been met).

²⁹ According to the petitioners, Tosçelik only incurred the KKDF tax on imported scrap using DIIBs that that were not part of Tosçelik's duty drawback claim given since they were completed after the POI. See Supplemental response from Tosçelik, dated May 1, 2015, at Exhibit 1 and Supplemental Sections A-C response from Tosçelik, dated April 22, 2015, at page 4 and accompanying DIIB usage excel worksheets.

³⁰ See Tosçelik's/Çayirova's rebuttal brief at 8-15.

³¹ See Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Antidumping Duty Administrative Review, 53 FR 36932 (October 11, 1988) (Standard Pipe from Turkey 1988) and accompanying Issues and Decision Memorandum at Comment 5.

³² See Tosçelik Sections B-C response at Exhibit 13.

contingent liability for import duties). According to the respondents, if there were no importation, there would be no KKDF liability.³³

Further, the respondents maintain that KKDF is different from VAT tax. According to the respondents, KKDF is only applied to imports, while VAT is applied alike to imports and domestic goods.

Finally, the respondents disagree with Maverick that they failed to demonstrate that their import transactions were of a type that received an exemption from KKDF. As support for this assertion, the respondents cite to the Çayirova cost verification report at Exhibit 7 and Çayirova sales verification report at Exhibit 18, which include contracts for imports of coils that show payment terms qualifying for KKDF and the associated DIIB, respectively.³⁴

Department's Position:

For the final determination, we continue to treat the KKDF tax as an import duty. Based on the information on the record of this proceeding, the respondents demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export contingent.³⁵ Specifically, the respondents' submissions included the applicable Turkish law pertaining to KKDF, where it states the following:

The firms residing in Turkey's Customs area . . . shall be granted authorization to import the raw materials, auxiliary materials, semi-finished products . . . and operating supplies which are required in obtaining the processed products committed to be exported on the basis of {a DIIB} . . . against posting of a guarantee equal to the amount of taxes arising from such importation, and returning said guarantee after the export commitment is realized.³⁶

During verification, we reviewed the Turkish system for granting claims related to duty drawback, including KKDF. We found no inconsistencies between the respondents' description of the KKDF program and the functioning of that program during the POI.³⁷ Similarly, we found no discrepancies in the amount of the KKDF reported and the KKDF reflected on the DIIBs examined at verification.³⁸ Therefore, we find that the respondents adequately supported their claim for KKDF in this investigation (subject to the limitation noted below). We note that

³³ As support for their assertion, the respondents cite to Standard Pipe from Turkey 1988 and accompanying Issues and Decision Memorandum at Comment 15.

³⁴ See Memorandum to the File from Robert Greger, Senior Accountant, entitled "Verification of the Cost Response of Çayirova Boru Sanayi ve Ticaret A.Ş. in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated June 30, 2015; and the Çayirova sales verification report.

³⁵ See Çayirova Sections B-C response at Exhibit 10; Tosçelik Sections B-C response at Exhibit 13; and Tosçelik sales verification report at page 18.

³⁶ See, e.g., Çayirova Sections B-C response at Exhibit 10, which contains the Turkish "Resolution Concerning Inward Processing Regime," establishing the import-dependent and export-contingent nature of the KKDF tax.

³⁷ See, e.g., Tosçelik sales verification report at pages 16-19.

³⁸ Id., at page 18, where the Department confirmed that the KKDF amount was six percent the value of the import.

acceptance of properly supported KKDF claims is consistent with the Department's practice in other cases involving Turkey.³⁹

We disagree with Maverick that the Department failed to provide sufficient analysis for treating KKDF as an import duty in Rebar from Turkey. The Department specifically "reviewed the Turkish import system including the customs regulations specific to the IPR," that is, the Turkish duty drawback scheme, "and the IPCs{,} that is, the Domestic Processing Certificates."⁴⁰ The Department noted that the respondent provided copies of inward processing certificates as well as documents submitted to the GOT when they closed out the inward processing certificate.⁴¹ The submission included the applicable Turkish government bylaws concerning the KKDF tax, which described the import-dependent and export-contingent nature of the tax.⁴² Therefore, the Department found, based on verified record evidence, that pursuant to the Turkish duty drawback scheme, the respondents had applied for Domestic Processing Certificates and approval of the Turkish government for an exemption from the tax on loans used to finance imports of steel inputs, upon the export of the subject merchandise.⁴³ Accordingly, the Department's analysis in Rebar from Turkey was reasonable, and we continue to use the methodology in this case.

We disagree with the petitioners that the DIIBs associated with Tosçelik's imports contained no exports of subject merchandise to the United States. As noted in Comment 1 above, we are basing Tosçelik's duty drawback calculation only on DIIBs which were "closed" during the POI using exports of subject merchandise. Because Tosçelik reported KKDF related to these DIIBs, we continued to include them in our calculations, consistent with our practice.

However, with respect to Çayirova, as noted in Comment 3 below, the DIIB on which Çayirova's duty drawback claim was based does not include exports of subject merchandise. Therefore, we did not grant a duty drawback adjustment to Çayirova, as explained below, for purposes of the final determination.

Comment 3: U.S. Exports of Subject Merchandise

The petitioners and Maverick argue that, if the Department does not accept its arguments in Comments 1 and 2, above, it should grant the respondents' duty drawback claims only where these claims involved exportation of the "subject merchandise."⁴⁴ The petitioners contend that Congress did not mandate a drawback adjustment linked to all exports, but rather limited it to duties rebated or uncollected, but only for those caused by exportation, specifically exportation to the United States, and specifically of the merchandise subject to the investigation. The

³⁹ See, e.g., OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1; and Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁰ See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 1, at 15.

⁴¹ Id.

⁴² Id., and accompanying Issues and Decision Memorandum at Comment 1, at 15 n.52.

⁴³ Id., and accompanying Issues and Decision Memorandum at Comment 1, at 14-15.

⁴⁴ See the petitioners' brief at 24, 39-43; and Maverick's brief at 16-17.

petitioners maintain that the Act is not silent or ambiguous on this point. According to the petitioners, because Congress expressly addressed the issue of which duties should be added to U.S. price, the Department cannot do something different.⁴⁵

The petitioners assert that the Department has precedent for limiting the drawback in such a manner, given that it applied duty drawback to only U.S. sales made by a respondent in OCTG from Turkey which were included on DIIBs and reported in the U.S. sales listing. The petitioners note that acceptance of this methodology would result in the denial of an adjustment to Çayirova and the limitation of the adjustment for Tosçelik to two DIIBs closed with reported U.S. sales.⁴⁶

Finally, Maverick agrees with the petitioners' reasoning, especially with regard to Çayirova.⁴⁷ According to Maverick, because the exempted duties on which Çayirova based its claim are unrelated to its sales of subject merchandise, its claim fails the first "prong" of the Department's duty drawback test.

According to Çayirova, the Department should not base its decision for the final determination contingent on whether Çayirova's DIIBs used in its duty drawback claim had U.S. exports.⁴⁸ Rather, Çayirova suggests that the Department take into consideration all viable DIIBs regardless of whether they contained U.S. sales of subject merchandise. According to Çayirova, the test for viability is dependent upon whether the DIIB was: 1) used in the POI; and 2) closed at a point at which the total ratio of imports to exports could be reasonably measured.⁴⁹ Çayirova maintains that because all of its reported U.S. sales were included on a DIIB, the Department should find that all of its U.S. sales are therefore entitled to a duty drawback adjustment. Çayirova maintains that its proposed methodology is consistent with the Department's policy statement in 2006 Antidumping Methodologies.⁵⁰

Moreover, Çayirova argues that the most accurate duty drawback adjustment would be to use as robust a database as possible using Turkish Customs updated final import and export figures

⁴⁵ As support for this argument, the petitioners cite Board of Governors of Fed. Reserve Sys. v. Dimension Fin. Corp., 474 US 361, 106 S. Ct 681 at 688-699 (1986), which held that "[t]he 'plain purpose' of legislation . . . is determined in the first instance with reference to the plain language of the statute itself." The petitioners also cite Wheatland Tube Co. v. United States, 495 F.3d 1355, 1359 (Fed. Cir. 2007), citing Chevron, which held that, in granting deference to a Federal agency, a court must first ascertain "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

⁴⁶ See Çayirova sales verification report at page 17 which shows that none of Çayirova's reported U.S. sales were used to close the DIIB which forms the basis of its claim. See also Tosçelik sales verification report at pages 16-17, and 19, which shows that only DIIBs D1-56, D1-2794, and D1-2795 contained U.S. exports which were reported in the U.S. database; however DIIB D1-2794 closed after the POI.

⁴⁷ See Maverick's brief at 16-17, referring to Çayirova as Yücel.

⁴⁸ See Çayirova's brief at 8-12.

⁴⁹ According to Çayirova, any unclosed DIIB will give a distorted ratio of import to exports given that the activity is not spread evenly across the life of the DIIB, and therefore only closed DIIBs should be considered as viable for use in the drawback adjustment.

⁵⁰ See 2006 Antidumping Methodologies, 71 FR at 61723.

even if that means including DIIBs with no U.S. exports of subject merchandise.⁵¹ In sum, Çayirova maintains that while it does not object to the duty drawback methodology used for the preliminary determination, it objects to basing the adjustment only on DIIBs which included U.S. exports of subject merchandise.

Tosçelik provides a calculation using these DIIBs, for use in the event that the Department limits its duty drawback adjustment to DIIBs containing U.S. exports.⁵² Tosçelik includes in this calculation all DIIBs that contained reported U.S. sales, including one DIIB which was closed after the POI.

Department's Position:

We agree with the petitioners, in part. We are modifying our preliminary duty drawback calculations to follow the methodology used in OCTG from Turkey,⁵³ and thus we are only allowing claims related to reported U.S. sales with respect to both respondents.

Consistent with this limitation, we revised the respondents' duty drawback adjustments to use the uncollected duties reflected on DIIBs both closed during the POI and containing reported U.S. exports of welded line pipe. Because Çayirova had no such DIIBs, we made no addition to its U.S. prices for duty drawback or to its cost of production. For Tosçelik, we are now including in its adjustment only those two DIIBs which meet the above criteria.

With respect to Tosçelik, we revised Tosçelik's duty drawback adjustment calculation for the final determination. 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. The volume of welded line pipe exports to the United States used by Tosçelik to close the relevant DIIBs represents only a portion of the volume of its reported sales of welded line pipe to the United States. Accordingly, for this final determination, we find that Tosçelik 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 reported U.S. welded line pipe exports. We note that this methodology is consistent with our practice in OCTG from Turkey where the Department

⁵¹ According to Çayirova, this is the best way to minimize the possibility of distortion and ensure the most accurate measurement of the adjustment.

⁵² However, Tosçelik argues that the DIIBs need not be closed during the POI as long as they had activity. See Tosçelik's brief at 5-7.

⁵³ See OCTG from Turkey and accompanying Issues and Decision Memorandum at page 17, where we stated that

For Borusan we are granting the duty drawback adjustment as it was reported. . .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.

limited the drawback only to U.S. sales of subject merchandise made by a respondent which were included on DIIBs and reported in the U.S. sales listing.⁵⁴

Finally, we disagree with the petitioners that it is appropriate to allocate Tosçelik's duty drawback adjustment (determined as noted above) only to particular sales in the U.S. sales listing. By its nature, duty drawback is not transaction-specific; rather, the benefit that Tosçelik received applies equally to all subject exports. Thus, we calculated the amount of import duties which were not collected by reason of the exportation of subject merchandise, and we allocated these uncollected duties over all reported U.S. sales for purposes of the final determination.⁵⁵

Comment 4: *Unreliability of Reported Duty Drawback Information*

Notwithstanding their above arguments, the petitioners argue the Department should find both respondents' duty drawback information unreliable, based on discrepancies in the data observed at verification.⁵⁶ With respect to Çayirova, the petitioners maintain that the Department found differences between the DIIB file quantities and values and those in the official Turkish customs system.⁵⁷ Moreover, with respect to Tosçelik, the petitioners argue that the record shows discrepancies between Tosçelik's reported DIIB data and both invoices on the record as well as DIIB data that Tosçelik submitted to Turkish customs.⁵⁸ As such, the petitioners argue that the Department should find the data to be unusable. However, the petitioners note that if the Department does allow a drawback for Tosçelik, it should limit the adjustment to U.S. sales that reconciled to the DIIB data.⁵⁹

The respondents maintain that the Department verified the accuracy of their drawback data without any material errors, only noting immaterial differences between the reported data and the Turkish Customs portal data for DIIBs that closed after the POI resulting from the lag between the submission of the response to the Department and the finalization of customs export declarations (i.e., GCBs).⁶⁰ With respect to the petitioners' claim that not all of Tosçelik's subject exports were used to close DIIBs, Tosçelik argues that the petitioners' analysis of record information is flawed and Tosçelik stands by its full reconciliation of its U.S. listing on the record.⁶¹

⁵⁴ See OCTG from Turkey and Issues and Decision Memorandum at Comment 1.

⁵⁵ See Tosçelik Final Calculation Memo at page 2.

⁵⁶ See the petitioners' brief at 41-43.

⁵⁷ The petitioners cite to Çayirova sales verification report at page 16.

⁵⁸ The petitioners cite to Tosçelik sales verification report at page 17.

⁵⁹ The petitioners also contend that because DIIB volumes in drawback claims in Turkish proceedings appear to continually change, the Department should not find such data reliable, or at minimum until they are finalized by the government of Turkey.

⁶⁰ Çayirova cites to the Çayirova sales verification report at pages 15-17; see also Tosçelik's/Çayirova's rebuttal brief at 24-27.

⁶¹ See Tosçelik Sections B-C response at Exhibit 14.

Department's Position:

We disagree with the petitioners that the duty drawback data submitted by the respondents is unreliable. We verified the data submitted by the respondents with respect to their claim and noted no discrepancies with respect to the integrity of the data itself.⁶² While we did note updated figures resulting from the lag time between the company's closing of the DIIB and Turkish customs' finalization of the corresponding GCBs, namely for DIIBs closed after the POI, these updates do not call into question the data themselves.⁶³

Comment 5: *Deducting Expenses from the Duty Drawback Calculation*

The petitioners maintain that the Department has a longstanding practice of reducing the drawback pool for associated expenses,⁶⁴ and they claim that the Department should follow that practice here.⁶⁵ Specifically, the petitioners maintain that there is evidence on the record of this investigation that both respondents were required under Turkey's duty drawback law to pay a guarantee equaling a percentage of the DIIB value. The petitioners note that this law provides for the return of only a portion of this guarantee after official closure of the export commitment by the Government of Turkey (GOT).

Therefore, the petitioners assert that three types of expenses should be deducted from the eligible drawback that forms the numerator of the calculation: 1) the portion of the guarantee that the GOT retains; 2) any bank fees associate with the initial creation of the guarantee; and 3) the opportunity cost for leaving the guarantee with the GOT for several years (*i.e.*, the time between posting the guarantee when the DIIB is opened and when the guarantee is partially returned upon official closure by the GOT).

The petitioners note that, because the respondents have provided no information regarding these expenses, they have failed to adequately support their duty drawback claims, and the Department should deny them for purposes of the final result. Regarding the imputed opportunity cost, the petitioners contend that because none of the DIIBs used in the respondents' duty drawback claims have been officially closed by the GOT, this cost is still accumulating and the respondents have failed to meet the evidentiary burden required for a duty drawback claim.

The respondents did not comment on this issue.

Department's Position:

Because we did not request this information from the respondents, we disagree with the petitioners that the respondents failed to meet their evidentiary burden in this case. Thus, we

⁶² See Çayırova sales verification report at page 17 and Tosçelik sales verification report at page 17.

⁶³ See Çayırova sales verification report at page 17 and Tosçelik sales verification report at page 17.

⁶⁴ As support for their assertion, the petitioners cite to Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759 (October 21, 1999) and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁵ See the petitioners' brief at 73-75.

continued to accept Tosçelik's duty drawback claim, modified as noted above, for purposes of the final determination.

We note that, should an antidumping duty order be issued in this proceeding, we will request the information in question from respondents in subsequent segments.

Comment 6: *Making a Duty Drawback Adjustment to Normal Value and/or Capping the U.S. Duty Drawback Adjustment*

The petitioners maintain that section 773(a) of the Act explicitly requires a fair comparison between EP and NV,⁶⁶ and the Department's current methodology of limiting the duty drawback adjustment to the EP-side of the equation violates this requirement.⁶⁷ According to the petitioners, Congress intended the Department to make "apples-to-apples" comparisons in all cases, and it set forth the general rule that "normal value shall be adjusted for the same costs and expenses for which adjustments are made to {EP}."⁶⁸ The petitioners contend that the Department cannot interpret the Act in a manner that reads out the express Congressional intention to adjust normal value.

The petitioners argue that, if the Department disagrees with the above interpretation of the legislative history, it still cannot say that the section 772 drawback adjustment represents the full implementation of the United States' obligations to allow a fair comparison. The petitioners assert that Article 2.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade has a similar "fair comparisons" requirement, under which members agree to take into account differences in a variety of specific factors, as well as "any other differences which are shown to affect price comparability." According to the petitioners, a "difference," by definition, requires a comparison of two values, and thus the Department's one-sided adjustment fails to satisfy this language. Thus, the petitioners claim that, to effectuate the required difference, the drawback addition must be either the first of two adjustments (the second being to NV), or the adjustment to EP itself must be net of the duty difference (i.e., it must be capped).⁶⁹

⁶⁶ Specifically, the petitioners note that section 773(a) states:

In determining under this title whether subject merchandise is being, or is likely to be sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison . . . normal value shall be determined as follows . . ." (emphasis added).

The petitioners contend that a review of the legislative history shows that the fair-comparison requirement was deliberate because it is echoed in both the Senate and House reports, as well as in the Statement of Administrative Action accompanying the Uruguay Round Agreements (SAA). See the petitioners' brief at 79-80.

⁶⁷ See the petitioners' brief at 75-109.

⁶⁸ See Congressional Record-House, November 29, 1994 at 29960.

⁶⁹ The petitioners argue that the Department's current calculation violates the "Charming Betsy Doctrine," which holds that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." See Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

The petitioners maintain that, if the Department does not make one of the two suggested changes, it must explain why its failure to add duty drawback to home market sales is not arbitrary and capricious. The petitioners note that the Department has a long history of adjusting NV for duty drawback when the comparison market either is based on third country sales⁷⁰ or contains “local export” sales.⁷¹ The petitioners state that, as a justification in at least one case,⁷² the Department cited the indirect tax provision in section 773(a)(6)(B)(iii) of the Act, while in others it found the adjustment to be in accordance with the general intent of section 773(a)(6)(C) of the Act to account for “any difference.” Finally, the petitioners cite one instance where the Department adjusted CV for duty drawback related to third country exports via the circumstance of sale provision in section 773(a)(8).⁷³

According to the petitioners, the Court of Appeals for the Federal Circuit (CAFC) has held that the Department has both the authority to adjust CV for duty drawback, as well as a solid reason for doing so.⁷⁴ Further, the petitioners claim that the courts have found no bar from looking back to NV prior to making a U.S. adjustment, and then capping or denying the adjustment, if it chose to add a “third prong.” Thus, the petitioners contend that the Department must either adjust NV here, or explain why it has the authority to adjust NV in other cases but not in this one.

Finally, the petitioners note that the Department may agree that it has the authority to adjust NV but finds no adjustment is appropriate here because duty costs are already accounted for in home market sales via input costs (which the petitioners term the “duty wall”). The petitioners argue that the Department must address the following arguments with respect to the duty wall. First, the petitioner explains, the Departments’ “duty wall” theory does not appear to provide any accounting based or policy based rationale for allocating import duties to non-imported products. The petitioner asserts that the Department could allocate the exempted duties attributable to U.S. sales to the cost database on a CONNUM-specific basis using the U.S. sales quantities. The petitioner believes that this would set the comparisons between U.S. sales and normal value on an equal footing without requiring separate cost databases for the domestic and U.S. markets.

Second, the petitioner argues, the “duty wall” theory cites no record evidence showing or even suggesting that suppliers of the respondent’s domestic inputs increased their prices to world market prices much less world market prices plus duties. According to the petitioner, the presumption of the duty wall theory appears to imply that each domestic producer acts in isolation from other producers and that they face no competitive pressure from one another. Further, the petitioner posits, it is not clear why a domestic producer would raise prices to a

⁷⁰ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary, 67 FR 30358 (May 6, 2002) (Sulfanilic Acid from Hungary), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary, 67 FR 60221 (September 25, 2002).

⁷¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea, 67 FR 3149 (January 23, 2002).

⁷² See Sulfanilic Acid from Hungary.

⁷³ See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 67 FR 51182 (August 7, 2002).

⁷⁴ See Saha Thai, 635 F.d at 1342-1343.

world price plus an amount for duties when there are effectively no duties. The petitioner asserts that such a situation would result in domestic inputs being higher priced than imports by the amount of the duty.

Even if the theory were documented and made sense, the petitioner asserts, the Department has never explained why the duty wall would require duties exempted by reason of exports to the United States to be allocated to all products regardless of where they are sold. The petitioner contends that contrary to the Department's desire to use the cost side duty drawback adjustment to place all costs on the same basis, application of the adjustment over the total cost does not actually produce the intended result. The petitioner elaborates that the cost of a domestic product that reflects import duties would necessarily have a different cost than the cost of an exported product that does not.

The petitioner argues that the duty drawback adjustment to sales places the home market and U.S. sales prices on the same basis with respect to the exemption of duties in order to eliminate the dumping that would otherwise occur if the adjustment were not allowed. However, the petitioner maintains, the cost adjustment as undertaken in this proceeding creates distortions instead of resolving them by increasing the U.S. price by the full amount of the exempted duties and using only a fraction of the duties for the cost adjustment. According to the petitioner, these distinct allocations create an unnecessary and unjustified cushion that must be overcome in order to find a margin. Further, the petitioner adds, the Department's methodology builds in additional cost differences beyond those that are attributable to physical characteristics, thereby distorting the difference in merchandise ("DIFMER") adjustment. The petitioner concludes that the Department should recognize the distortions caused by its cost side duty drawback adjustment methodology and calculate the adjustment on the same basis as the sales adjustment at the final determination.

The respondents argue that:⁷⁵ 1) the petitioners failed to cite to any case where the Department has ever adjusted the home market selling price for duty drawback (but rather all cases involved sales for exportation);⁷⁶ 2) no such adjustment is envisioned in the language of the Act; 3) Congress legislatively ratified the Department's longstanding duty drawback methodology and never expressed an intent to create a duty drawback adjustment on the normal value side; 4) respondents that end up actually paying import duties or KKDF on their inputs treat them as expenses which are reflected in their HM prices; and 5) the proper place for raising these arguments would have been in the context of 2006 Antidumping Methodologies, rather than in the petitioners' case brief.

With respect to the duty wall, the respondents argue that the Department correctly calculated the duty drawback adjustment to cost at the preliminary determination.⁷⁷ According to the respondents, the disparity between the sales and cost duty drawback adjustments is based on the

⁷⁵ See Tosçelik's/Çayirova's rebuttal brief at 27-29.

⁷⁶ The respondents note that in Bicycles from Taiwan (used as support by the petitioners), the Department did not add drawback to normal value but rather, for DIFMER purposes, it adjusted the cost of a component to account for duties that would have been paid if the imported component had been used on a product sold in the domestic market.

⁷⁷ See Tosçelik's/Çayirova's rebuttal brief at 13-15.

very structure of the calculations. Specifically, the respondents assert, the sales adjustment applies only to U.S. sales because duty drawback is uniquely associated with export transactions. However, the respondent note, on the cost side the Department requires respondents to weight-average costs for each CONNUM regardless of the destination markets. According to the respondents, the duties must be imputed to cost on a POI basis over all merchandise. The respondents contend that this is reflected in both of their methodologies, which allocate the total duties forgiven over all POI production.

The respondents argue that the Department's methodology at the preliminary determination is neither distortive nor inaccurate. It is not distortive, the respondents assert, because all products are treated in a like manner and the products with the highest material costs receive the highest drawback adjustment. It is not inaccurate, the respondents maintain, because the numerator and denominator of the calculation are known figures and are both entirely verifiable. In fact, the respondents posit, the petitioners' only real complaint is that the cost side adjustment is not as big as the sales side. According to the respondents, there is no reasoning to support this contention as the differences are driven by the differences between the sales and cost databases and are correct and proper.

Department's Position:

As an initial matter, we note that we are no longer calculating a duty drawback adjustment for Çayirova for the final determination, and we are basing NV for Tosçelik on CV (see Comments 1 and 3, above, and Comment 12, below, for further discussion). Thus, the petitioners' arguments with respect to price-to-price adjustments are moot.

Regarding the duty wall, for the final determination, we continued to calculate the duty cost to include in COP and CV for Tosçelik in the same manner as was done in the Preliminary Determination. In such cases where the Department allows a duty drawback adjustment, it is the Department's practice to correspondingly increase the respondent's COP for the costs associated with the exempted duties, even though such amounts were not actually paid and recorded in the company's normal books and records.⁷⁸ The CAFC has upheld this practice.⁷⁹ Accordingly, consistent with our practice, we continued to adjust Tosçelik's COP to account for the exempted import duties on raw materials used to produce the merchandise under consideration at the final determination.⁸⁰

Comment 7: Treatment of Duty Drawback in the Cash Deposit Rate

The petitioners note that duty drawback is included in net U.S. price, which is used as the denominator of the cash deposit rate.⁸¹ They argue that this inclusion leads to the systematic under-collection of cash deposits because the entered value to which the deposit rate is applied is

⁷⁸ See Rebar from Turkey at Comment 2.

⁷⁹ See Saha Thai, 635 F.3d at 1342.

⁸⁰ As noted at Comment 3 above, we denied Çayirova's duty drawback adjustment at the final determination. Thus, with respect to Çayirova, we did not adjust the COP for exempted duties.

⁸¹ See the petitioners' brief at 111-113.

drawback-exclusive. The petitioners maintain that the Department should correct this imbalance by removing drawback from net U.S. price before calculating the cash deposit rate.

The respondents did not comment on this issue.

Department's Position:

In calculating the cash deposit rate, the Department's practice is to determine the extent to which dumping is occurring for a particular respondent and then to divide this amount by the respondent's total net sales value. We find that the resulting figure represents a reasonable approximation of the respondent's dumping behavior during the period examined, and it is also represents the Department's best method for estimating the amount of duties to collect, pending an administrative review. In applying this method, it is not the Department's practice to differentiate among different types of selling expenses or adjustments, of which duty drawback is merely one.

To the extent that the petitioners argue that our methodology results in an under-collection of cash deposits, we disagree that a change to our cash deposit calculation methodology is appropriate or necessary. Cash deposit rates are estimates of the AD duties which may ultimately be assessed, and are applied in investigations to provide the United States with security that it will collect AD duties upon completion of a review, should it find that dumping has occurred in the period covered by the review. Moreover, the statute "requires only cash deposit estimates, not absolute accuracy. These estimates need only be reasonably correct pending the submission of complete information for an actual and accurate assessment."⁸² Cash deposit rates become final assessment rates only when administrative reviews are not requested.⁸³ Therefore, because we are collecting estimated duties, we did not modify our methodology for purposes of the final determination.

Comment 8: Moot Arguments Related to Duty Drawback

The petitioners made arguments related to how the duty drawback adjustment should be accounted for differently in the margin program with respect to various areas of the practice (i.e., CEP profit and the differential pricing test).⁸⁴ The respondents did not comment specifically on these arguments.

In addition, Çayirova also made various arguments regarding the Department's verification report with respect to Çayirova's duty drawback calculation.⁸⁵

⁸² Torrington Co. v. United States, 44 F.3d 1572, 1578-79 (Fed. Cir. 1995) (Torrington Co.); see also section 737 of the Act.

⁸³ See 19 CFR 351.212(c).

⁸⁴ See the petitioners' brief at 109-120.

⁸⁵ See Çayirova's brief at 8-12.

Department's Position:

The petitioners' argument related to CEP profit is not relevant to this investigation because neither respondent reported CEP sales. The petitioners' argument related to differential pricing has no impact on the margins. Thus, we did not address these arguments here.

As for Çayirova's arguments, because we did not grant a duty drawback adjustment to Çayirova for the final determination, these arguments are moot.

Comment 9: Çayirova's U.S. Date of Sale

During the POI, Çayirova sold welded line pipe to the United States via "contracts" signed with its customers, and it reported the date of these contracts as the date of sale for all U.S. shipments. After examining the information on the record, however, we found that Çayirova provided insufficient evidence to demonstrate that the contract date reflected the date on which the material terms of sale were established, given that changes in the terms of these sales could, and did, occur after the order was placed.⁸⁶ Therefore, for the preliminary determination, we based Çayirova's U.S. date of sale on the earlier of invoice or shipment date, in accordance with our practice.⁸⁷

Çayirova disagrees with this decision, contending that the Department should accept its reported contract dates as the U.S. date of sale for purposes of the final determination.⁸⁸ Specifically, Çayirova maintains that no changes in the terms of sale occurred from the contract date and the shipment date, as substantiated by the Department at verification.⁸⁹ Çayirova notes that the Department examined all U.S. sales contracts during its sales verification and found that the price and did not change between order and shipment and that all observed quantify variations were within the tolerance level stated in the contract. With respect to quantity changes reflected by tolerance, Çayirova points out that the reference to theoretical weight on the contract is not a means to calculate price, but rather to create a length-to-weight conversion which is applied to the actual quantity of pipe (as measured by length of feet).

Çayirova acknowledges that the Department's definition of material terms of sale has evolved to include more than just price and quantity. For example, Çayirova cites two court cases where the Department found delivery terms and/or payment terms to be essential terms of sale.⁹⁰ However, Çayirova claims that, even under these expanded terms, contract date is still the appropriate U.S. date of sale. According to Çayirova, each of its U.S. shipments was consistent with the contract as to both quantity and value, as were the form of payment (*i.e.*, letter of credit). With respect to this latter point, Çayirova maintains that, once the letters of credit were opened, it was bound by

⁸⁶ See Preliminary Decision Memorandum at page 14.

⁸⁷ *Id.*

⁸⁸ See Çayirova's brief at 2-8.

⁸⁹ See Çayirova sales verification report at pages 6-7 and Exhibits 14 and 16.

⁹⁰ See SeAH Steel Crop. V. United States, 25 CIT 133, 134 (2001); and Nakornthai Strip Mill Public Co. v. United States, 33 Ct. Intl Trade 326, 614 F.Supp.2d 1323, 1334 (2009).

the doctrine of strict compliance⁹¹ to ship entirely within the terms of the letters of credit, and it implies that it did so. Indeed, Çayirova asserts that, if it did not comply with those terms, it risked not receiving payment from the customer.

In addition, Çayirova contends that the applicable date of sale standard is whether changes have occurred, not whether the terms of sale are subject to change. According to Çayirova, the Courts have held that a “possibility of change” standard would be too restrictive.⁹² Therefore, Çayirova maintains that the possibility of an amended contract by mutual consent does not call into question the binding nature of the contract.

Finally, Çayirova notes that the Department accepted contract date as Çayirova’s U.S. date of sale when it was a respondent in the recent LTFV investigation regarding OCTG from Turkey.⁹³ Specifically, Çayirova asserts that the facts here are the same as those in OCTG from Turkey and it contends that the Department’s decision should be the same here as well.

The petitioners assert that the Department correctly relied on invoice date as date of sale.⁹⁴ The petitioners disagree with Çayirova that the Department’s date of sale standard is limited to whether the terms of sale actually changed. The petitioners note that the Department recently found that, where contracts are subject to change, contract date is not the appropriate date of sale.⁹⁵ According to the petitioners, Çayirova identified four material terms of sale (i.e., price quantity, delivery terms, and payment terms) that were established within the contract. However, the petitioners note that the Department found that these terms of sale not only could change, but did change, after the order was placed.”⁹⁶ The petitioners contend that the Department found no evidence to contradict this finding at verification. The petitioners argue that, to the contrary, verification evidence corroborates that changes did occur.

⁹¹ Çayirova points to 3Com Corp. v. Banco de Brasil, S.A., 2F. Supp.2d 452, 458-459 (SDNY 1998, Sotomayor, J.), where the Court stated that letters of credit are subject to doctrine of strict compliance). See also Sunlight Distribution v. Bank of Communications, 1995 U.S. Dist. LEXIS 1349, 1995 WL 46636 (SDNY Feb. 6, 1995).

⁹² See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 33 CIT 695, 625 F. Supp. 2d 1339, 1373-1374 (2009), citing Nucor v. United States, 33 CIT at 257, 612 F. Supp. 2d at 1306, in which the Court rejected the claim that “the regulatory presumption of invoice date can be overcome only if a foreign producer establishes that there were no changes whatsoever to any material term of any contract at issue (and, moreover, that there was no possibility of any such change).”

⁹³ 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) (OCTG from Turkey Prelim), and accompanying Issues and Decision Memorandum at pages 18-19 (where the Department stated that the “material terms of Çayirova’s U.S. sales did not change after the date of the sales contract”), unchanged in OCTG from Turkey.

⁹⁴ See the petitioners’ rebuttal brief at 10-14.

⁹⁵ See Crystalline Silicon Photovoltaic Cells from the People’s Republic of China, Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 40998 (July 14, 2015) (Crystalline Silicon Photovoltaic Cells from China), and accompanying Issues and Decision Memorandum at Comment 40. See also Honey From Argentina: Preliminary Results of Antidumping Duty New Shipper Review, 76 FR 54202, 54204 (August 31, 2011), where the Department stated that because “there is potential for change to the essential terms of sale between the order date and invoice date { ... } invoice date continues to be the appropriate date of sale.

⁹⁶ See Preliminary Decision Memorandum at page 14.

The petitioners take issue with Çayirova's statement that "once the letters of credit were opened, Çayirova was bound by the doctrine of strict compliance." The petitioners point out that Çayirova's customer ignored the contract date on which to establish the letter of credit by many weeks and that the established shipment date in the contract further changed as a result.⁹⁷ According to the petitioners, these changes indicate that there was significant doubt between the establishment of the order and invoicing, including whether the sale would take place at all. Thus, the petitioners maintain that Çayirova has failed to overcome the regulatory presumption that invoice date is the appropriate date of sale.

The petitioners acknowledge that, pursuant to 19 CFR 351.401(i), respondents are free to use a date of sale other than invoice date if evidence indicates the terms of sale are set at a different, more appropriate, date. However, the petitioners point out that the Preamble to the regulations⁹⁸ indicates that price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced, and thus, it directs the Department to rely on invoice date, "absent satisfactory evidence" that the materials were set earlier.⁹⁹ Here, the petitioners argue that, because Çayirova failed to provide satisfactory evidence in support of its claim,¹⁰⁰ it did not meet its burden for the Department to move away from invoice date.¹⁰¹

Department's Position:

For this final determination, we agree with the petitioners and continue to find that date of invoice correctly reflects the date on which the material terms of Çayirova's U.S. sales are finalized. The Department's regulations at 19 CFR 351.401(i) direct the Department to define the date of sale as the date on which the material terms of sale are established. Specifically, 19 CFR 351.401(i) states:

In identifying the date of sale of the subject merchandise or the foreign like product, the Secretary will normally use the date of invoice, as recorded in the exporter or producer's record kept in the ordinary course of business. However, the Secretary may use a date

⁹⁷ The petitioners cite to Çayirova's February 9, 2015, response at Exhibit 9.

⁹⁸ See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27348-27349 (May 19, 1997) (Preamble).

⁹⁹ Id., at 27349.

¹⁰⁰ The petitioners note that in Çayirova's section A response, it failed to provide an answer as to what date of sale is appropriate in the U.S. market. In addition, the petitioners note that in Çayirova's section C response, it failed to provide any support or documentation other than the following claim that, "the date of sale is the order date." See Çayirova's February 9, 2015, response at pages 13-19; see also Çayirova's February 11, 2015, response at page 55.

¹⁰¹ According to the petitioners, it is a longstanding Department practice that, when a respondent makes a claim for a favorable adjustment, it must demonstrate that it is entitled to such adjustment. See Administrative Reviews of Ball Bearings (other than tapered roller bearings) and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom, 67 FR 55780 (August 3, 2002), and accompanying Issues and Decision Memorandum at Comment 7. Further, the petitioners state that the burden of creating an adequate record lies with respondents and not with Commerce. See Tianjin Mach. Imp. & Exp. Corp. v. United States, 16 CIT 93.1, 936, 806 F. Supp.1008, 1015 (1992). See also NSK Ltd. v. United States, 919 F. Supp.442 449 (CIT 1996). See also Tianjin Mach. Imp. & Exp. Corp. v. United States, 353 F.Supp. 2d 1294, 1305 (CIT 2004).

other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

During the POI, Çayirova made five shipments to the United States of welded line pipe, four under one contract and one under another. Çayirova reported the contract date as the date of sale, claiming that there were no changes to the terms of sale after the contracts were signed. However, after examining the information on the record, we found that Çayirova provided insufficient evidence to demonstrate that the contract date better reflects the date on which the material terms of sale are established, given that changes in the terms of these sales could, and did, occur after the order was placed.¹⁰² Therefore, in the preliminary determination we based Çayirova's U.S. date of sale on invoice date.

At verification, we examined both of Çayirova's U.S. contracts.¹⁰³ For one of these contracts, we found that Çayirova and the U.S. customer each performed according to the terms of the contract, and thus, we found no changes to the material terms of sale. For the second contract, however, we noted that the customer failed to open the letter of credit within the timeframe required by the contract and, as a result, Çayirova had to amend the contract to change the letter of credit expiry date and latest date of shipment. Further, Çayirova shipped the merchandise to the United States after the date originally agreed upon with the customer. Based on these facts, we find that Çayirova's contracts are not only changeable, but their terms did, in fact, change during the POI.

We disagree with Çayirova that the contract date represents a better U.S. date of sale than invoice date. By its own admission, Çayirova notes, "once the letters of credit were opened, {it} was bound by the doctrine of strict compliance to ship entirely within the terms of the letters of credit." Therefore, the binding terms of sale are not set here until, at the earliest, the letter of credit is opened,¹⁰⁴ and that, without a valid letter of credit, there effectively is no sale. The truth of this statement can be seen in Çayirova's actions here, given that Çayirova had to amend the original contract to incorporate changes necessitated by the late opening of the letter of credit.¹⁰⁵ Thus, we find that the contract date is not the actual date on which the material terms of sale are established, pursuant to 19 CFR 351.401(i).

Finally, we acknowledge that the Department used contract date as Çayirova's U.S. date of sale in OCTG from Turkey.¹⁰⁶ However, we note that the fact pattern differs here. In OCTG from Turkey, the Department determined that, "the material terms of {Çayirova's} U.S. sales did not change after the date of the sales contract."¹⁰⁷ In this instant investigation, as noted above, we

¹⁰² See Preliminary Decision Memorandum at page 14

¹⁰³ See Çayirova sales verification report at page 7.

¹⁰⁴ See Çayirova's case brief at page 6.

¹⁰⁵ See Çayirova sales verification report at page 7.

¹⁰⁶ See OCTG from Turkey Prelim and accompanying Issues and Decision Memorandum at pages 18-19, unchanged in OCTG from Turkey.

¹⁰⁷ Id.

verified that Çayirova's contracts can, and do, change after the date of signature.¹⁰⁸ Therefore, for purposes of this final determination, we continue to use invoice date as the date of sale for Çayirova's reported U.S. sales.

Comment 10: Çayirova's Pipe Specification for a Home Market Sale

The Department stated in the sales verification report that Çayirova reported an incorrect product specification for two of its home market sales.¹⁰⁹

Çayirova disagrees with this finding, citing to the product descriptions shown on the associated invoice.¹¹⁰ Thus, Çayirova argues that the Department should accept the specifications as reported for purposes of the final determination.

No other party commented on this issue.

Department's Position:

We reviewed the information on the record and agree with Çayirova that the reported specification for the two sales at issue matches the description shown the invoice. However, this information is inconsistent with the information contained in the stock card related to these sales, which was provided by the company at verification.¹¹¹ Because the record contains conflicting information, and without additional documentation to demonstrate which specification standard is correct, we accepted the respondents' reported information for purposes of the final determination.

Comment 11: Çayirova's G&A Expenses

Çayirova argues that the Department incorrectly calculated Çayirova's G&A expense ratio for the preliminary determination for three reasons.¹¹² First, Çayirova asserts that the Department added income from the reversal of antidumping provisions to the total G&A expenses when it should have subtracted this amount. Second, Çayirova contends that the Department should not have included expenses related to prior periods in the total G&A expense because they were not incurred during the period in which the foreign like product under investigation was produced. Third, Çayirova maintains that the Department should not have added Çayirova's capitalized depreciation expense to the total G&A expense.

Çayirova maintains that the capitalized depreciation is actually the depreciation recorded related to the period prior to the commissioning of an asset. Çayirova notes that Turkish accounting

¹⁰⁸ See Çayirova sales verification report at Exhibits 14 and 15.

¹⁰⁹ See Çayirova sales verification report at page 11.

¹¹⁰ See Çayirova's brief at 17-18, citing to Çayirova sales verification report at Exhibit 7.

¹¹¹ See Çayirova sales verification report at Exhibit 7, which contains both the stock card and specification standard guidelines.

¹¹² See Çayirova's brief at 12-13.

rules require that a new asset be assigned a full year of depreciation in the year that it is commissioned, regardless of which month it is placed into service.¹¹³ Çayirova asserts that, to avoid distorting the actual cost of production, Çayirova books only the depreciation for the time period after the asset is placed into service as manufacturing depreciation; the depreciation recorded for the months prior to the in service date is booked as a G&A expense. According to Çayirova, the portion of the total depreciation booked as G&A expense does not relate to the production of subject merchandise. Çayirova argues that this depreciation is not related to the production of any product, since it is an accounting construct related to the cost incurred before the equipment was even operating. Çayirova maintains that the costs incurred in producing the subject merchandise do not include the depreciation for the period before the asset was commissioned. Thus, Çayirova concludes, this portion of the total depreciation should not be included in G&A expense at the final determination.

The petitioners assert that the Department should continue to calculate Çayirova's G&A expense ratio inclusive of all of the adjustments made at the preliminary determination.¹¹⁴

Department's Position:

With regard to Çayirova's first argument, we disagree that we made an arithmetic error by adding the reversal of antidumping provisions when we should have subtracted them. Çayirova submitted a net total G&A expense figure as the numerator of its ratio calculation (*i.e.*, total G&A expenses net of income from provisions). As the Department stated in the preliminary determination, we excluded the portion of the provision income related to the reversal of antidumping duties.¹¹⁵ We note that while Çayirova does not object to the Department's exclusion of antidumping provisions from Çayirova's G&A expense ratio, it argues that, when doing this, the Department subtracted the antidumping provisions income from Çayirova's net total G&A expense, thereby eliminating the offset and increasing the net total. However, we note that adding the offset when it was already included in the net total G&A expense would have constituted double counting.

We also disagree with Çayirova's contention that the Department should not have included prior period expenses in its net total G&A expense. Despite Çayirova's objections, the fact that the underlying events leading to the accrual of the expenses took place prior to the POI does not change the fact that these expenses are related to general operations in the current year. Under Turkish generally accepted accounting principles (GAAP), the accruals were recognized and recorded as current expenses for the first time in the 2014 audited financial statements. The Department's consistent practice is to follow the financial statement treatment and include such costs as current year G&A expenses.¹¹⁶

¹¹³ Thus, for example, according to Çayirova, if a new asset is commissioned and placed into service in November of a given year, a full year of depreciation is still recorded.

¹¹⁴ See the petitioners' brief at 12.

¹¹⁵ See the Memorandum from Robert B. Greger to Neal M. Halper, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Çayirova Boru Sanayi ve Ticaret A.Ş.," dated May 14, 2015.

¹¹⁶ See, *e.g.*, Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping

Lastly, we disagree with Çayirova that we should not have added Çayirova's "capitalized depreciation" expense to the reported net total G&A expense. We note that this amount was recorded as a general expense in Çayirova's audited financial statements in accordance with Turkish GAAP. In line with this treatment, we consider that these amounts constitute routine costs that are associated with the general operations of the company as a whole. Further, as Çayirova notes, these costs are not specifically related to the production of any product. The Department's approach for these types of costs is to spread them across the entire operations of the producer. Accordingly, it is our practice to include such routine costs that do not benefit the production of a particular product or division in a respondent's total G&A expenses.¹¹⁷

Comment 12: Tosçelik's Reporting of Home Market Sales

Tosçelik reported that certain of its POI home market sales resulted from bids, or "tenders," opened by state-owned utility companies. For these sales, Tosçelik reported the order date of the tender as the date of sale,¹¹⁸ and we accepted this date for purposes of the preliminary determination.¹¹⁹ However, at verification, we discovered that Tosçelik failed to report a significant volume of tender shipments, and we raised this as an issue in the sales verification report.¹²⁰

The petitioners agree that the unreported sales are an issue for the final determination.¹²¹ The petitioners note that, because the Department only selected one tender sale for individual examination, there is no way to know whether, or how many of, the other tenders had quantities which were similarly under-reported. The petitioners find it significant that Tosçelik did not voluntarily disclose the unreported sales at the start of verification. Moreover, while they acknowledge that none of the products in the unreported shipments would match any of Tosçelik's U.S. sales, there is no way to determine if any other unreported tender sales would do so.

The petitioners maintain that, given the magnitude of the error, the Department would be within the bounds of its past practice to reject Tosçelik's responses in their entirety and apply facts available.¹²² Instead, however, they propose that the Department apply partial AFA to

Duty Administrative Review; 2011-2012, 79 FR 37284 (July 1, 2014) and accompanying Issues and Decision Memorandum at Comment 4 and Cut-to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review and Final Partial Rescission, 72 FR 6522 (February 12, 2007) and accompanying Issues and Decision Memorandum at Comment 3.

¹¹⁷ See, e.g., Certain Steel Nails from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value, 80 FR 28972 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 6.

¹¹⁸ See Tosçelik Sections B-C response at page 16.

¹¹⁹ See Preliminary Decision Memorandum at page 13.

¹²⁰ See Tosçelik sales verification report at pages 3 and 8.

¹²¹ See the petitioners' brief at 12-15.

¹²² See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Administrative Reviews, 65 FR 6136, 6138 (February 8, 2000).

Tosçelik's home market sales.¹²³ As partial AFA, the petitioners state that the Department should: 1) identify the largest quantity home market sale; and 2) duplicate this sale in Tosçelik's margin calculations without accounting for home market selling expenses.

Tosçelik maintains that it reported the correct universe of home market tender sales because the Department instructed it in a supplemental questionnaire to "include all sales that were invoiced during the POI."¹²⁴ Tosçelik argues that, if the Department had wanted it to include all shipments related to its POI tenders, it should have instructed Tosçelik to report its sales in this manner. In any event, Tosçelik argues that, because none of its unreported tender sales would match its U.S. sales, Tosçelik's failure to report these tender sales does not affect the outcome of the investigation.

Department's Position:

We agree with the petitioners that Tosçelik should have reported all tender sales ordered during the POI in its home market sales listing. The original questionnaire issued to Tosçelik in this investigation instructs the company to report its universe of sales transactions as follows:

In accordance with the instructions provided in this section, prepare a separate computer data file containing each sale made during the period of investigation. . . . For sales of merchandise that have been shipped to the customer and invoiced by the time this response is prepared, each record in the computer data file should correspond to an invoice line item For sales of merchandise that have not yet been fully shipped and invoiced, separate records should be provided for the shipped and unshipped portions of the sale. For sales shipped in installments, a separate record should be provided for each installment.¹²⁵

Tosçelik determined what constituted a tender "sale" by reference to the order placed by the customer for each tender, and it notified the Department that it defined the date of sale for these transactions as the order date.¹²⁶ Thus, in accordance with the above instructions, Tosçelik was required to report shipments made under all home market orders (i.e., sales) of tenders placed during the POI; where those orders had not been completely filled by the due date for Tosçelik's questionnaire response, the questionnaire instructed Tosçelik to include a record in its home market sales listing covering the "unshipped portion of the sale."

Instead of following these instructions, Tosçelik reported all shipments of welded line pipe to tender customers, irrespective of when the order was placed. Tosçelik did not inform the Department that it had departed from the questionnaire instructions, nor did it seek guidance as to whether its alternative reporting methodology was acceptable. While it did include several

¹²³ While the petitioners characterize their suggestion as partial facts available, in reality, such an application would amount to partial AFA.

¹²⁴ See Tosçelik's brief at 2-3, citing to the Department's supplemental questionnaire for Tosçelik dated, February 25, 2015, at page 3; see also Tosçelik's rebuttal brief at 7-8.

¹²⁵ See the Department's original questionnaire issued to Tosçelik, dated December 8, 2014, at page B-2.

¹²⁶ See Tosçelik Sections B-C response at page 16.

shipments in the home market sales database related to tender sales prior to the POI, it offered no explanation as to why it had reported these shipments.

In a supplemental questionnaire, we requested that Tosçelik provide an alternative universe of home market sales transactions, to include all shipments of merchandise invoiced to home market customers during the POI.¹²⁷ This information was solicited as a precaution, in order to collect necessary data in the event that we disagreed that Tosçelik's order date was not the appropriate date of sale for tenders. Tosçelik's response was that it had already reported all transactions invoiced during the POI, without elaborating as to how these invoiced transactions related to the customer orders.¹²⁸ It was not until verification that we realized that the two sales universes (i.e., one based on orders and one based on invoices) were in fact different.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹²⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹³⁰

First, we recognize that the wording of our supplemental question may have led to some ambiguity and that it could have conveyed that we were accepting Tosçelik's self-selected reporting methodology. We also recognize our obligation under section 782(d) of the Act to inform Tosçelik of the nature of its deficiency and afford it a chance to remedy it. Thus, because we do not find that Tosçelik failed to act to the best of its ability, we disagree with the petitioners that an adverse inference is appropriate here.

¹²⁷ See the Department's supplemental questionnaire for Tosçelik dated, February 25, 2015, at page 3, where we instructed Tosçelik to revise its home market sales listing to include all sales that were invoiced during the POI.

¹²⁸ See Tosçelik's March 25, 2015, response, at page 10.

¹²⁹ See TPEA. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

¹³⁰ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

However, we also disagree with Tosçelik that it is appropriate to take no action for purposes of the final determination. After reviewing the data related to the unreported shipments, we found that some of the products contained in these shipments are, in fact, more similar to the reported home market products.¹³¹ When this fact is taken in conjunction with the facts that: 1) the tender sale examined at verification represented a significant portion of Tosçelik's POI home market sales; and 2) we are unable to determine the existence of additional, and potentially extensive, under-reporting, we find that the home market sales database is not complete enough to use as the basis for normal value, nor does it provide the Department with a reasonable assurance that the dumping margins for individual U.S. sales would not be materially different (given that better comparisons do exist).

Consequently, for the final determination, as partial facts available, we used CV as the basis for NV for purposes of the final determination. We note that the use of CV is fully consistent with 19 CFR 351.405(a), which directs the Department to use CV when price-to-price comparisons are inappropriate.¹³² Given our finding that the home market sales database is so incomplete that it does not provide a reliable basis for NV, we find that price-to-price comparisons are inappropriate and the use of CV instead is warranted.

Comment 13: Tosçelik's Home Market Interest Rate

In our calculation of Tosçelik's home market short-term borrowing rate for the preliminary determination, we included all short-term loans that were active during the POI, including those on which Tosçelik paid no interest.¹³³ Tosçelik disagrees with the inclusion of these "zero-interest" loans on the grounds that they are not short-term commercial loans, but instead are incentives provided by the banks to secure Tosçelik's business.¹³⁴ Tosçelik contends that it receives no real benefit itself from the transactions because they merely represent a pre-payment by the bank of Tosçelik's monthly tax liabilities (which Tosçelik remits to the bank on the due tax date). According to Tosçelik, the real beneficiaries of this process are the banks themselves, because these transactions enable the banks to show that they have strong loan portfolios on their books at the end of the month.

Tosçelik maintains that sellers offer differences in payment terms to compensate for differences in discounts (i.e., the longer the payment term, the lower the discount), and the size of these differences is tied to the seller's cost of money. Tosçelik claims that it does not take into account the zero-interest loans in question when setting its discounts and it would be unreasonable of the Department to expect it to do so. According to Tosçelik, the Federal Circuit has held that the Department must consider a respondent's actual commercial experience when determining its appropriate interest rate,¹³⁵ and these zero-interest loans are not the "usual and reasonable

¹³¹ Tosçelik has claimed business proprietary treatment with respect to the unreported products. Therefore, for further discussion see Tosçelik Final Calculation Memo.

¹³² See section 773(a)(4) of the Act.

¹³³ See Tosçelik's April 22, 2015, response at page 2.

¹³⁴ See Tosçelik's brief at 7-9.

¹³⁵ As support for this assertion, Tosçelik cites to LMI-La Metalli Industriale, S.p.A. v. United States, 912 F.2d 455, 460 (Fed. Cir. 1990) (LMI), where the Court explained that the Department must consider the actual commercial

commercial behavior” envisioned by the Court. Therefore, Tosçelik contends that the Department should calculate Tosçelik’s home market interest rate using only interest-bearing loans.

The petitioners agree with the Department’s preliminary decision to include zero-interest loans in the calculation of Tosçelik’s home market short-term interest rate.¹³⁶ The petitioners object to Tosçelik’s assertion that these loans are not short-term commercial loans,¹³⁷ pointing out that Tosçelik itself conceded that the banks consider these loans as part of their loan portfolios.¹³⁸ The petitioners note that 19 CFR 351.102 defines a short-term loan as one with “terms of repayment . . . which are one year or less,”¹³⁹ and record evidence demonstrates that the loans in question are short-term loans, as defined by the regulations. Finally, the petitioners state that the Department rejected the exclusion of zero-interest loans in Tosçelik’s home market credit calculation in Steel Pipe and Tube from Turkey,¹⁴⁰ and they contend that the Department should continue to do so here.

Department’s Position:

We disagree with Tosçelik that zero-interest loans should be excluded from the calculation of the home market borrowing rate. The short-term borrowing rate worksheet submitted by Tosçelik indicates that Tosçelik had principal balances for certain short-term loans, although it incurred no interest.¹⁴¹ Moreover, we note that Tosçelik records all interest-bearing and zero-interest loans into the same subaccount in its accounting system; this subaccount is designated as “short term liabilities – TL bank credits.”¹⁴² Therefore, the record shows that, in the ordinary course of its business, Tosçelik regards both loan types as short-term liabilities, and, thus, for the purposes of the final determination, we find it reasonable to continue to include each short-term loan in our calculation of Tosçelik’s short-term borrowing rate calculation, consistent with our practice in Steel Pipe and Tube from Turkey.¹⁴³

Comment 14: Tosçelik’s Late Shipment Penalties

Tosçelik argues that the Department’s verification report incorrectly stated that Tosçelik did not report late shipment penalties related to certain home market tender sales; however Tosçelik

experience of the respondent.

¹³⁶ See the petitioners’ rebuttal brief at 2-3.

¹³⁷ See Tosçelik’s brief at 8.

¹³⁸ Id.

¹³⁹ The petitioners further note that the regulations do not specify a minimum borrowing term with respect to short-term commercial loans.

¹⁴⁰ The petitioners cite to Final Results of the Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 76 FR 76939 (December 9, 2011) (Steel Pipe and Tube from Turkey), and accompanying Issues and Decision Memorandum at Comment 10.

¹⁴¹ See Tosçelik’s March 22, 2015, response at Exhibit 3.

¹⁴² Id.; see also Tosçelik’s January 11, 2015, response at Exhibit 14.

¹⁴³ See Steel Pipe and Tube from Turkey, and accompanying Issues and Decision Memorandum at Comment 10.

maintains that it correctly reported these expenses at part of its indirect selling expense calculation.¹⁴⁴ Tosçelik contends that the penalty invoice does not reference the underlying commercial invoice, and there are variable, and sometimes significant, lags between the shipment of the merchandise and the penalty. Therefore, Tosçelik argues that it is appropriate to classify these expenses as indirect.

The petitioners argue that these penalties should be reported as direct selling expenses relating only to the sales for which they were incurred.¹⁴⁵

Department's Position:

We reviewed the information on the record and agree with Tosçelik that the late shipment penalties are included in the company's indirect selling expense calculation. However, we agree with the petitioners that these penalties are more appropriately classified as direct selling expenses because they are directly related to specific sales reported in the home market sales listing. Although Tosçelik asserts that there is no explicit linkage between the penalty and the subsequent shipment, we note that such a linkage can be made using the terms of the tender.

However, because Tosçelik reported these expenses on an aggregate (i.e., non-tender-specific) basis, we do not have the information to treat them as direct. Moreover, we note that it is conservative to treat these expenses as indirect selling expenses. Therefore, we accepted these expenses as reported for purposes of the final determination.

Comment 15: Tosçelik's Net Financial Expense

In the preliminary determination, the Department increased Tosçelik's net consolidated financial expenses by the amount of foreign exchange losses from assets and liabilities other than borrowings that were reported in the company's consolidated income statement.¹⁴⁶ Tosçelik contends that the amount should be excluded from the reported costs in the final determination.¹⁴⁷

Tosçelik maintains its net consolidated financial expenses constitute a notional amount required under International Financial Reporting Standards (IFRS) to express the difference between the monthly and year-end exchange rates when valuing asset and liability accounts. As such, Tosçelik concludes that the amount is an unrealized loss since there is no underlying transaction that constitutes the realization of this loss.

¹⁴⁴ See Tosçelik's brief at 3-4.

¹⁴⁵ See the petitioners' rebuttal brief at 2.

¹⁴⁶ See the Memorandum to Neal M. Halper, Director, Office of Accounting, from Heidi K. Schriefer, Senior Accountant, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Tosçelik Profil ve Sac Endüstrisi A.Ş. and Tosyali Dis Ticaret A.Ş.," dated May 14, 2015 (Tosçelik Prelim Cost Calculation Memo), at page 2.

¹⁴⁷ See Tosçelik's brief at 11-14.

Citing to Fischer 2012 and SSSSC from Taiwan, Tosçelik claims that it is the Department's consistent policy to exclude unrealized foreign exchange gains and losses because they are not actual costs.¹⁴⁸ According to Tosçelik, the decision in subsequent cases to include unrealized foreign exchange losses, i.e., Fischer 2014, hinges on the fact that the losses were recognized on financial statements that reflect home country GAAP.¹⁴⁹ In contrast, Tosçelik contends that its consolidation is not prepared under Turkish GAAP, but instead IFRS, and is an exercise in which the company participates voluntarily, above and beyond the requirements of Turkish law.

Finally, Tosçelik argues that at a minimum the Department should exclude the portions of the loss that were expressly identified by the company's auditor as unrealized and as related to the cost of goods sold, as these amounts are artifacts of the IFRS conversion process and do not represent money actually expended on the production of the merchandise under consideration. Tosçelik argues that sections 773(b)(3)(B) and 773(e)(2)(A) of the Act require that the cost of production and CV be calculated based on actual amounts incurred and realized. As such, Tosçelik concludes that unrealized foreign exchange losses have no part in this statutory scheme, which prevails over any policies of IFRS.

The petitioners argue that the Department should continue to include the foreign exchange losses at question in Tosçelik's financial expense ratio for the final determination.¹⁵⁰ The petitioners maintain that, contrary to Tosçelik's assertions, Fischer 2012 does not stand for a consistent Departmental practice of excluding unrealized losses; rather, Fischer 2014 clarified that the Department's practice is to include such losses and characterized any past actions to the contrary as aberrant. Moreover, the petitioners contend that Tosçelik has failed to provide evidence that the losses were indeed unrealized.

Regarding Tosçelik's reference to section 773(e)(2)(A) of the Act ("...actual amounts incurred and realized. . ."), the petitioners contend that in Fisher 2014, the court concluded that the complainant's reliance on this section of the Act "must fail because it creates tension with other parts of the statute."¹⁵¹ Similarly, the petitioners argue that Tosçelik has also failed to substantiate how the inclusion of the foreign exchange losses Tosçelik's financial expense ratio would distort costs.

Finally, the petitioners point out that Tosçelik does not question the Department's practice of using the highest level of consolidated financial statements, nor does Tosçelik raise any objections to the particular consolidated financial statements that were used in the calculation of

¹⁴⁸ See Fischer S.A. Commercio V. United States, No. 10-00281, 2012 WL 1942109 (CIT Apr. 30, 2012) (Fischer 2012); Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results of Antidumping Review, 67 FR 45472, 45478 (July 9, 2002) (SSSSC from Taiwan).

¹⁴⁹ See Fischer S.A. Comercio, Industria and Agricultura v. United States, No. 12-00340, 2014 WL 2853909 (CIT May 27, 2014) (Fischer 2014).

¹⁵⁰ See the petitioners' rebuttal brief at 5-9.

¹⁵¹ Specifically, the petitioners argue that the court points to section 773(f)(1)(A) of the Act where the Department is instructed to calculate costs based on company records, provided the records reflect home country GAAP and "reasonably reflect the costs associated with the production and sale of the merchandise." In Fischer 2014, the court was unpersuaded that the inclusion of such losses was distortive.

the financial expense ratio. Thus, the petitioners argue that the financial expense ratio must be based on Tosçelik's consolidated financial statements and not on Tosçelik's separate company financial statements. The petitioners maintain that, since Tosçelik failed to provide evidence of the differences between Turkish GAAP and IFRS, the Department should reject Tosçelik's arguments and continue to include the foreign exchange losses in Tosçelik's financial expense ratio for the final determination.

Department's Position:

We continued to include the foreign exchange losses from assets and liabilities other than borrowings in the calculation of the financial expense ratio for the final determination.

First, contrary to Tosçelik's assertions, the Department does not have a practice of excluding unrealized foreign exchange gains and losses. In 2003, the Department implemented a practice of including all foreign exchange gains and losses in the calculation of the financial expense ratio.¹⁵² In doing so, the Department placed no weight on whether such gains and losses were realized or unrealized. In fact, case precedent is replete with evidence that the Department's consistent policy since 2003 has been to include in the financial expense ratio all foreign exchange gains and losses reported on a respondent's income statement.¹⁵³

We find Tosçelik's reliance on SSSSC from Taiwan and Fischer 2012 is misplaced. We note that the SSSSC from Taiwan preliminary decision to exclude unrealized foreign exchange losses predates the Department's 2003 pronouncement that all foreign exchange gains and losses will be included in the financial expense ratio going forward.¹⁵⁴ Tosçelik's reliance on Fischer 2012 is equally misplaced because in that case, the Department's discussion of foreign exchange losses as not representing "an actual expense" related to the company's losses that were recorded directly in the shareholders' equity account on the balance sheet.¹⁵⁵ In the final determination the Department's original calculation of the respondent's financial expense ratio in fact included only the net foreign exchange losses recognized in the company's income statement.¹⁵⁶

¹⁵² See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045, 11048 (March 7, 2003), unchanged in Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 68 FR 41303 (July 11, 2003).

¹⁵³ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Results of the Antidumping Duty Administrative Review; 2012-2013, 80 FR 19964 (April 14, 2015), and accompanying Issues and Decision Memorandum at Comment 3; Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part, 75 FR 41813, (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 7; and, Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 14.

¹⁵⁴ See SSSSC from Taiwan, 67 FR at 45478.

¹⁵⁵ See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), (Orange Juice from Brazil), and accompanying Issues and Decision Memorandum at Comment 12. In Fischer 2012, the respondent recorded foreign exchange gains and losses in two places: 1) as an adjustment to shareholders' equity on the balance sheet, and 2) as a net expense on the income statement. *Id.*

¹⁵⁶ See Orange Juice from Brazil at Comment 12 where the Department states that the net exchange variation included in the financial expense ratio "is classified as a line item in the income statement, not the statement of

Although the court in Fischer 2012 ultimately directed the Department to exclude the net unrealized foreign exchange losses that were reported on Fischer’s income statement, we note that this decision was reached based on a specific set of facts. Specifically, the court relied on the fact that “Fischer adopted the U.S. dollar as its functional currency and conducts all of its business in U.S. dollars” and would then translate its U.S. dollar financial statements to Brazilian reais financial statements in order to comply with Brazilian financial reporting laws.¹⁵⁷ The court concluded that by adopting the U.S. dollar as its functional currency, combined with the fact that all of its business is conducted in U.S. dollars, Fischer chose not to expose itself to foreign currency fluctuation.¹⁵⁸ Therefore, the variations caused by currency translation to reais for reporting purposes are not “the actual amounts incurred and realized” pursuant to section 773 of the Act.¹⁵⁹ The distinguishable nature of Fischer 2012 was also recognized by the court in Fischer 2014, noting that its holding in Fischer 2012 was “premised on the fact that Fischer only included the hypothetical translation losses to comply with Brazilian law”¹⁶⁰

Finally, with regard to Fischer 2012, despite following the Court’s instructions to exclude the net exchange variance reported on Fischer’s income statement, the Department maintains that including all foreign exchange gains and losses reported on a company’s income statement, while excluding any foreign exchange gains and losses recorded to stockholders’ equity, is appropriate.

Tosçelik attempts to distinguish the instant case from Fischer 2014 as a matter of compliance with home country GAAP. Whereas Fischer’s financial statements reflected Brazilian GAAP, Tosçelik contends that its holding company’s consolidated financial statements upon which its financial expense ratio is based, reflect IFRS, not Turkish GAAP. However, IFRS is accepted under Turkish GAAP. The Kamu Gözetimi Kurumu (KGK), the Turkish Public Oversight authority for Accounting and Auditing Standards, adopted IFRS for the consolidated financial statements of all companies whose securities are publicly traded.¹⁶¹ While Tosçelik’s holding company is not publicly traded, the company chose to present its consolidated financial statements in accordance with IFRS, the reporting standards preferred by the KGK for consolidated entities. Hence, both the non-consolidated and consolidated entities have prepared their audited financial statements in accordance with Turkish GAAP.

Tosçelik also contends that the foreign exchange losses should be excluded because the statute instructs the Department to include only “actual data” and “the actual amounts incurred and realized.”¹⁶² However, section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on company records, provided they are in accordance with home country GAAP and

equity, and is an actual expense incurred by the company during the POR.”

¹⁵⁷ See Fischer 2012, 2012 WL 1942109, at *3.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ See Fischer 2014, 2014 WL 2853909, at *11.

¹⁶¹ See <http://www.ifrs.org/Use-around-the-world/Documents/Jurisdiction-profiles/Turkey-IFRS-Profile.pdf> at page 3. See also Tosçelik Prelim Cost Calculation Memo.

¹⁶² See sections 773(b)(3)(B) and 773(e)(2)(A) of the Act.

are reasonable.¹⁶³ Here, both the non-consolidated and consolidated financial statements are prepared in accordance with reporting standards that are permitted under Turkish GAAP. Further, the Department does not find the inclusion of the foreign exchange losses to be unreasonable. Rather, the financial expense ratio calculation for Tosçelik reflects the Department's long-standing practice of calculating financial expenses at the highest level of consolidation and including in those expenses all foreign exchange gains and losses.¹⁶⁴

While Tosçelik also argues that, at a minimum, portions of the loss should be excluded because they do not reflect money actually expended, we disagree. The court has recognized that “[a]lthough translation losses are unrealized, as there is no actual outflow of funds from the company, the resulting exposure to increased liability for borrowed funds caused by fluctuations in the exchange rate is by no means hypothetical.”¹⁶⁵ Here, Tosçelik's consolidated financial statements identify the U.S. dollar as the functional currency of both Tosçelik and its holding company.¹⁶⁶ A functional currency is the currency of the primary economic environment in which an entity operates (i.e., the one in which it primarily generates and expends cash).¹⁶⁷ Tosçelik, however, records its daily transactions in Turkish lira, not in its U.S. dollar functional currency.¹⁶⁸ When an entity maintains its books and records in a currency other than its functional currency, the entity must translate its financial statements at year end into the functional currency.¹⁶⁹ In accordance with IFRS, this re-measurement from the recording to the functional currency should produce the same results had the transactions been initially recorded in the functional currency.¹⁷⁰ Further, all exchange differences should be recognized in the profit and loss in the period in which they arise.¹⁷¹ The record demonstrates that Tosçelik transacts in both Turkish lira and U.S. dollars.¹⁷² Consequently, Tosçelik does in fact incur foreign exchange

¹⁶³ A similar argument was also made in Fischer 2014; however, the court found that “Fischer’s interpretation must fail because it creates tension with other parts of the statute and with the purpose of constructed value. Id., 2014 WL 2853909, at *9.

¹⁶⁴ See e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 7; Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 8; and, Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (December 15, 2000), and accompanying Issues and Decision Memorandum at Comment 7.

¹⁶⁵ See Micron Technology, Inc. V. United States, 893 F. Supp. 21, 33 (CIT 1995).

¹⁶⁶ See Tosyali Audited Consolidated Financial Statements at note 3.4, Tosçelik’s January 12, 2015 response, at exhibit 13.

¹⁶⁷ See International Accounting Standards 21 “The Effects of Changes in Foreign Exchange Rates” (IAS 21), at paragraphs 8-9.

¹⁶⁸ See Tosyali Audited Consolidated Financial Statements at note 3, Tosçelik’s January 12, 2015 response, at exhibit 13.

¹⁶⁹ See IAS 21, at paragraph 34.

¹⁷⁰ Id.

¹⁷¹ See IAS 21, at paragraph 28.

¹⁷² See, e.g., cost verification exhibits (CVEs) 6, 9, and 11, which contain copies of invoices denominated in Turkish lira and copies of invoices denominated in U.S. dollars.

gains and losses that are tied to specific transactions, regardless of whether the company records its transactions in Turkish lira or U.S. dollars. Further, where a subsidiary has a functional currency that differs from its parent's functional currency, the translation gain or loss is recognized in stockholder's equity, not in the income statement.¹⁷³ Here, Tosçelik's net foreign exchange loss was treated as a current expense on the consolidated income statement, not stockholders' equity, thereby recognizing that these losses had an impact on the overall risk management and purchasing power of the consolidated entity as a whole. Thus, we find that Tosçelik's request to parse out elements of the net foreign exchange loss must also be denied.

For the foregoing reasons, we continued to include all foreign exchange losses from the consolidated income statement in the calculation of Tosçelik's financial expense ratio in the final determination.

Comment 16: Tosçelik's PE Coated Product Costs

At the cost verification, the Department found that the significant fluctuations in the per-unit costs reported for PE coated products were unrelated to the physical characteristics of those products.¹⁷⁴ Consequently, the Department's cost verification report contemplates a reallocation of the conversion costs for PE coated products to eliminate these variations.¹⁷⁵ Tosçelik objects to any reallocation of costs.¹⁷⁶ The petitioners argue that the Department should expand the reallocation of costs to all products.¹⁷⁷

Although Tosçelik concedes that some PE coated products were very expensive to produce, it claims that the high costs are directly related to a physical characteristic (*i.e.*, surface finish, and to the underlying physical production process). According to Tosçelik, the PE coating process is very sensitive and Tosçelik has not yet achieved the capability to handle this type of coating in a consistent manner. Consequently, Tosçelik maintains that the production of certain products generated a lot of scrap and waste in certain months resulting in high production costs for those products. Tosçelik asserts that the Department would not allow a respondent to reallocate its own per-unit costs from its normal books and records and the Department should not do so either. Moreover, Tosçelik maintains that such a recalculation is not rational since a company cannot appropriately price its products if it reallocates the costs from its normal books and records to give the appearance of profitability on sales of goods that were made at a loss.

Tosçelik disagrees with the petitioners' contention that the costs for all products should be recalculated. As an initial matter Tosçelik posits that it is too late in the proceeding for the petitioners to propose novel cost calculation methodologies, as the timing of these allegations now deprives Tosçelik of the ability to review such calculations. Nevertheless, citing section 773(f)(1)(A) of the Act, Tosçelik avers that such a recalculation violates the statutory directive to

¹⁷³ See IAS 21, at paragraph 32.

¹⁷⁴ See Tosçelik cost verification report at page 3.

¹⁷⁵ *Id.*

¹⁷⁶ See Tosçelik's brief at 10-11; and Tosçelik's/Çayirova's rebuttal brief at 1-7.

¹⁷⁷ See the petitioners' brief at 2-9; and the petitioners' rebuttal brief at 3-5.

use a respondent's normal books and records where such records are in accordance with home country GAAP and are a reasonable reflection of the cost of producing the merchandise under investigation. According to Tosçelik, its reported costs are both in accordance with Turkish GAAP and reasonably reflect the costs associated with producing the merchandise. Although the Department found that the PE coated products may not reasonably reflect the cost to produce such products, Tosçelik points out that the Department found the costs to be accurate.

Tosçelik disagrees with the petitioners' contention (see below) that products with near-identical physical characteristics have radically different costs simply because of where or when they were produced. Tosçelik counters that "near-identical" products would fall under the same CONNUM since the control number (or "CONNUM") attempts to group products by significant physical characteristics. Further, Tosçelik argues that the recalculations proposed by the Department and the petitioners ignore 19 CFR 351.407(c) which directs the Department to take into account other qualitative factors (e.g., variations in scrap rates between production orders) when determining the appropriateness of a respondent's cost allocation methodology. Moreover, Tosçelik asserts that the cost analyses that underpin the petitioners' cost recalculation argument are overly-broad and fail to take into account Tosçelik's cost reporting formulas.

To address the petitioners' analyses, Tosçelik first submits that direct labor coating costs are in line with expectations (i.e., lower costs for unpainted and uncoated pipe, etc.) when compared on a factory-specific basis. Next, Tosçelik notes that PE coating material costs are recorded as variable overhead costs, not as other materials, thus explaining why the petitioners' comparison of the other material costs for uncoated versus coated pipes did not identify any notable cost differences. Additionally, Tosçelik explains that the petitioners' direct material and other material cost comparisons fail to consider that products may be produced from steel, from purchased slab, or from purchased hot rolled coil (HRC). Where a product was produced from steel, the respective costs flow through Tosçelik's accounting system by nature, (e.g., scrap (reported under the direct materials cost of production (COP) database field), ferroalloys (reported under the other material COP database field), direct labor, etc.), while the purchased slab and the purchased HRC costs are recorded as raw materials (reported under the direct materials COP database field). Thus, Tosçelik argues that, where products were produced from differing substrate, the comparisons of a single cost reporting field are not appropriate.

Finally, Tosçelik proffers that such a move away from a respondent's normal books and records invites chaos, as there is no discernable governing principle to predict when such reallocations may be applied by the Department or by respondents themselves. While other reallocations of cost, (e.g., startup operations or quarterly costs), are tightly constrained and based on objective rules, Tosçelik holds that the criteria for the type of reallocations proposed here are undiscernible and fail to take into account the impact of such decisions on future cases.

The petitioners argue that the Department's proposal to recalculate costs for PE coated products should be extended to a recalculation of the costs for all products. Citing to CWP from Korea,¹⁷⁸ the petitioners note that the Department has previously declined to accept the wildly varying

¹⁷⁸ See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 32937 (June 10, 2015) (CWP from Korea), and accompanying Issues and Decision Memorandum at Comments 8-10.

costs that were reported for CONNUMs with near-identical physical characteristics. Similarly, the petitioners allege that Tosçelik has also reported wildly varying product costs which are not justified by any difference in the products' physical characteristics. As support, the petitioners first identify what they describe as unexplained and inexplicable differences in the other material, variable overhead, and fixed overhead per-unit costs for sample sets of CONNUMs that differ only in wall thickness. Second, the petitioners characterize surface finish as the largest cost driver among types of pipe and submit that: 1) the Department failed to investigate a discrepancy in coating production quantities; and 2) comparisons of the other material, direct labor, variable overhead, and fixed overhead per-unit costs for uncoated coated products also make little sense.

The petitioners claim that, as a result of these unjustified cost variations, the difference-in-merchandise (or "DIFMER") calculations, which are intended to account for the physical differences between similar products, likewise reflect large distortive adjustments that are unrelated to the physical characteristics of the products that are being matched. Pointing to 19 CFR 351.411 which states that cost differences will not be considered between merchandise with identical physical characteristics, the petitioners urge the Department to smooth out these cost differences as they are simply related to when or where the products were produced during the POI rather than the products' physical characteristics.

The petitioners rebut Tosçelik's arguments against this proposed cost reallocation by initially noting that today's more sophisticated accounting systems now allow companies to track actual costs down to individual production runs. The petitioners maintain that one consequence of such detailed accounting is that it can generate wildly varying costs that the company itself does not take into consideration when pricing its products. In fact, the petitioners proffer that, contrary to Tosçelik's assertions, the reported sales files demonstrate that the more costly PE coated products were apparently not priced based on their wildly inflated actual costs, but rather based on the expected costs to produce the products absent unusual circumstances. Regardless, the petitioners maintain that the Department is not constrained by either the statute or the regulations to accept uncritically the actual costs generated by a company's accounting system. Furthermore, the petitioners interpret 19 CFR 351.407(c) (i.e., the Department "... may take into account production quantities, relative sales values, and other quantitative and qualitative factors ...") as giving the Department the discretion to reallocate a respondent's reported costs, not limiting the Department's consideration of the appropriate cost allocation methodology.

The petitioners also allege that Tosçelik's reported direct material costs are understated and should be rejected. In support, the petitioners compare Tosçelik's company-wide POI purchased and self-produced HRC per-unit costs to the weighted-average direct materials per-unit cost reported to the Department, finding the reported figure to be significantly lower. While the Department reviewed four CONNUMs in detail at the cost verification, the petitioners claim that they were unable to recalculate the reported direct materials cost for one of these CONNUMs. Furthermore, the petitioners question how this particular direct materials figure was verified when the only HRC costs referenced in the Department's report were significantly higher than the direct material cost reported for this CONNUM. The petitioners also question the Department's statement that the reported costs account for "all yield losses," as the petitioners allege that the underlying cost drilldowns clearly reflect un-yielded HRC costs. Based on the

aforementioned, the petitioners construe that the reported direct material cost for this CONNUM has clearly been understated and was not truly verified. Therefore, for the final determination, the petitioners request that the Department revise the direct material costs for all products to reflect Tosçelik's company-wide purchased and self-produced HRC weighted-average cost, adjusted for the yield losses that would be incurred in subsequent processing.

Department's Position:

For the final determination, we reallocated the conversion costs for PE coated products to mitigate the impact of cost variations unrelated to the products' physical characteristics.¹⁷⁹ However, we disagree with the petitioners' additional recalculation proposals, and did, therefore, not revise the direct material and conversion costs for the entire cost database.

In evaluating a company's reported costs, the Department is directed by section 773(f)(1)(A) of the Act to consider whether the costs are in accordance with home country GAAP and reasonably reflect the costs to produce the product under investigation. While Tosçelik raises a valid point regarding the lack of discernable criteria for determining what is so unreasonable that it requires a reallocation of the costs from a company's GAAP-based books and records, the statute provides no specific guideline in this regard. Accordingly, "{the Department} has broad discretion to devise a method for calculating 'general expenses.'"¹⁸⁰ In so doing, the Department has made such decisions on a case-by-case basis.¹⁸¹ The Department believes that substantial preference should be placed on the use of a respondent's normal books and only after critical analysis should such wholesale recalculations be performed. Here, the significant fluctuations in the PE coated product costs leave no doubt that they are not a reasonable reflection of the cost required to produce such products.¹⁸² Tosçelik itself concedes this point.¹⁸³ Further, Tosçelik acknowledges that these cost variances were driven by the company's inexperience with this new type of processing and by the limited number of PE coated products that the company was able to produce.¹⁸⁴ In certain months, this created large quantities of scrap and waste, the costs of which were born solely by the few PE coated products that happened to be produced in marketable condition.¹⁸⁵ Further exacerbating the per-unit cost variations is the

¹⁷⁹ While these products may not be used in the margin calculation, we made this adjustment due to the potential impact on other calculations in the program, such as CV profit.

¹⁸⁰ See Am. Silicon Techs. v. United States, 334 F.3d 1033, 1037 (Fed. Cir. 2003) (citing Micron Tech. Inc. v. United States, 243 F.3d 1301, 1308 (Fed. Cir. 2001)).

¹⁸¹ See e.g., Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35248 (June 12, 2013) (CWP from Korea 2013) and accompanying Issues and Decision Memorandum at Comment 6; Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 72 FR 43598 (August 6, 2007) (UK Bar), and accompanying Issues and Decision Memorandum at Comment 1; and, Thai Plastic Bag Indus. Co., Ltd. v. United States, 752 F. Supp. 2d 1316, 1324-25 (CIT 2010) (Thai Bags).

¹⁸² See Tosçelik cost verification report at page 3.

¹⁸³ See Tosçelik's brief at 10.

¹⁸⁴ Id.

¹⁸⁵ The scrap and waste mentioned here refer to the PE coating materials which are included in the variable overhead cost field.

fact that under such circumstances the company's monthly fixed costs were then spread over the limited quantity of good PE coated products that Tosçelik was able to produce that month.

Although Tosçelik attempts to package these cost variations as related to the physical characteristic for surface finish and therefore appropriate, we disagree. While the costs are a result of the PE coating process, they should not be allocated to nearly-identical products (e.g., products that differ in only the thickness characteristic) in a manner that significantly overburdens one PE coated product but not another when both products received the same processing. To avoid such abnormalities, the Department has a long-standing practice of using annual average costs.¹⁸⁶ The annual average approach smooths out fluctuations in production volumes and costs that occur during a company's normal cost reporting cycle, with the goal of deriving a cost that reasonably reflects a normalized COP for the year. Moreover, using a full year's cost data ensures that sporadic fixed overhead costs, such as repairs and maintenance, and certain provisions or accruals recorded only at year's-end, are appropriately considered for inclusion in COP. As noted by the petitioners, the sophisticated cost accounting systems now in use allow companies to calculate very specific, very detailed product costs. Consequently, products may be unjustly overburdened if, for example, they were produced during a month with low production, produced during a month with a large equipment failure, etc. Thus, weight-averaging a company's monthly product-specific costs on a CONNUM-specific basis may not adequately smooth out such cost differences. Where such circumstances create pervasive inexplicable cost variations that are unrelated to the reported products' physical characteristics and that are significantly distortive to the margin calculations, the Department has found it necessary to reallocate a respondent's costs across CONNUMs with common physical characteristics.¹⁸⁷ In the instant case, we find that the cost of coating the PE coated products should vary based on the surface area coated, not based on what particular PE coated products were being produced when Tosçelik was still learning how to use the coating equipment.

We also disagree with the rationale that the Department should not adjust Tosçelik's costs since the company could not adjust its own books and records (i.e., the Department would not allow it or the company would not consider it internally). Section 773(f)(1)(A) of the Act gives the Department the discretion to reallocate costs from a company's normal books and records if they do not "reasonably reflect the costs associated with the production and sale of the merchandise." Here, we identified that the PE coated products reflect significant cost variations that are unrelated to the physical characteristics of the reported products.¹⁸⁸ As such, we find that the reported costs for the PE coated products do not reasonably reflect the costs associated with their production and sale. Consequently, for the final determination, we reallocated the conversion costs of the PE coated products so that they reflect a normalized COP for the POI consistent with section 773(f)(1)(A) of the Act.

¹⁸⁶ See e.g., Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 17503, (March 28, 2014), and accompanying Issues and Decision Memorandum at Comment 1; and CWP from Korea 2013 and accompanying Issues and Decision Memorandum at Comment 6.

¹⁸⁷ See e.g., CWP from Korea 2013 and accompanying Issues and Decision Memorandum at Comment 6; UK Bar and accompanying Issues and Decision Memorandum at Comment 1; and Thai Bags.

¹⁸⁸ See Tosçelik cost verification report at page 3.

Conversely, we do not find that Tosçelik's reported costs for the non-PE coated products are unreasonable. Nor do we agree with the petitioners that Tosçelik's direct material costs were understated and unverified. Instead, we find that the petitioners' cost analyses which underlie their arguments for the wholesale reallocation of Tosçelik's reported costs fail under close scrutiny.

The petitioners first compare selected cost fields for four sets of CONNUMs where each CONNUM pair differs by wall thickness only. According to the petitioners, the differences in physical characteristics of these CONNUM pairs do not justify the disparities in their per-unit other material, variable overhead, or fixed overhead costs. As explained in the Department's cost verification report, the conversion costs associated with each stage of production from steel making through pipe forming are maintained according to the nature of the expense in Tosçelik's cost accounting system and have been reported to the Department in the direct labor, variable overhead, and fixed overhead cost fields.¹⁸⁹ Furthermore, Tosçelik may produce pipes from either scrap, purchased slab, or purchased HRC; thus, the direct material cost field includes only the scrap, purchased slab, or purchased HRC costs, while the additional raw material inputs required for steel production, such as ferroalloys, etc., were reported under the other materials cost field.¹⁹⁰ Consequently, if a CONNUM was largely produced from purchased HRC, it would have lower other material, variable overhead, and fixed overhead costs (but a higher direct material cost) than a CONNUM that was largely produced from scrap. Such was the case with the petitioners' selections. However, when the total per-unit costs for these CONNUM pairs are considered, the costs vary in accordance with expectations, (*i.e.*, the thinner, lighter weight products which would require more time to process one metric ton, were reported with higher total costs).¹⁹¹

Next, the petitioners critique products of differing surface finishes (*i.e.*, bare, painted, or PE coated). The petitioners commence by asserting that the Department failed to verify a discrepancy between the total quantity of PE products produced and the total quantity of PE products reported in the cost database. The Department does not characterize this figure as a discrepancy, but rather the quantity of non-subject PE coated products that Tosçelik was not required to report in its cost database. While we did not trace this particular non-subject figure to source documents, we note that "it is *not* required that Commerce trace through every number of the response--a representative sample is sufficient."¹⁹² Rather, "{v}erification is a spot check and is not intended to be an exhaustive examination of the respondent's business."¹⁹³ As such, the Department was satisfied with the spot check performed on non-subject products at other points of the verification, and therefore, did not consider the fact that Tosçelik also produced non-subject PE coated products as something that should be further investigated.¹⁹⁴

¹⁸⁹ *Id.*, at page 18.

¹⁹⁰ *Id.*

¹⁹¹ See Tosçelik's April 14, 2015 supplemental section D response at pages 29-30 and Tosçelik's August 7, 2015 cost database.

¹⁹² See *Micron Technology, Inc. v. United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997) (emphasis in the original).

¹⁹³ *Id.*, (citing *Monsanto Co. v. United States*, 698 F. Supp. 275, 281 (1988)).

¹⁹⁴ See Tosçelik cost verification report at pages 10-14, where the Department tested the costs excluded as related to

We also disagree with the petitioners that the per-unit costs of uncoated versus coated products make little sense and are grounds to revise Tosçelik's reported costs. First, regarding other materials and variable overhead, the Department's verification report notes that "variable overhead includes the epoxy and PE materials" for the PE coated products.¹⁹⁵ Therefore, comparisons of only the other material costs for bare, painted, and PE coated pipes are not instructive because other materials do not include epoxy or PE materials. However, using the petitioners' own table, a comparison of the average variable overhead costs or even the sum of the average variable overhead and average other material costs for each of these categories provides results that are in line with expectations (*i.e.*, pipes are progressively more expensive to produce as the surface finishing increases).

Regarding the differences in the average direct labor costs for bare, painted, and PE coated products, these can also be explained by the fact that the category would include the direct labor for all processing steps and is not specific to the coating processing stage.¹⁹⁶ Hence, pipes produced from self-produced HRC rather than purchased HRC would have more conversion costs since more processing was involved. Ultimately, it is the total cost of manufacturing that is important,¹⁹⁷ and, if we perform the petitioners' same exercise for total costs, (*i.e.*, compare the weighted-average total cost of manufacturing for bare, painted, and PE coated products), we again find that pipes are progressively more expensive to produce as the surface finishing increases.

The petitioners' final comparison of bare, painted, and PE coated products is directed at the large fixed overhead costs of certain PE coated products.¹⁹⁸ For the final determination we have adjusted the conversion costs (*i.e.*, direct labor, variable overhead and fixed overhead costs) for PE coated products due to such unusual variations. As discussed in detail above, we are applying these adjustments because the pipes are progressively more expensive to produce as the surface finishing increases. Notwithstanding, we do not agree that the variations in a subset of products support the recalculation of Tosçelik's entire cost database. Therefore, for the final determination, we did not recalculate the other material and conversion costs for non-PE coated products.

Finally, we disagree with the petitioners' contentions regarding direct materials. While the petitioners are correct that Tosçelik's weighted-average direct material cost field from the cost database is lower than its company-wide average HRC costs, the petitioners have again overlooked crucial pieces of information on the record. As noted previously, the direct material

non-subject products.

¹⁹⁵ See Tosçelik cost verification report at pages 3 and 20.

¹⁹⁶ See our discussion above of the per-unit cost differences between products that vary only by thickness.

¹⁹⁷ We note that the Department is relying on CV for the final determination. Therefore, the assignment of costs as fixed or variable for purposes of the DIFMER calculation does not come into play.

¹⁹⁸ The petitioners also take issue with the Department's verification report with regard to depreciation. However, while we traced the total figures to Tosçelik's cost accounting records, we selected electricity and direct labor, not depreciation, for detail test work. See Tosçelik cost verification report at page 23. Therefore, the "pile of printouts" referenced by the petitioners is not intended to support the depreciation figures.

cost field “included only scrap, purchased slab, and purchased HRC.”¹⁹⁹ The Department also noted that “the conversion costs associated with each stage of production from steel making through pipe forming are maintained according to the nature of the expense in Tosçelik’s cost accounting system and have been reported to the Department in the direct labor, variable overhead, and fixed overhead cost fields. Further, we noted that the additional raw material inputs required for steel production, such as ferroalloys, have been reported to the Department under the other materials cost field.”²⁰⁰ Therefore, to obtain assurance that the total cost of self-produced HRC was reasonable, “we compared the total cost of the purchased and self-produced HRCs that were consumed in the production orders.”²⁰¹ To do so, the Department examined the detailed drilldowns from the accounting system where the total cost of the HRC entering pipe production could be seen. The Department then compared the total costs of the self-produced HRCs to the total costs of the purchased HRCs. Thus, in comparing the purchased to self-produced coil costs, the Department considered the fully loaded costs (*i.e.*, not only direct material costs, but also the other materials, direct labor, and conversion costs) of the self-produced coils. A specific example of these comparisons was provided in the cost verification report.²⁰² These are the very figures which seemingly perplex the petitioners in their brief.²⁰³ However, a review of these figures demonstrates that they are in line with the petitioners’ own company-wide calculations for purchased and self-produced HRC. Thus, we found that HRC costs were not understated, but instead where self-produced HRC were consumed, their total costs were embedded in the various cost fields. Therefore, we disagree with the petitioners that the HRC costs were understated.

Regarding the petitioners’ inability to recalculate the direct material cost field for one of the four CONNUMs that the Department reviewed in detail, we direct the petitioners’ attention to the weight-averaging worksheets that were obtained at verification.²⁰⁴ The worksheets show all product codes that fall within each CONNUM and then demonstrate how the costs for each are aggregated and then weight-averaged to calculate the reported per-unit costs. For direct materials, the “hammadde” column total was divided by the production quantity total to arrive at the reported per-unit cost for which petitioners were searching.²⁰⁵

¹⁹⁹ See Tosçelik cost verification report at page 18.

²⁰⁰ *Id.*

²⁰¹ *Id.*, at page 19.

²⁰² *Id.*

²⁰³ See the petitioners’ brief at 7, where the petitioners quote from the Tosçelik cost verification report.

²⁰⁴ See Tosçelik cost verification report at page 15 and at CVE 7, where we obtained weight-averaging worksheets for each of the selected CONNUMs which demonstrate the calculation of the per-unit costs. At CVE 11, the cost buildup package referenced by the petitioners, the respondent mistakenly printed the weight-averaging worksheet without the last row of the spreadsheet, (*i.e.*, the line that calculated the per-unit costs). However, as the complete weight-averaging worksheet with the per-unit calculations was already provided at the first page of CVE 7, we did not request another copy.

²⁰⁵ See Tosçelik cost verification report at page 18, where the Department defines “hammadde” as raw materials, and CVE 7, where the direct materials per-unit cost calculation can be seen at the bottom of page 1.

Finally, we disagree that the reported costs were un-yielded. The drilldowns to which the petitioners refer reflect each stage of production.²⁰⁶ Thus, the petitioners (and the Department in its comparison) were looking at the cost of the HRCs as they entered the pipe production stage where no yield was reflected for the pipe production stage because no processing had yet occurred. The fully yielded cost can be seen at the completion of the last stage of production, and, indeed, these are the total production costs and total finished production quantities that were used to calculate the reported costs.²⁰⁷

Based on the above, we do not find that Tosçelik's direct material costs were either understated or unverified. Therefore, we did not recalculate either the direct material or conversion costs for the non-PE coated products in the final determination.

Comment 17: Tosçelik's Revised Manufacturing Costs

Tosçelik claims that the total costs from the revised cost database submitted subsequent to the cost verification now exceeds the total costs from the company's financial accounting system.²⁰⁸ Based on this premise, Tosçelik argues that there is no need for the Department to adjust for the negative variance that was identified in the overall cost reconciliation section of the Tosçelik cost verification report.²⁰⁹

The petitioners did not comment on this issue.

Department's Position:

We disagree with Tosçelik and adjusted the total reported costs for the negative variance for the final determination. The improperly-classified products that necessitated the revision to the cost database were originally identified as non-subject products and were excluded by Tosçelik both from its overall cost reconciliation and from the reported cost database. Thus, while it is true that the total costs from the cost database did increase, Tosçelik failed to take into account that the total reportable costs from the financial accounting system should also be increased for the additional merchandise under consideration which was previously improperly excluded. Consequently, we adjusted the reported costs for the negative variance identified in the Tosçelik cost verification report.²¹⁰

²⁰⁶ See Tosçelik cost verification report at page 18, where the Department explains that the drilldowns show "for each stage of the production process the substrate quantities, the production quantities, the allocation factor (i.e., processing times, quantities processed, or square meters), and the allocated costs."

²⁰⁷ See Tosçelik cost verification report at page 18, where the Department states that it traced the total production quantities and the total allocated costs from the drilldowns to the cost buildup worksheets.

²⁰⁸ See Tosçelik's brief at 14-15.

²⁰⁹ Negative variance in this context signifies that the total reportable costs from the company's financial accounting system exceeded the total costs that were actually reported in the cost database.

²¹⁰ We note that the Department's final cost calculation memorandum includes a recalculation of the negative variance adjustment factor based on the revised financial accounting and cost database figures; however, these changes did not result in a different adjustment percentage.

Comment 18: *Tosçelik's Second Quality Pipe Adjustment*

Both Tosçelik and the petitioners note that the second quality pipe adjustment from the preliminary determination should be revised for the final determination to include all pipe products in the denominator of the calculation.²¹¹ The petitioners further argue that the Department should apply the second quality pipe adjustment factor that was calculated in the Tosçelik cost verification report.

Department's Position:

For the final determination we corrected the denominator of the second quality pipe adjustment to include all pipe products. We note that this change from the preliminary determination is consistent with the arguments from both parties, as the calculation from the Tosçelik cost verification report incorporates the correct denominator.²¹²

Comment 19: *Moot Arguments for Tosçelik*

The petitioners argue that the Department should reclassify the “coating” type of certain products sold by Tosçelik during the POI to reflect that the fact that the coating contains epoxy.²¹³ Tosçelik believes an epoxy coating finish is different from the coating finish used on its products (i.e., 3 layer PE coating). However, Tosçelik states that, if the Department wishes, it can recode Tosçelik's CONNUMs so that all products with 3 layer PE coating are additionally coded as having an epoxy coating finish.²¹⁴

Department's Position:

Because the petitioners' proposed reclassification has no impact on the margin calculations performed for the final determination,²¹⁵ this issue is moot.

Comment 20: *Basing the Margin for Borusan Mannesmann and Borusan Istikbal on AFA*

In the Preliminary Determination, we based the AD margins for Borusan Mannesmann and Borusan Istikbal on AFA because both companies declined to participate in this investigation and neither responded to the Department's questionnaire.²¹⁶ As a result, Borusan Mannesmann and Borusan Istikbal did not provide the requested information necessary for the Department to

²¹¹ See Tocelik's brief at 14-15; and the petitioners' brief at 9-10.

²¹² See Tosçelik cost verification report at page 22.

²¹³ See the petitioners' brief at 10; and the petitioners' rebuttal brief at 2.

²¹⁴ See Tosçelik's brief at 4.

²¹⁵ As noted in Comment 12 above, we are making price-to-CV comparisons for Tosçelik in our final determination. Adopting the parties' proposal would change the control number for all U.S. sales of the affected product. However, it would not change the comparisons themselves (and, thus, by extension, it would also not change the dumping margins calculated for those comparisons).

²¹⁶ See Preliminary Decision Memorandum at page 23.

calculate AD margins for them in this investigation. As noted in the Preliminary Determination, the Department's practice is to select, as an AFA rate, the higher of: 1) the highest dumping margin alleged in the petition; or 2) the highest calculated dumping margin of any respondent in the investigation.²¹⁷ Therefore, as AFA, we preliminarily assigned both Borusan Mannesmann and Borusan Istikbal a rate of 9.85 percent, which was the sole rate alleged in the petition.²¹⁸ Further, we corroborated this rate to the extent practicable within the meaning of section 776(c) of the Act.²¹⁹

The petitioners argue that the petition rate assigned to Borusan Mannesmann and Borusan Istikbal was not higher than the highest calculated dumping margin for any respondent in the investigation.²²⁰ Specifically, the petitioners assert that the Department preliminarily calculated transaction-specific margins for Tosçelik, which were higher than the 9.85 percent petition rate,²²¹ therefore, the petitioners argue that the Department should have assigned as AFA the highest transaction-specific margin calculated in this investigation.²²² Finally, the petitioners note that according to the Trade Preferences Extension Act of 2015, the Department may apply any of the dumping margins specified under section 502(d)(2), including the highest such margin. Consequently, the petitioners maintain that the Department should apply the highest final transaction-specific margin to Borusan Mannesmann and Borusan Istikbal.

No other party, including Borusan Mannesmann or Borusan Istikbal, commented on this issue.

Department's Position:

The Department continued to base the dumping margin for Borusan Mannesmann and Borusan Istikbal on AFA for purposes of the final determination. As AFA, we assigned these respondents the final calculated dumping margin for Çayirova (i.e., 22.95 percent), consistent with our practice.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by

²¹⁷ See, e.g., Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

²¹⁸ See Initiation Notice, 79 FR at 68215.

²¹⁹ See Preliminary Decision Memorandum at pages 25-26.

²²⁰ See the petitioners' brief at 120-124.

²²¹ See the Memorandum to the File from Alice Maldonado, Senior Analyst, entitled, "Corroboration of Adverse Facts Available Rate for the Preliminary Determination in the Less Than Fair Value Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated May 14, 2015, at Attachment 1.

²²² As support for this assertion, the petitioners cite to Welded Stainless Pressure Pipe From Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 808 (Jan. 7, 2014) (Pipe from Malaysia), where the Department assigned as the AFA rate the highest transaction-specific margin calculated for one of the non-cooperative respondents using that respondent's own information on the record of the proceeding.

the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²²³ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²²⁴

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²²⁵ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.²²⁶

As noted in the Preliminary Determination, Borusan Mannesmann and Borusan Istikbal did not respond to the Department's questionnaire in this investigation, and they informed the Department that it did not intend to participate further.²²⁷ Under these circumstances, the Department has sufficient basis to deem the company in question non-cooperative, and to assign it a dumping rate based on AFA.²²⁸ At issue here is not whether the use of AFA for Borusan Mannesmann and Borusan Istikbal is justified, but rather whether the rate selected as AFA is appropriate.

As noted in the Preliminary Determination, the Department's practice is to select, as an AFA rate, the higher of: 1) the highest dumping margin alleged in the petition; or 2) the highest calculated dumping margin of any respondent in the investigation.²²⁹ In selecting a rate based on AFA, the SAA explains that the Department may employ an adverse inference "to ensure that the party

²²³ See TPEA. As noted above, the 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Applicability Notice.

²²⁴ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

²²⁵ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²²⁶ See 19 CFR 351.308(c).

²²⁷ See Preliminary Decision Memo at pages 23.

²²⁸ Id.

²²⁹ See, e.g., Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³⁰

In this proceeding, the Department has the following available sources of AFA: 9.85 percent (the highest rate alleged in the petition) and 22.95 percent (the weighted-average margin calculated for Çayirova for the final determination of this investigation). Given these choices, we find that the rate calculated for Çayirova in this investigation is the most appropriate.

Moreover, we disagree with the petitioners that using the highest transaction-specific margin calculated this investigation as the basis for AFA is warranted here. The Department’s general practice with respect to the assignment of adverse rates is to assign the higher of the highest rate in the petition or the highest margin rate calculated in any segment of a given proceeding, unless these rates cannot be corroborated or there are case-specific reasons that these rates are not acceptable.²³¹ In this investigation, we find that the rate calculated for Çayirova, 22.95 percent, is a valid source of AFA, and it is one of the sources explicitly authorized under section 776(b)(2) of the Act. Further, because this rate was calculated based on information obtained in the course of this investigation, it is not considered to be secondary information, and therefore, needs not be corroborated. Therefore, we conclude that the calculated margin of the cooperating respondent is the best information reasonably available to us to effectuate the purpose of AFA.

²³⁰ See SAA at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007); see also Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

²³¹ See, e.g., D.L. Supply v. United States, 113 F.3d 1220 (Fed. Cir. 1997).


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



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 OCTOBER 2015

(Date)