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

A-489-501
Administrative Review
POR: 5/1/13-4/30/14
Public Document
AD/CVD Operations, OVI: DS, FB

December 2, 2015

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

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2013-2014

SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey covering the period of review (POR) May 1, 2013 to April 30, 2014. This review covers the following companies: Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (collectively, Borusan); Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. (collectively, Toscelik); and ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan).[1] Based upon our analysis of the comments received, we made changes to the margin calculation for Toscelik for the final results, and find that Toscelik did not sell welded pipe and tube in the United States below normal value (NV). We also continue to find that Borusan sold welded pipe and tube in the United States below NV, and that Erbosan had no shipments. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments from parties:

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[1]As explained in the Preliminary Results, the Department treats Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as the same legal entity, and Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. as the same legal entity. See Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 32090 (June 5, 2015) (Preliminary Results).

General Comments

1. Duty Drawback
2. Duty Drawback and Treatment of the Resource Utilization Support Fund
3. Deducting Certain Expenses from the Duty Drawback Calculation
4. Making a Duty Drawback Adjustment to Normal Value and/or Capping the U.S. Duty Drawback Adjustment
5. Treatment of Duty Drawback in the Cash Deposit Rate and Assessment Rate
6. Other Arguments Related to Duty Drawback
7. Differential Pricing Analysis Should Not Be Used Because the Cohen's *d* Test Does Not Measure Targeted or Masked Dumping
8. Differential Pricing Analysis Reasoning for Use of Average-to-Transaction Comparison Methodology is Arbitrary and Unlawful

Company-Specific Comments

Borusan

9. Duty Drawback and Treatment of the Yield Loss Factor
10. Home Market Sales of Overruns and the Ordinary Course of Trade
11. Domestic Inland Freight Expenses
12. International Freight Expenses

Toscelik

13. Billing Adjustments
14. Duty Drawback
15. Duty Drawback Adjustment to Cost
16. Toscelik's Net Financial Expense

BACKGROUND

The Department published the Preliminary Results in the Federal Register on June 5, 2015.[2] In accordance with 19 CFR 351.309(c), we invited parties to comment on our Preliminary Results.[3] On July 26 and 27, 2015, we received case briefs from petitioner Allied Tube & Conduit and TMK IPSCO (petitioner),[4] Borusan,[5] and Toscelik.[6] On August 10, 2015, we received rebuttal briefs from petitioner,[7] Borusan,[8] and Toscelik.[9]

[2] See Preliminary Results and the accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2013-2014 Administrative Review," dated May 29, 2015 (Preliminary Decision Memorandum).
[3] See Preliminary Results, 80 FR at 32091.
[4] See Letter from Allied Tube & Conduit and TMK IPSCO to the Department, "Certain Circular Welded Non-Alloy Steel Pipe From Turkey: Case Brief," dated July 27, 2015 (Petitioner's Case Brief).
[5] See Letter from Borusan to the Department, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Case Brief," dated July 27, 2015 (Borusan's Case Brief).
[6] See Letter from Toscelik to the Department, "Welded Carbon Steel Standard Pipe and Tube From Turkey;

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

SCOPE OF THE ORDER[10]

The products covered by this order are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53 or A-135.

DISCUSSION OF THE ISSUES

Comment 1: *Duty Drawback*

Both Borusan and Toscelik claimed an adjustment for U.S. duty drawback. For Borusan, in the Preliminary Results, we added duty drawback to U.S. price and included amounts for duty drawback in the total cost of manufacture.[11] For Toscelik, in the Preliminary Results, we intended to add duty drawback to U.S. price,[12] but inadvertently failed to do so; as noted in Comment 14, we have corrected this error for the final results. Also for Toscelik in the Preliminary Results, we included in the cost of manufacture the imputed duty cost related to the claimed duty drawback.[13]

Petitioner argues that the Department should deny Borusan's and Toscelik's duty drawback claims for the final results because the Turkish government has not given final approval to any of

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Toscelik case brief," dated July 26, 2015 (Toscelik's Case Brief).

[7] See Letter from Allied Tube & Conduit and TMK IPSCO to the Department, "Certain Circular Welded Non-Alloy Steel Pipe From Turkey: Rebuttal Brief," dated August 10, 2015 (Petitioner's Rebuttal Brief).

[8] See Letter from Borusan to the Department, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Rebuttal Brief," dated August 10, 2015 (Borusan's Rebuttal Brief).

[9] See Letter from Toscelik to the Department, "Welded Carbon Steel Standard Pipe and Tube From Turkey; Toscelik rebuttal brief," dated August 10, 2015 (Toscelik's Rebuttal Brief).

[10] See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey, 51 FR 17784 (May 15, 1986). Note that the HTSUS did not exist at the time the order went into effect, so the references to the HTSUS numbers did not appear in the scope contained in the order.

[11] See Preliminary Decision Memorandum at 9; see also Memorandum from Deborah Scott through Robert James to the File, "Preliminary Analysis Memorandum for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. in the 2013 – 2014 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey," dated May 29, 2015 (Borusan Preliminary Analysis Memorandum) at 3 and 5.

[12] See Preliminary Decision Memorandum at 9.

[13] See the Memorandum from Sheikh M. Hannan through Taija A. Slaughter to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S.," dated May 29, 2015 (Toscelik Preliminary Cost Memorandum) at 2-4 and Attachment 3.

the inward processing certificates (DIIBs) used in the calculations.[14] According to petitioner, the plain language of the section 772(c)(1)(B) 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." Petitioner asserts that the tenses and structure of the terms "have been rebated" and "have not been collected" refer to a completed action by the government, not a pending application. Petitioner argues that, because the respondents' DIIBs are still pending and have not received final approval from the Turkish government, it is not the case that import duties "have not been collected." Therefore, petitioner contends that the Act expressly precludes an adjustment here. Further, petitioner claims the record does not even establish that respondents' DIIBs have been "closed."

Petitioner argues that if the Department disagrees with this argument, at a minimum, it should revise the duty drawback calculation to minimize the distortion created by the Department's current methodology.[15] In particular, petitioner argues the Department's current methodology does not account for the economic implications of substitution drawback systems, which, petitioner claims, effectively remove the requirement that the merchandise be exported to the United States.[16] Thus, petitioner proposes that the Department allocate the drawback over the total export volume of all "substitutable merchandise" sold by the respondents, not just the export volume of U.S. sales reflected in the DIIBs.

Borusan contends its claim for a duty drawback adjustment is wholly consistent with the duty drawback claims granted by the Department in past segments of this proceeding, and thus the Department should reject petitioner's arguments regarding duty drawback.[17] In the Preliminary Results, Borusan claims, the Department applied its two-prong duty drawback test and found that Borusan satisfied both prongs. Borusan contends the Court of Appeals for the Federal Circuit (Federal Circuit) recently upheld the Department's two-prong test, and this decision is controlling on the issue of the lawfulness of the Department's duty drawback test.[18] Moreover, Borusan argues, the Department has consistently determined that Borusan's receipt of duty drawback under the Turkish Inward Processing Regime (IPR) is in accordance with the two-part test.[19] According to Borusan, the U.S. Court of International Trade (CIT) also concluded that Borusan's receipt of duty drawback under the IPR is consistent with the two-prong test and is lawful.[20] Given this consistent, judicially-affirmed practice in relation to Borusan, Borusan claims that any substantive changes to the duty-drawback test would need to be preceded by notice and comment and applied prospectively.[21]

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[14] See Petitioner's Case Brief at 12-19.
[15] Id. at 21-93.
[16] Id. at 40-46.
[17] See Borusan's Rebuttal Brief at 18-20.
[18] Id. at 21, citing Saha Thai Steel Pipe (Public) Co. v. United States, 635 F.3d 1335 (Fed. Cir. 2011) (Saha Thai).
[19] Id., citing, 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) (2011-2012 Final Results) and accompanying Issues and Decision Memorandum at Comment 4 and Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76939 (December 9, 2011) (2009-2010 Final Results).
[20] Id. at 22-23, citing Allied Tube & Conduit Corp. v. United States, 374 F. Supp. 2d 1257, 1261-1264 (CIT 2005) (Allied Tube).
[21] Id. at 23.

Borusan disagrees with petitioner's contention that the statute requires DIIBs to be closed in order to grant a duty drawback adjustment.[22] Borusan argues the statutory language "have not been collected" refers to "import duties imposed by the country of exportation," and this language is easily satisfied because there is no question that Borusan was exempt from paying import duties on hot-rolled coils imported under a DIIB. Borusan claims the only other statutory condition, showing that import duties were not collected due to "exportation of the subject merchandise to the United States," is satisfied by the operation of the IPR. Furthermore, Borusan asserts that petitioner is wrong that the statute requires completed action by the government because section 772(c)(1)(B) of the Act contains no such language.[23]

Toscelik maintains the methodology used in the Preliminary Results is consistent with the Department's practice and thus should not be changed for the final results.[24] Toscelik argues the Department recently determined that government approval of the closure of DIIBs was not required when the respondent provided evidence that it met the requirements of the IPR and there was "'nothing to indicate that they were not entitled to exemptions under the IPR.'"[25] Toscelik asserts there is no evidence that the Turkish government has ever denied approval of any of Toscelik's DIIBs, and there is no reason to question the reliability of the actual import and export data used to close them.

Toscelik disagrees with petitioner that substitution drawback systems eliminate the statutory requirement that subject merchandise be exported to the United States. Toscelik argues the Department requires a respondent to demonstrate that the goods on which it claims drawback were exported to the United States, and Toscelik maintains it met this requirement.[26] Toscelik also asserts the Turkish government maintains ongoing tables of the imports and exports under each DIIB, and petitioner provides no reason to believe that Toscelik, or exporters in general, would over-report the sales used to satisfy an export commitment under a DIIB.[27]

Department's Position:

For these final results, we are continuing to calculate duty drawback using the same methodology employed in the Preliminary Results.[28] 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 export price (EP) and constructed export price (CEP) shall be increased by "the amount of any import duties imposed

[22] Id. at 24.
[23] Id. at 24-25.
[24] See Toscelik's Rebuttal Brief at 3-7 and 9-12.
[25] Id. at 3, citing Certain Oil Country Tubular Goods From the Republic of 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.
[26] Id. at 11.
[27] Id. at 12.
[28] In the Preliminary Results, for Toscelik, we intended to add duty drawback to U.S. price, but inadvertently failed to do so. As stated in Comment 14, we have corrected this error for the final results. We note that this is a clerical correction, not a methodological change.

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.[29]

Based on our analysis, we find that Borusan and Toscelik met the requirements of the Department's two-prong test for a duty drawback adjustment. First, Borusan and Toscelik showed that the exemption from import duties was linked to the exportation of subject merchandise.[30] Second, Borusan and Toscelik demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product.[31] In particular, both Borusan and Toscelik provided documentation regarding the Turkish duty drawback program (known as the IPR), including a DIIB, which listed projected imports of raw materials and the forecasted amount of finished goods to be exported; lists of the actual imports of raw materials and the actual exports; duty rates as published by the Turkish government; and import and export customs declaration forms along with related commercial invoices.[32]

In previous proceedings involving other products from Turkey, we found that the requirements under Turkey's duty drawback program, if met by Turkish companies, satisfied the statute with respect to duty drawback adjustments under U.S. law.[33]

While petitioner argues 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 AD 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.[34] Accordingly, we are granting Borusan and Toscelik a duty drawback adjustment for these final results based on each respondent's fulfillment of the requirements under the IPR for purposes of considering their entitlement to duty drawback adjustments, and we have not made any changes to respondents' duty drawback calculations for these final results.

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[29] 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, 635 F.3d at 1335, 1340-41.

[30] See Borusan's September 24, 2014 section C questionnaire response at 34-39 and Exhibits C-15 and C-17; Borusan's December 2, 2014 section C supplemental questionnaire response at 9-15 and Exhibits C-28-C-32; Borusan's March 6, 2015 section A-D supplemental questionnaire response at 20-23 and Exhibit C-40; Toscelik's September 22, 2014 section C response at 73-75 and Exhibits 10 and 11; and Toscelik's December 29, 2014 submission at 2-3 and Exhibit 1.

[31] Id.

[32] Id. Note that the documentation Toscelik provided in these exhibits did not include "related commercial invoices."

[33] See, e.g., 2011-2012 Final Results and accompanying Issues and Decision Memorandum at Comment 4; see also OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1.

[34] See, e.g., OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1.

We note that the record of this administrative review does not contain complete information about whether respondents' DIIBs are "open" or "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). In light of our recent practice reflected in Rebar from Turkey and Welded Line Pipe from Turkey regarding open and closed DIIBs,[35] we intend to require that respondents seeking a duty drawback adjustment report this information in future segments of this proceeding.

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.

Comment 2: *Duty Drawback and Treatment of the Resource Utilization Support Fund*

In their duty drawback calculations, both Borusan and Toscelik included amounts not collected by the Turkish government for the Resource Utilization Support Fund (KKDF). Petitioner argues that the Department erroneously accepted respondents' claims that the KKDF should be included in the calculation of duty drawback for the preliminary results.[36] Petitioner asserts that the KKDF does not constitute an import duty, particularly when compared to criteria used in prior cases.[37] Petitioner asserts that, were the Department to apply these same criteria to Turkish Value Added Tax (VAT), it would also conclude that the VAT should be treated as a duty. As such, petitioner claims the Department's analyses clearly show that the KKDF is a tax.

Petitioner argues the Department should also consider the following points regarding the KKDF: 1) it can also apply to domestic transactions; 2) it is not levied on all imports, but only on those paid through particular financial vehicles; and 3) it is levied on financial transactions, not on goods or services used to make the product.[38] For the final results, petitioner contends, the Department should find that respondents have not established their entitlement to an adjustment for the KKDF.

In rebuttal, Borusan argues the Department found in the 2011-2012 Final Results that it did not matter that the KKDF tax is not called an import duty.[39] According to Borusan, the Department found in Color Picture Tubes from Korea that despite its name, a defense tax imposed upon

[35] 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 at Comment 1 and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015) (Welded Line Pipe from Turkey) and accompanying Issues and Decision Memorandum at Comment 1.

[36] See Petitioner's Case Brief at 28-39.

[37] Petitioner maintains the Department simplified its analysis to "import-dependent and export-contingent" in OCTG from Turkey and Rebar from Turkey. Id. at 33, citing 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. According to petitioner, the record of this review shows that 1) KKDF is not import-dependent, but, rather, 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.

[38] Id. at 38.

[39] See Borusan's Rebuttal Brief at 27, citing 2011-2012 Final Results and accompanying Issues and Decision Memorandum at Comment 4.

importation and rebated upon exportation should not be treated any differently than an import duty for purposes of the duty drawback adjustment.[40] Borusan contends the KKDF tax is a six percent tax on imports purchased with deferred payments that is exempted if the imports are made pursuant to a DIIB and the goods are exported under Turkey's duty drawback system.[41]

Borusan argues that it has shown the exemptions from the KKDF taxes were contingent upon the re-exportation of the subject merchandise and that it has provided ample documentation to demonstrate there are sufficient imports of the raw material to account for the duty drawback on the subject exports, thus satisfying the Department's two-prong test for a duty drawback adjustment.[42] Borusan asserts that petitioner has offered no new facts or arguments that would cause a departure from the Department's inclusion of the KKDF tax in the duty drawback adjustment in the previous two administrative reviews of this proceeding.[43] As such, Borusan avers that the Department should follow its past practice and include the KKDF tax in the duty drawback adjustment.

Toscelik likewise responds that the KKDF is a tax on imports and is therefore properly considered part of the duty drawback adjustment. Toscelik contends the Turkish 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 "{a}ll financial obligations such as taxes, duties, fees, fund payments, etc. which are stipulated for collection during import and export {of} goods."[44] As such, Toscelik argues the KKDF is clearly a tax because it is a financial obligation stipulated for collection during the importation of goods. Toscelik claims that, under the KKDF decree, the holder of a DIIB is permitted to import raw materials without cash payment of taxes under the contingency that the taxes be released upon satisfaction of the export commitment.[45] Toscelik states that the suspension of payment of the KKDF tax is an exemption of import taxes, and these taxes are treated like the other import taxes subject to the IPR (i.e., collection is suspended under operative DIIBs, and the contingent liability is extinguished in the same manner as the contingent liability for import duties).[46]

In addition, Toscelik maintains that the KKDF tax is different than VAT tax, because the KKDF is only applied to imports, while VAT is applied to both imports and domestic goods.[47]

[40] Id. at 27-28, citing Color Picture Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 56 FR 19084 (April 25, 1991) (Color Picture Tubes from Korea).
[41] Id. at 28-30, citing Borusan's September 24, 2014 section C questionnaire response at C-39 and Exhibit C-15.
[42] Id. at 31.
[43] See Borusan's Rebuttal Brief at 28-29 and 31, citing 2011-2012 Final Results and accompanying Issues and Decision Memorandum at Comment 4 and Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71087 (December 1, 2014) (2012-2013 Final Results) and accompanying Issues and Decision Memorandum at Comment 3.
[44] See Toscelik's Rebuttal Brief at 7, citing Toscelik's September 22, 2014 section B-D questionnaire response at Exhibits 10 and 11.
[45] Id. at 7-8, citing Toscelik's September 22, 2014 section B-D questionnaire response at Exhibit 10.
[46] Id. at 8-9.
[47] Id. at 8.

Department's Position:

For the final results, we continue to treat the KKDF tax as an import duty. Based on the information on the record of this segment of the proceeding, the respondents demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export contingent.[48] In their submissions, the respondents provided the applicable Turkish law pertaining to KKDF, which described the import-dependent and export-contingent nature of the KKDF. Specifically, that law 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.[49]

Even if the KKDF is labeled a "tax," the Department finds that does not matter if in this context it functions as a duty on imports. As indicated above, the applicable Turkish law concerning the KKDF tax describes the import-dependent and export-contingent nature of the tax.[50] Consistent with the Department's practice in other recent decisions involving Turkey,[51] the Department finds in the instant case that the KKDF taxes function like import duties. Therefore, for purposes of these final results, we continue to include the amounts reported for KKDF taxes in Borusan's and Toscelik's duty drawback calculations.

Comment 3: *Deducting Certain Expenses from the Duty Drawback Calculation*

Petitioner maintains that the Department has a longstanding practice of reducing the drawback pool for certain expenses, and it asserts the Department should follow that practice here.[52] Specifically, petitioner contends that under Turkey's duty drawback law, importers must post a guarantee ranging from one to ten percent, and only a portion of this guarantee is returned after official closure of DIIB by the Government of Turkey (GOT). Petitioner claims the record of this review contains evidence that both Borusan and Toscelik were required to pay this guarantee.

Petitioner argues that three types of expenses should be deducted from the eligible drawback that forms the numerator of the calculation to account for this guarantee: 1) the portion of the

[48] See Borusan's September 24, 2014 section C questionnaire response at Exhibit C-15 and Toscelik's September 22, 2014 section B-D questionnaire response at Exhibit 10.
[49] Id., both containing the Turkish "Resolution Concerning Inward Processing Regime," establishing the import-dependent and export-contingent nature of the KKDF tax.
[50] Id.
[51] See OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1, Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 1, and Welded Line Pipe from Turkey and accompanying Issues and Decision Memorandum at Comment 2.
[52] See Petitioner's Case Brief at 46-48. As support for its assertion, petitioner cites Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759, 56760-56763 (October 21, 1999).

guarantee that the GOT retains; 2) any bank fees related to the initial creation of the guarantee; and 3) the opportunity cost of leaving the guarantee with the GOT for several years (i.e., the time between posting the guarantee and its partial return upon official closure of the DIIB by the GOT). Petitioner contends that, because the respondents have provided no information regarding these expenses, they have failed to adequately support their duty drawback claims. Therefore, petitioner asserts that the Department should deny respondents' duty drawback claims for the final results.

Toscelik responds that it reported guarantee expenses in the appropriate database fields and that it is too late in this segment of the proceeding to deconstruct its financial expenses in order to offset duty drawback for guarantee expenses.[53] Moreover, Toscelik contends, there is no clear methodology for subtracting these expenses, and, at any rate, these expenses are quite small and can be considered insignificant according to 19 CFR 351.413.

Borusan did not comment on this issue.

Department's Position:

Because we did not request information about these guarantee expenses from the respondents, we disagree with petitioner that the respondents failed to meet their evidentiary burden in this case. Thus, we continued to accept Borusan and Toscelik's duty drawback claims for purposes of these final results.

We note that we intend to request information regarding these guarantee expenses from respondents in subsequent segments of this proceeding.

Comment 4: *Making a Duty Drawback Adjustment to Normal Value and/or Capping the U.S. Duty Drawback Adjustment*

Petitioner asserts that section 773(a) of the Act explicitly requires a fair comparison between EP or CEP and NV,[54] and the Department's current methodology of limiting the duty drawback adjustment to the U.S. side of the equation violates this requirement.[55] According to petitioner, Congress intended the Department to make "apples-to-apples" comparisons in all cases, setting forth the general rule that "normal value shall be adjusted for the same costs and expenses for

[53] See Toscelik's Rebuttal Brief at 10-11.

[54] Petitioner notes that section 773(a) of the Act 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 by petitioner).

Petitioner contends 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 Act (SAA). See Petitioner's Case Brief at 52-54 (citing S. Rep. No. 103-412, at 67, 70-71 (1994); SAA, H.R. Rep. No. 103-316, at 820 (1994), reprinted in 1994 U.S.C.C.A.N. 4040).

[55] See Petitioner's Case Brief at 49-82.

which adjustments are made to {EP} or {CEP}."[56] Petitioner maintains that the Department cannot interpret the Act in a manner that reads out the express congressional intent to adjust NV.

Petitioner argues that even if the Department disagrees with the above interpretation of the legislative history, it cannot say that the duty drawback adjustment under section 772 of the Act represents the full implementation of the United States' obligations to allow a fair comparison.[57] Petitioner asserts 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 must take into account differences in a variety of specific factors, as well as "any other differences which are shown to affect price comparability."[58] According to petitioner, a "difference," by definition, requires a comparison of two values, and thus the Department's one-sided adjustment fails to satisfy this language.[59] Therefore, petitioner claims that, to effectuate the required difference, the addition of duty drawback to U.S. price must be either the first of two adjustments (the second being an adjustment to NV), or the adjustment to U.S. price must be net of the duty difference (i.e., it must be capped).[60]

Petitioner maintains that, if the Department does not make an adjustment to NV for duty drawback or cap the U.S. duty drawback adjustment, it must explain why its failure to add duty drawback to home market sales is not arbitrary and capricious.[61] Petitioner argues that the Department has a long history of adjusting NV for duty drawback when the comparison market is based on third country sales[62] or contains "local export" home market sales.[63] Petitioner states that, as a justification in at least one case,[64] 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."[65] Petitioner also cites one instance in which the Department adjusted constructed value (CV) for duty drawback related to third country exports pursuant to the circumstance-of-sale provision in section 773(a)(8) of the Act.[66]

Petitioner argues that when CV forms the basis for NV, section 773 of the Act requires that a circumstance-of-sale adjustment be made to CV.[67] Petitioner claims this can be accomplished by

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[56] Id. at 54, citing Congressional Record-House, November 29, 1994 at 29690 (emphasis added by petitioner).
[57] Id. at 55.
[58] Id. at 51-52.
[59] Id. at 55.
[60] Id. Citing Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804), petitioner argues 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."
[61] Id. at 57.
[62] Id. at 57-65, citing, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary, 67 FR 30358 (May 6, 2002), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary, 67 FR 60221 (September 25, 2002) (Sulfanilic Acid from Hungary).
[63] Id. at 65-66, citing, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea, 67 FR 3149 (January 23, 2002).
[64] Id. at 58, citing Sulfanilic Acid from Hungary.
[65] Id. at 66-67.
[66] Id. at 68, citing 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) (Salmon from Chile).
[67] Id. at 40.

removing any duty drawback included in the cost of production (COP) after completing the sales below cost test, and, in the margin program, adding to CV the difference between U.S. duty drawback and any actual paid duties included in COP.[68] Referring to the Preliminary Results for Toscelik, petitioner contends this issue is relevant here.[69]

Petitioner asserts that judicial precedent is instructive on this matter. According to petitioner, the Federal Circuit has held that the Department has both the statutory authority to adjust CV for duty drawback as well as a solid reason for doing so.[70] Further, petitioner claims that while the courts have found the Department is not required to look back to NV prior to making an adjustment under section 772 of the Act, they did not find that the Department was barred from looking back and capping or denying the adjustment, if it chose to add a "third prong."[71] As such, petitioner contends that the Department must either adjust NV in this case, or explain why it has the authority to adjust NV in other cases but not in this one.[72]

Petitioner maintains that the Department may agree 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 (a concept which petitioner terms the "duty wall").[73] However, petitioner argues that the duty wall concept fails in regard to Turkey because the three possible steel inputs (scrap, slab, and hot-rolled coil) for the subject merchandise can all be imported duty-free into Turkey.[74] Therefore, petitioner avers, for the final results, the Department should either reject the duty wall concept in general, or determine that it does not apply in Turkey with respect to the inputs used to make the subject merchandise.[75]

Borusan replies that there is no basis for the Department to adjust NV for duty drawback. Borusan contends the CIT has found there is no requirement that a company show it paid duties on raw materials used to produce goods sold in the home market in order to claim a duty drawback adjustment.[76] According to Borusan, petitioner's assertion that the Department should make a circumstance-of-sale adjustment for the difference between duty drawback added to U.S. price and the amount of duties included in NV is an attempt to introduce the same requirement already rejected by the CIT.[77] Borusan claims that section 772(c)(1)(B) of the Act requires an upward adjustment to U.S. price for duty drawback, and it would defy the plain meaning of the Act to offset that adjustment, either wholly or partially, by a circumstance-of-sale adjustment. In fact, Borusan asserts, the Federal Circuit has found that the Department may not nullify a statutorily-required upward adjustment to U.S. price through an offsetting circumstance-of-sale adjustment.[78] As for petitioner's argument that the Department must make a "fair comparison," Borusan maintains the Federal Circuit has held that the "fair comparison" provision is not a

[68] Id. at 40 and 69.
[69] Id. at 40.
[70] Id. at 70, citing Saha Thai, 635 F.3d at 1342-1343.
[71] Id. at 71.
[72] Id. at 71-72.
[73] Id. at 72-75.
[74] Id. at 75-79.
[75] Id. at 80-81.
[76] See Borusan's Rebuttal Brief at 31-32, citing Allied Tube, 374 F. Supp. 2d at 1261, 1262.
[77] Id. at 32.
[78] Id. at 32-33, citing Zenith Electronics Corp. v. United States, 988 F.2d 1573 (Fed. Cir. 1993).

stand-alone statutory requirement, but instead must be read in the context of the provisions regarding EP and NV, including the mandatory adjustments thereto.[79] Finally, Borusan argues, all of the cases cited by petitioner are irrelevant because they involved adjustments to third-country NV, "local export" sales, home market sales which received an actual drawback, or a different type of duty drawback than that at issue in this case.[80]

Toscelik responds that Congress legislatively ratified the Department's longstanding duty drawback methodology and never expressed an intent to create a duty drawback adjustment to NV. Further, Toscelik maintains, no such adjustment is envisioned in the language of the Act.[81] In addition, Toscelik argues, respondents that end up actually paying import duties or KKDF on their inputs treat them as expenses which are reflected in their home market prices.[82] Toscelik contends the proper place for petitioner to raise these arguments would have been in the context of 2006 Antidumping Methodologies.[83] Finally, Toscelik asserts that petitioner did not cite to any case where the Department ever adjusted the home market selling price for duty drawback, but, rather, cited cases involving sales for exportation.[84]

Department's Position:

We disagree with petitioner that we should make an adjustment to NV for duty drawback or cap the duty drawback adjustment to U.S. price. First, and foremost, notwithstanding petitioner's reliance on ambiguous legislative history, the statute itself does not require the Department to make such an adjustment. Section 773(a) of the Act, which pertains to the calculation of NV, states that:

> 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 with the export price or constructed export price, normal value shall be determined as follows …

Sections 773(a)(1) through (8) of the Act then address various aspects of the determination of NV, including the price at which the foreign like product is first sold (see section 773(a)(1) of the Act) and the different adjustments that the Department is required to make to this price (see sections 773(a)(6) and (7) of the Act). An adjustment for duty drawback is not among the prescribed adjustments.

In addition, we find that petitioner's reliance on the phrase "fair comparison" is misplaced. As noted above, section 773(a) states, in part, that "{i}n order to achieve a fair comparison with the

[79] Id. at 33, citing Corus Staal BV v. Department of Commerce, 395 F. 3d 1343, 1348 (Fed. Cir. 2005) (Corus Staal) (citing Timken Co. v. United States, 354 F.3d 1334, 1344 (Fed. Cir. 2004) (Timken)).
[80] Id. at 33-34.
[81] See Toscelik's Rebuttal Brief at 12-13.
[82] Id. at 13.
[83] Id., citing 2006 Antidumping Methodologies.
[84] Id. at 13-14. Toscelik notes that in one case cited by petitioner, the Department did not add drawback to NV 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.

export price or constructed export price, normal value shall be determined as follows …" (emphasis added). The phrase "fair comparison" does not mandate that we make corresponding adjustments to both NV and U.S. price, but, rather, instructs the Department to make the specific adjustments stipulated in section 773(a) of the Act. The Federal Circuit has upheld this interpretation of the "fair comparison" language of the statute.[85]

To the extent that petitioner claims that the failure to adjust NV for duty drawback is a violation of the United States' international obligations, we disagree. There have been no WTO panel reports or appellate body decisions issued concerning the application of the Department's duty drawback practice to date. Lacking a ruling from the WTO and subsequent action under the Uruguay Rounds Agreement Act (URAA),[86] the claims regarding the United States' international obligations are irrelevant to the application of duty drawback in the instant review.

With respect to the numerous cases that petitioner cites as precedent for making an adjustment to NV for duty drawback, we find that petitioner's examples are inapposite to the instant case. Those cases involved situations where NV was based on third-country market sales, "local export" home market sales, or home market sales which themselves were subject to duty drawback.[87] In those cases, and unlike here, the sales forming the basis for NV were themselves subject to drawback. In cases where third-country market sales or "local export" home market sales form the basis of NV, an adjustment to NV for duty drawback may be necessary, if, in fact, the exported sales involved duty drawback. However, in cases where NV is based on typical home market sales that are sold in, and remain in, the domestic market, no duty drawback would be expected, as the sales are not exported.

To make an adjustment to NV for duty drawback where there is no evidence of such drawback on home market sales would nullify the adjustment to U.S. price. There is no record evidence that any situations akin to those cited by petitioner are present in this case,[88] nor does petitioner cite any instances in which the Department has made a corresponding adjustment to NV in analogous factual circumstances. As such, we do not agree with petitioner that our failure to adjust NV for duty drawback in this case is arbitrary and capricious.

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[85] See Corus Staal, 395 F.3d at 1348, citing Timken, 354 F.3d at 1344 ("We agree with the government's position that this is an exhaustive list, and that the "fair comparison" requirement upon which Koyo now relies is specifically defined in the normal-value-calculation instructions. As such, the "fair comparison" requirement of § 1677b(a) does not impose any requirements for calculating normal value beyond those explicitly established in the statute and does not carry over to create additional limitations on the calculation of dumping margins.").

[86] The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Rounds Agreement Act (URAA). See Corus Staal, 395 F.3d at 1347; see also SAA at 659 ("WTO dispute settlement panels will not have any power to change U.S. law or order such a change.").

[87] With respect to petitioner's argument that the Department adjusted CV for duty drawback pursuant to the circumstance-of-sale provision in section 773(a)(8) of the Act in Salmon from Chile, we note that the duty drawback in that case was associated with third-country sales. See Salmon from Chile, 67 FR at 51189.

[88] The Department notes that Borusan's home market database does include "local domestic sales," i.e., merchandise sold to a Turkish customer which further processes the merchandise into another product for export. See, e.g., Borusan's September 24, 2014 section B questionnaire response at B-7. However, we excluded these sales from our analysis. See Borusan Preliminary Analysis Memorandum at 5.

Regarding the "duty wall," for these final results, we continued to calculate the duty cost to include in COP and CV for Borusan and Toscelik in the same manner as was done in the Preliminary Results. In 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.[89] The Federal Circuit has upheld this practice.[90] Accordingly, consistent with our practice, we continued to adjust Borusan's and Toscelik's COP and CV to account for the exempted import duties on raw materials used to produce the merchandise under consideration.

Comment 5: *Treatment of Duty Drawback in the Cash Deposit Rate and Assessment Rate*

Petitioner notes that duty drawback is included in net U.S. price, which is used as the denominator of the cash deposit rate.[91] Petitioner argues that this inclusion leads to the systematic under-collection of cash deposits because the entered value to which the cash deposit rate is applied is drawback-exclusive. Petitioner asserts the Department should correct this imbalance by not including duty drawback in the net U.S. price used to calculate the cash deposit rate.[92]

In addition, petitioner argues the same distortion occurs when a duty-inclusive U.S. price is used to calculate ad valorem assessment rates in cases where the Department uses net U.S. price as a surrogate for entered value.[93] Petitioner contends the Department can rectify this distortion by not including duty drawback in the net U.S. price used to calculate the assessment rate, or, alternatively, by calculating per-unit assessment rates when duty drawback is added to U.S. price and entered value is unknown.[94]

Borusan disagrees with petitioner, arguing that the CIT resolved this issue over 20 years ago. Specifically, Borusan asserts, the CIT found that using a statutorily-adjusted U.S. price (which includes the duty drawback adjustment) as the denominator of the cash deposit rate is not distortive or unlawful.[95] Borusan maintains that petitioner has not provided any new facts or arguments that would warrant revisiting this issue.

Toscelik 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

[89] See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 2.
[90] See Saha Thai, 635 F.3d at 1342.
[91] See Petitioner's Case Brief at 84-86.
[92] Id. at 86-93.
[93] Id. at 86.
[94] Id. at 86-93.
[95] See Borusan's Rebuttal Brief at 34, citing Federal Mogul Corp. v. United States, 813 F. Supp. 856, 867-68 (CIT 1993).

approximation of the respondent's dumping behavior during the period examined, and it also represents the Department's best method for estimating the amount of duties to collect prospectively. 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 petitioner argues 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 will ultimately be assessed, and 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."[96] Cash deposit rates become final assessment rates only when administrative reviews are not requested.[97] Therefore, because we are collecting estimated duties, we did not modify our methodology for purposes of the final results.

With respect to petitioner's argument that a change is needed in the methodology used to calculate assessment rates "where the Department does not have entered value data,"[98] we conclude that this argument is moot. Because both Borusan and Toscelik reported entered values in the instant review, it is not necessary for the Department to calculate surrogate entered values in this case.

Comment 6: *Other Arguments Related to Duty Drawback*

Petitioner argues that duty drawback is included in the calculation of CEP profit, resulting in double-counting and overstated profitability.[99] Petitioner also argues that the inclusion of duty drawback in the U.S. price causes distortions in the Department's differential pricing test.[100] Specifically, petitioner claims that since duty drawback is meant to balance the U.S. price when it is compared to NV, it is not necessary for the differential pricing test, which is a comparison between U.S. sales. Petitioner also argues that where duty drawback is not added to all U.S. sales, U.S. prices are unequally altered by the adjustment. Further, petitioner contends the outcome of the differential pricing test can be manipulated by reporting duty drawback for certain sales. Petitioner therefore suggests that the Department modify the margin program to remove these distortions.[101]

Borusan did not comment on the CEP profit issue. With respect to differential pricing, Borusan asserts the argument that duty drawback can be used to manipulate the differential pricing test is absurd as it relates to Borusan. Borusan states that it reported duty drawback based on the actual amount of drawback exempted by the Turkish government on a specific DIIB tied to a specific export.[102] Borusan contends that, since the link between the DIIB and the export is established at

[96] See Torrington Co. v. United States, 44 F.3d 1572, 1578-79 (Fed. Cir. 1995) (Torrington Co.); see also section 737 of the Act.
[97] See 19 CFR 351.212(c).
[98] See Petitioner's Case Brief at 86.
[99] Id. at 83.
[100] Id. at 83-84.
[101] Id. at 86-93.
[102] See Borusan's Rebuttal Brief at 34-35.

the time of importation and the differential pricing test reflects a respondent's entire POR experience, it is nearly impossible for a respondent to manipulate the differential pricing analysis via the duty drawback adjustment.[103] Borusan claims petitioner has not presented any evidence that the differential pricing analysis used in the Preliminary Results suffered from any distortion and, thus, there is no need to alter the Department's analysis.

Toscelik did not comment on either issue.

Department's Position:

Petitioner's argument related to CEP profit is not relevant to this administrative review because neither Borusan nor Toscelik reported CEP sales.

The Department disagrees with petitioner's argument that the adjustment for duty drawback should not be included as part of the price used in the Cohen's *d* test to examine whether there exists a pattern of prices that differ significantly pursuant to section 777A(d)(1)(B)(i) of the Act. The purpose of the Department's analysis is to determine whether the average-to-average (A-A) method is appropriate to measure the amount of dumping for a respondent. To calculate the weighted-average dumping margin, and the underlying A-A comparisons to calculate individual dumping margins,[104] the Department uses net U.S. prices, either based on export prices or constructed export prices as provided for in section 772 of the Act. Furthermore, section 777A(d)(1)(B)(i) of the Act provides for a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly…" Therefore, both from the statutory language as well as the purpose of considering whether the A-A method is appropriate, it is logical and reasonable that the prices used in the Cohen's *d* test and the prices used to calculate dumping margins are based on the same reported gross unit prices and price adjustments. Accordingly, for the Cohen's *d* test, the Department has made all of the U.S. sales price adjustments when examining whether there exists a pattern of prices that differ significantly.

Comment 7: *Differential Pricing Analysis Should Not Be Used Because the Cohen's* d *Test Does Not Measure Targeted or Masked Dumping*

In the Preliminary Results, the Department applied its differential pricing analysis. The Department found that between 33 and 66 percent of the value of Borusan's total U.S. sales passed the Cohen's *d* test, confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. These findings supported consideration of the application of a mixed methodology (i.e., applying an average-to-transaction (A-T) method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and applying the A-A method to those sales identified as not passing the Cohen's *d* test).[105]

Borusan contends the Department's differential pricing test does not measure targeted or masked dumping and thus is unreasonable and unlawful, and should not be used for the final results. Borusan argues the Cohen's *d* test is not an appropriate statistical test for identifying the

[103] Id. at 35.
[104] See section 771(35) and section 773(a) of the Act.
[105] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 6-7.

"targeted dumping" defined in the statute and legislative history.[106] Borusan asserts the statute specifically states that the A-T method is an "exception" to the normal A-A method and is to be applied only when "(i) there is a pattern of export prices…for comparable merchandise that differ significantly among purchasers, regions, or period of time and (ii) the administering authority explains why such differences cannot be taken into account" using one of the standard comparison methods.[107] Borusan maintains the Department's regulations also treat the A-T method as an exception to the A-A method, and contends the SAA made it evident that the A-T method was meant to be used where "targeted dumping may be occurring."[108] Since it is clear that the A-T method is only authorized where targeted dumping is occurring, Borusan argues, the test's failure to differentiate between sales that are dumped and sales that are not dumped is unlawful.[109]

Borusan asserts that the Cohen's *d* test is poorly suited for determining whether to apply the A-T method because it does not distinguish between positive and negative deviations. In other words, Borusan states that the test does not distinguish between circumstances in which the mean price of the test group is above or below the mean price of the comparison group. Borusan states that the Cohen's *d* test will find prices significantly different for sales of a test group whose mean price is higher than the mean price of the comparison group just as it will find prices significantly different for sales of a test group whose mean price is lower than the mean price of the comparison group. In other words, sales in a test group with a Cohen's *d* test result of 0.8 or greater would pass the Cohen's *d* test, regardless of whether the mean price of the test group is higher or lower than the mean price of the comparison group. Borusan maintains this is an absurd result, as sales that are priced higher than the comparison group cannot be said to be dumped or "targeted."[110] Borusan claims that in the instant review, of the total number of sales passing the Cohen's *d* test and thus classified as "targeted" sales, 75 percent are not dumped.[111] Thus, Borusan argues, even though the Department is only permitted to use the A-T method when sales are targeted and dumped, that the Department has misapplied the alternative A-T method in this review because the proportion percentage of sales which passed the Cohen's *d* test includes sales which were not dumped.[112]

Borusan further argues that the Cohen's *d* test measures nothing more than the extent of the difference between the mean of a test group and the mean of the comparison group. Borusan asserts that the Cohen's *d* test does not address "relative magnitude," which allows sales with tiny price differences to have "passing" Cohen's *d* values. Borusan alleges that the Cohen's *d* test can result in an finding of significant price differences under circumstances where the price variations are insignificant to the market, but happen to exceed the pooled standard deviation of the test and comparison groups. Borusan contends this is especially the case where price variations in the sample being tested are relatively small and overall prices are stable.[113]

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[106] See Borusan's Case Brief at 3-4.
[107] Id. at 4, citing section 777A(d) (1)(B) of the Act.
[108] Id., citing 19 CFR 351.414(c)(1) and quoting the SAA at 843.
[109] Id. at 5.
[110] Id. at 5-6.
[111] Id. at 6 and Attachment 1.
[112] Id. at 6.
[113] Id. at 6-7.

Petitioner responds that Borusan has raised no new arguments with respect to the Department's differential pricing analysis, and urges the Department to reject Borusan's arguments as it did in past proceedings. Petitioner asserts the Department has the statutory authority to perform a differential pricing analysis and that Borusan's argument to the contrary has been repeatedly considered and rejected by the Department.[114] Moreover, petitioner states that Borusan's various criticisms of the Cohen's *d* test have all been addressed and rejected in recent cases, as the Department has repeatedly maintained that the use and implementation of this test to identify a pattern of prices that differ significantly is reasonable and appropriate.[115] Petitioner argues the Department has properly found that the Cohen's *d* test is consistent with the statute and the SAA.[116] In addition, petitioner asserts the Department recently rejected Borusan's argument that the Cohen's *d* test should not treat higher-priced sales as part of a pattern of prices that differ significantly.[117]

Petitioner contends the Department should continue to use the Cohen's *d* test and the current differential pricing analysis. Petitioner claims the statute only requires the Department to find that there exists a pattern of prices that differ significantly among purchasers, regions, or periods of time.[118] Petitioner maintains there is no requirement that the Department identify the causes for such a pattern or demonstrate whether an exporter intended to discriminate between purchasers, regions, or time periods when setting U.S. prices.

Department's Position:

We disagree with Borusan and continue to find that the differential pricing analysis, including the Cohen's *d* test, reasonably fills a statutory gap when considering whether the A-A method is the appropriate comparison method with which to calculate a respondent's weighted-average dumping margin.

The SAA expressly recognizes that the statute "provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an {A-A} or {T-T} methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, i.e., where targeted dumping may be occurring."[119] Thus, the SAA states that in order to use the A-T method, the two statutory requirements must be fulfilled. The SAA's reference to where targeted dumping may be occurring reflects the concern regarding the use of the A-A method in investigations and the possible masking of dumping.[120] Thus, the SAA recognizes that "targeted dumping may be occurring" where there is a pattern of

[114] See Petitioner's Rebuttal Brief at 2, citing as an example 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) (2012-2013 CWP from Korea) and accompanying Issues and Decision Memorandum at Comment 1.
[115] Id., citing 2012-2013 CWP from Korea and accompanying Issues and Decision Memorandum at Comment 1 and Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 24401 (April 30, 2014) and accompanying Issues and Decision Memorandum at Comment 3.
[116] Id., citing 2012-2013 CWP from Korea and accompanying Issues and Decision Memorandum at Comment 1.
[117] Id., citing 2012-2013 CWP from Korea and accompanying Issues and Decision Memorandum at Comment 1.
[118] Id. at 3, citing section 777A(d)(1)(B)(i) of the Act.
[119] See SAA at 843 (emphasis added).
[120] Id. at 842.

prices that differ significantly among purchasers, regions, or time periods; however, it does not limit the consideration of the A-T method to only situations where "targeted dumping" exists. In our view, the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the merchandise at issue.[121] While "targeting" may be occurring with respect to such sales, identifying "targeted dumping" is neither a requirement nor a precondition for a determination that the A-T method is warranted because of a finding of a pattern of prices that differ significantly and a determination that the A-A method cannot account for such differences, consistent with the regulations and following the statutory requirement for less-than-fair-value investigations.

As noted, we will normally use the A-A method unless we determine that another method is appropriate in a particular situation.[122] The purpose of considering the application of an alternative comparison method is to determine whether the application of the A-A method is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. The A-A method compares "the weighted average of the normal values with the weighted average of the export prices (or constructed export prices) for comparable merchandise."[123] Consideration of an alternative comparison method consistent with section 777A(d)(1)(B) of the Act involves examination of whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the Department has examined whether there exists a pattern of prices that differ significantly among purchasers, among regions, or among time periods. If the Department finds that prices do differ significantly among purchasers, regions or time periods, and that these differences constitute a pattern, then the respondent's pricing behavior exhibits conditions (i.e., prices that differ significantly) which may conceal or mask dumping. Subsequently, the Department will consider whether the A-A method can account for "such differences" (i.e., the conditions which indicate that dumping may be masked). If the Department determines that the A-A method cannot account for the price differences exhibited in the respondent's pricing behavior, then it may consider using the A-T method as an alternative comparison method to measure the respondents amount of dumping in the U.S. market.

In the context of administrative reviews, the statute is silent on when and how the Department may determine whether the A-A method is appropriate or whether an alternative comparison method should be applied.[124] The Department has filled this statutory gap by looking to section 777A(d)(1)(B) of the Act to determine whether the A-A method or an alternative comparison method is an appropriate tool with which to measure the extent of a respondent's dumping in a given situation. Section 777A(d)(1)(B)(i) of the Act requires that there exists "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." The statute leaves to the Department's discretion how to determine the existence of such a pattern under section 77A(d)(1)(B)(i) of the Act and does not provide any specific direction on how to make such a determination. The

[121] See 19 CFR 351.414(c)(1).
[122] Id.
[123] See section 777A(d)(1)(A)(i) of the Act and 19 CFR 351.414(b)(1).
[124] See section 777A(d)(2)of the Act.

statute simply requires that we find the existence of a pattern of prices that "differ significantly," and we reasonably demonstrated that such a pattern exists in this administrative review.

The Department disagrees with Borusan that the Cohen's *d* test is not an appropriate for identifying "targeted dumping" (i.e., whether a pattern of prices that differ significantly exists). The Cohen's *d* coefficient is one approach to quantifying an "effect size" and it "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."[125] In responding to a similar comment in the final determination of Xanthan Gum from the PRC, the Department noted in response to argument from Deosen, a respondent in that investigation:

> Nothing in Deosen's submitted articles undermines the Department's reliance on the Cohen's *d* test. Deosen's reliance on the article "It's the Effect Size, Stupid" does not undermine the validity of the Cohen's *d* test or the Department's reliance on it to satisfy the statutory language. Interestingly, the first sentence in the abstract of the article states: "Effect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone." Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of the significance of the difference." The article points out the precise purpose for which the Department relies on Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.[126]

Accordingly, the Department has relied upon a measure of effect size, namely Cohen's *d* coefficient, as part of its differential pricing analysis in these final results of review as a measure of the practical significance of the observed prices differences, i.e., to determine whether the observed price differ significantly. In this application, the difference in the weighted-average (i.e., mean) U.S. price to a particular purchaser, region or time period (i.e., the test group) and the weighted-average U.S. price to all other purchasers, regions or time periods (i.e., the comparison group) is measured relative to the variance of the U.S. prices within each of these groups (i.e., all U.S. prices).

Further, within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for these measures and they are based on the universe of sales (i.e., the entire population of data). Accordingly, because the Department's analysis relies on the complete population of the respondent's sale price data in the

[125] See Preliminary Results and the accompanying Preliminary Decision Memorandum at page 5.
[126] See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) (Xanthan Gum from the PRC), and the accompanying Issues and Decision Memorandum at Comment 3 (emphasis in the original, internal citations omitted); quoting from Coe, "It's the Effects Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.

U.S. market, there is no sampling error, or noise, in the results which must be taken into account through a measure of the statistical significance of the results.

Statistical significance is used to evaluate whether the results of an analysis rise above the sampling error (i.e., noise) present in the analysis. This arises in analyses which are based on data sampled from a larger population of data where the calculated measures (e.g., mean and standard deviation) are estimates of the actual values of the entire population of data. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. Accordingly, statistical significance is not a relevant consideration in this context.

Further, even assuming that "significance" could imply "statistical significance" and "statistical significance" would be relevant to the Department's analysis, as the respondents suggest, the Department notes that, if Congress had intended to require a particular result to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, does not agree with the respondents that the term "significantly" in the statute can mean only "statistically significant." The Act includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, fills the statutory gap as to how to determine whether a pattern of prices "differ significantly." Furthermore, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by each respondent, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. Therefore, respondents' argument is meritless.

The Department disagrees with Borusan that U.S. sales must be both "targeted" and "dumped" in order to be part of a pattern of prices that differ significantly. Whether any of the U.S. sale prices, lower or higher than those to other purchasers, regions or time periods in the U.S. market, are actually above or below their comparable normal value is not a part of determining whether there exists a pattern of prices that differ significantly. Section 777A(d)(1)(B)(i) of the Act specifies a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time." Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not required to fulfill this requirement. Indeed, lower-priced U.S. sales could be below their normal value, and higher-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen's *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to identify "targeted dumping" or "dumped" sales as asserted by Borusan.

We disagree with Borusan that the Department is required to distinguish between prices which are higher and prices which are lower than the mean price of the comparison group. In determining whether a pattern of export prices existed, the Department correctly applied the

Cohen's *d* test to all of Borusan's export prices. Contrary to Borusan's claim, it is reasonable for the Department to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally as capable as lower-priced sales to create a pattern of prices that differ significantly which may lead to hidden or masked dumping. Higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, which can mask dumping. The statute states that the Department may apply the A-T method if "there is a *pattern of export prices* . . . for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time," and the Department "explains why *such differences* cannot be taken into account" using the A-A comparison method.[127] The statute directs the Department to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices.

The Department deems moot Borusan's claim that 75 percent of the sales passing the Cohen's *d* test (i.e., "targeted" sales) are not dumped. Higher-priced sales and lower-priced sales do not operate independently and that all sales are relevant to the analysis.[128] Higher- or lower-priced sales could be dumped or could be masking other dumped sales. When the Department applies the first stage of the differential pricing analysis, the Department is unaware for purposes of its analysis if sales are dumped or not. That is not the issue at that stage of the differential pricing analysis. The question at that stage is whether or not a pattern of prices that differ significantly exists. In answering the question of whether there is a pattern of prices that differ significantly, this analysis includes no comparisons with NVs. Indeed, section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons.

By considering all sales, higher-priced sales and lower-priced sales, the Department is able to analyze an exporter's pricing behavior, and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, rather than a uniform pricing behavior, could signal that the exporter is exhibiting conditions in the U.S. market in which dumping could be masked. Where the evidence indicates that the exporter is engaged in a varying pricing behavior which results in such a condition where dumping may be masked, we believe that there is cause to continue with the analysis to determine whether the A-A method can account for such pricing behavior.

As explained in the SAA, with "targeted dumping," "an exporter may sell at a dumped {i.e., lower} price to particular customers or regions, while selling at higher prices to other customers or regions."[129] Thus, Congress, in recognizing the concerns regarding targeted, or masked, dumping, emphasized that this concern about masked dumping not only included lower-priced sales which may be dumped, but also higher-priced sales which could conceal or mask dumping. Accordingly, both higher- and lower-priced sales are relevant to the Department's analysis of the

[127] See section 777A(d)(1)(B) of the Act (emphasis added).
[128] See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) (Plywood), and accompanying Issues and Decision Memorandum at Comment 5.
[129] See SAA at 842.

exporter's pricing behavior, consistent with the requirements of section 777A(d)(1)(B)(i) of the Act and the relevant language in the SAA.

The Department disagrees with Borusan that its analysis ignores the "relative magnitude" of the observed price differences. The Department interprets Borusan's argument to mean that the Department's analysis ignores the magnitude of the difference in prices relative to the absolute price level in the U.S. market. For example, a one dollar price difference has a different meaning when market prices are around ten dollars as opposed to when they are around one thousand dollars.

The concept behind the Cohen's *d* coefficient is that it quantifies the degree of the difference in the means of the prices within the test and comparison groups relative to the variances of the individual prices within each of the two groups. These variances are the basis for the "pooled standard deviation" which is the denominator of the Cohen's *d* coefficient. When the variance of prices is small within these two groups, then a small difference between the weighted-average sale prices of the two groups may represent a significant difference. However, when the variances within the two groups are larger (i.e., the dispersion of prices within one or both of the groups is greater), then the difference between the weighted-average sale prices of the two groups must be larger in order for the difference to be significant. The Department finds this approach to be reasonable in discerning whether prices differ significantly among purchasers, regions or time periods.

This interpretation is confirmed by language in the SAA, which states that "the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another."[130] The Department's use of the Cohen's *d* coefficient in this case is consistent with that conception of industry and patterns of price differences. As described above, the significance of the difference in the means of the prices is dependent upon the industry, type of product, as well as the individual respondent's pricing behavior.

Although the price level in the U.S. market is not considered when the Department examines whether there exists a pattern of prices that differ significantly, it is central when examining whether the A-A method cannot account for such differences. In this analysis, the differences in the prices, relative to normal value, are each measured relative to the U.S. net sales value. As a result, the differences in the U.S. prices must be large enough, relative to the price level in the U.S. market, such that the normal value for these U.S. sales falls within this range of U.S. prices and that there is an above de minimis of dumping for some U.S. sales as well as a meaningful volume of offsets for non-dumped U.S. sales in order for there to be a meaningful difference in the weighted-average dumping margins calculated using the A-A method and the appropriate alternative comparison method.[131] The above de minimis amount of dumping and meaningful

[130] See SAA at 843.

[131] See Preliminary Results and the accompanying Preliminary Determination Memorandum at 6 ("A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method when both results are above the de minimis threshold, or (2) the resulting weighted-average dumping margin moves

volume of offsets is measured relative to the price level in the U.S. market (i.e., U.S. net sales value). Furthermore, the required range of values within which the normal value for these U.S. sales must fall is necessarily narrower than the range in the U.S. prices because there must be not only an above de minimis amount of dumping (for U.S. sales with prices which are less than the normal value) as well as a meaningful amount of offsets (for U.S. sales with prices which are greater than the normal value).

Therefore, the Department finds that the Cohen's *d* test reasonably measures whether price differences are significant relative to the variation in prices as exhibited in the respondent's own pricing behavior. Furthermore, contrary to Borusan's claim, the Department also takes into consideration Borusan's argument that the Department must consider the "relative magnitude" of these price differences in its analysis.

In sum, we disagree with Borusan's arguments with respect to the analysis employed by the Department, including the use of the Cohen's *d* and ratio tests, for discerning whether a pattern of prices that "differ significantly" exists. We determine that this test is reasonable and is in accordance with the requirements of the Act and the SAA.

Comment 8: *Differential Pricing Analysis Reasoning for Use of Average-to-Transaction Comparison Methodology is Arbitrary and Unlawful*

In the Preliminary Results, the Department also determined that applying the A-A method to all sales could not appropriately account for such differences because there was a meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the mixed alternative method (i.e., the resulting weighted-average dumping margin using the mixed methodology moved across the de minimis threshold as compared to the A-A method.). Thus, the Department applied the mixed alternative method in calculating Borusan's weighted-average dumping margin for the Preliminary Results.[132]

Borusan contends the Department has never explained its reasoning for the 33 and 66 percent cutoffs that it uses in determining whether to apply the A-T comparison methodology, and states that this appears to be an arbitrary, and, therefore, unlawful cut-off point for the Department's analysis.[133]

Borusan also asserts that the Department has not complied with section 777A(d)(1)(B)(ii) of the Act, which requires that the Department explain why such differences cannot be taken into account using the standard A-A method.[134] According to Borusan, the statute provides that departures from the standard comparison method will be the exception and will be "well-justified."[135] Borusan asserts that the closest the Department comes to explaining why the price differences could not be taken into account using the A-A method is its statement that there is a

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across the de minimis threshold.").
[132] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 6-7.
[133] See Borusan's Case Brief at 7.
[134] Id.
[135] See Borusan's Case Brief at 8.

"meaningful difference" in the weighted-average dumping margins calculated by the two methods.[136]

Borusan claims the CIT recently found that the Department's approach enables it to use the alternative comparison method whenever there is a pattern of prices that differ significantly, because it is a mathematical truism that when prices differ, a method that averages prices will produce different results than one that uses individual transactions.[137] Borusan maintains the CIT thus concluded that the Department's approach in effect collapses the separate requirements of section 777A(d)(1)(B)(i) and 777A(d)(l)(B)(ii).[138] According to Borusan, the assertion that using the A-T method generates higher dumping margins is an inadequate explanation for why the price differences cannot be taken into account using the A-A method and thus "violates" the statute. Borusan argues that the only reason there is a "meaningful difference" in its margin when the A-T method is used instead of the A-A method is because the Department applies zeroing in computing the weighted-average dumping margin with the A-T method, but not does not use zeroing in computing the weighted-average dumping margin with the A-A method,[139] and zeroing results in higher overall weighted-average dumping margins.[140]

Borusan contends that if the pattern of price differences is made up of non-dumped sales, then the differences certainly can be taken into account by the A-A method, because if no dumping is occurring for the allegedly "targeted" sales, no dumping can be masked.[141] Borusan asserts that the CIT stated that, in applying 777A(d)(1)(B)(ii),the Department must "explain why A-A cannot account for dumping from targeted sales before it deploys the A-T remedy."[142] Borusan avers that in the instant review, the Department cannot show the A-A method cannot account for the dumping from these sales because a certain number of the sales found to be "targeted" are not being dumped.[143] As a result, Borusan argues, the Department's explanation that the price differences cannot be taken into account using the A-A method for these sales is not supported by substantial evidence. Borusan concludes that the Department's responsibility under the statute is to calculate weighted-average dumping margins as accurately as possible, and the Department's "meaningful difference" test violates this obligation because it is a means for calculating the highest possible dumping margin.[144]

Petitioner replies that Borusan's arguments are not novel and should be rejected as in past proceedings.[145] Petitioner asserts that the Department has the statutory authority to apply the A-

[136] Id. at 8, citing the Preliminary Decision Memorandum at 6.
[137] Id. at 9, citing Beijing Tianhai Indus. Co. Ltd. v. United States, 7 F. Supp. 3d 1318, 1331-32 (CIT 2014) (Beijing Tianhai).
[138] Id., citing Beijing Tianhai, 7 F. Supp. 3d at 1332.
[139] Id. Borusan cites High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739 (May 7, 2012) (Steel Cylinders from the PRC) and accompanying Issues and Decision Memorandum at Comment IV, claiming the Department acknowledged there that without zeroing the results of the A-T and A-A comparison methods would be identical.
[140] Id. at 9-10, citing, e.g., Corus Staal, 395 F.3d at 1345-1346.
[141] Id. at 10.
[142] Id., citing Apex Frozen Foods Private Ltd. v. United States, 37 F. Supp. 3d 1286, 1297 (CIT 2014) (Apex Frozen Foods) (emphasis Borusan's).
[143] Id., citing Attachment 1.
[144] Id. at 11, citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[145] See Petitioner's Rebuttal Brief at 1-4.

T method in administrative reviews and that the Department should continue to use the current differential pricing analysis. Petitioner argues that any pattern of prices that differ significantly, regardless of its cause and the exporter's motivation, can potentially mask dumping, and the purpose of applying the A-T method is to unmask such dumping.[146]

Department's Position:

The Department disagrees with Borusan's claim that the thresholds provided for in its differential pricing analysis regarding the results of the ratio test are arbitrary. As stated in Comment 7, neither the statute nor the SAA provides any guidance in determining how to apply the A-T method once the requirements of section 77A(d)(1)(B)(i) and (ii) have been satisfied. Accordingly, the Department has reasonably created a framework to determine how the A-T method may be considered as an alternative to the standard A-A method based on the extent of the pattern of prices that differ significantly as identified with the Cohen's *d* test.

As stated in the Preliminary Results, the purpose of the Cohen's *d* test is to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise."[147] When 66 percent of more of the value of a respondent's U.S. sales are found to establish a pattern of prices that differ significantly, then the Department determines that considering the application of the A-to-T method to all U.S. sales to be reasonable. When between 33 percent and 66 percent of the value of a respondent's U.S. sales constitute a pattern of prices that differ significantly, then the Department considers a more limited application of the A-to-T method as an alternative comparison method by only applying the A-to-T method to the portion of a respondent's U.S. sales which pass the Cohen's *d* test. Further, when 33 percent or less of the value of a respondent's U.S. sales constitute the identified pattern of prices that differ significantly, then the Department has not considered the application of the A-to-T method as an alternative comparison method. Lastly, as stated in the Preliminary Results, the Department invited interested parties to submit arguments and support with respect to the differential pricing analysis used in this administrative review with respect to modifying the default definitions used in the Department's approach.[148] Borusan has provided no such comments to alter the 33 percent and 66 percent thresholds, or any of the other thresholds or definitions, used by the Department in the Preliminary Results.

As explained in the Preliminary Results, if the difference in the weighted-average dumping margins calculated using the A-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-A method cannot account for price differences and, therefore, an alternative comparison method would be appropriate.[149] As described in the

[146] Id., citing Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74391 (December 10, 2008) and Union Steel v. United States, 713 F.3d 1101 at notes 3, 5, and 8 (Fed. Cir. 2013).
[147] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 5.
[148] Id. at 6.
[149] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 6. See also, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 11160 (March 2, 2015) and the accompanying Issues and Decision Memorandum at Comment 3, and Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping

Preliminary Results, a difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method when both margins are above the de minimis threshold; or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.[150]

In this review, such a meaningful difference exists for Borusan because, when comparing Borusan's weighted-average dumping margin calculated pursuant to the A-A method and an alternative comparison method based on applying the A-T method only to those U.S. sales that passed the Cohen's *d* test and the A-A method to those U.S. that did not pass the Cohen's *d* test, Borusan's weighted-average dumping margin moves across the de minimis threshold. The Department's explanation, as provided for in section 777A(d)(1)(B)(ii) of the Act, is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which dumping is masked and the A-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market. For Borusan, the result of applying the "mixed" A-T and A-A method is an affirmative finding of dumping during the POR, compared to the negative finding of dumping during the POR as when applying the A-A method to all U.S. sales. Thus, for Borusan, there exists a meaningful difference in the results in that dumping is being masked to an extent that it is invisible, and application of the "mixed" A-T and A-A method in this administrative review is warranted, as affirmed by the CIT.[151] Therefore, for these final results, we continue to find that the A-A method cannot take into account the observed differences in Borusan's pricing behavior during the POR, and we continue to apply an alternative comparison method to calculate Borusan's weighted-average dumping margin.

The Department further disagrees with Borusan's reliance on Beijing Tianhai as support for its effort to invalidate the Department's comparison of the calculated results between the two comparison methods to determine whether the second statutory requirement has been met. In the underlying investigation at issue in Beijing Tianhai, the Department did not explain why the A-A method could not account for such differences.[152] Accordingly, the CIT remanded the issue to the Department for further explanation, which is still the subject of ongoing litigation at the CIT. In this review, the Department has explained why the A-A method cannot account for such differences.[153] Furthermore, this explanation has been twice affirmed by the CIT, in Apex Frozen Foods,[154] which affirmed that crossing the de minimis threshold demonstrated that the A-A method could not account for such differences, and in Samsung Electronics,[155] which affirmed

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Duty Administrative Review; 2012-2013, 80 FR 10051 (February 25, 2015) (PET Film from Taiwan) and accompanying Issues and Decision Memorandum at Comment 2.

[150] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 6.

[151] See Apex Frozen Foods, 37 F. Supp. 3d at 1300.

[152] See Steel Cylinders from the PRC and accompanying Issues and Decision Memorandum at Comment IV.

[153] See Preliminary Results and the accompanying Preliminary Decision Memorandum at 7.

[154] See Apex Frozen Foods, 37 F. Supp. 3d at 1300 ("the court sustains Commerce's use of the de minimis threshold to decide whether A-A could account for targeted sales.").

[155] See Samsung Electronics Co. v. United States, 72 F. Supp. 3d 1359, 1368 (CIT 2015) (Samsung Electronics) ("Commerce below explained that 'the A-to-A method does not take into account such price differences because there is a meaningful difference in the weighted average dumping margins when calculated using the A-to-A method and the A-to-T method for both respondents.' Specifically, Samsung's margin increased from de minimis to 9.29% using A-to-T, and LG's margin increased from a proprietary margin to 13.02% using A-to-T. Commerce's

that both of the Department's criteria for a meaningful difference are reasonable. The facts and explanation discussed here and in the Preliminary Results demonstrate that the A-A method is insufficient and that an alternative comparison method is appropriate.

Finally, Borusan's argument regarding the inclusion of "non-dumped" sales as a part of the pattern of prices that differ significantly is simply a variant of its argument discussed above in Comment 7. There, Borusan insisted that higher-priced sales could not be considered as part of a pattern of prices that differ significantly because the purpose of the statutory provision was to address "targeted dumping" which could only include lower-priced sales (whether either the higher- or lower priced sales were below normal value, or dumped, is a separate, not relevant question discussed in the preceding comment). Here, Borusan argues that inclusion of those higher-priced sales in the pattern – which, according to Borusan, are not dumped – means that the A-A method can account for the price differences. However, the A-A method can conceal or mask dumping either implicitly, through the weight-averaging of U.S. prices, or explicitly, through granting offsets for non-dumped sales. The purpose of the A-T method, with zeroing, is to expose this masked dumping whether implicitly or explicitly hidden. Borusan's argument that there would be no meaningful difference in the dumping margins calculated for the U.S. sales which pass the Cohen's d test makes the assumption that the application of the A-T method to these sales would not include zeroing. This will result in the same masking of dumping which occurs when using the A-A method with offsets and thus would provide no remedy for the masked dumping. The only approach to provide a remedy for masked dumping is through the application of the A-T method with zeroing. Using the A-T method with offsets will result in the same dumping margin as the A-A method with offsets.

Comment 9: *Duty Drawback and Treatment of the Yield Loss Factor*

Borusan states that in its original questionnaire response, it reported in the DTYDRAWU field the amount of duties on imported raw materials associated with a particular shipment of subject merchandise to the United States that is exempted upon export, and in the OTHERU field the amount of KKDF duty/tax on imports that is exempted if the goods are exported.[156] Borusan states that in response to the Department's request Borusan reported duty drawback and KKDF without the amounts for yield loss in the fields DTYDRW2U and OTHER2U, respectively, and it renamed the original variables DTYDRW1U and OTHER1U.[157] Borusan argues that the Department's decision in the Preliminary Results to use the modified DTYDRW2U and OTHER2U fields, which do not include the yield loss between the imported raw materials (steel coils) and the exported pipes, was in error.[158]

Borusan asserts that the statute provides for an increase of EP or CEP by the amount of any duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States.[159] Borusan

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explanation is reasonable." (internal citations omitted)).
[156] See Borusan's Case Brief at 12, citing Borusan's September 24, 2014 section C questionnaire response at C-34.
[157] Id., citing Borusan's December 2, 2014 section C supplemental questionnaire response at 9-11 and Exhibits C-21 and C-28.
[158] Id., citing Borusan Preliminary Analysis Memorandum at 5.
[159] Id. at 11, citing section 772(c)(1)(B) of the Act.

cites Saha Thai, which provides that the purpose of the provision is to "account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically" and that "but for the exportation of the subject merchandise to the United States, the manufacturer would have shouldered the cost of an import duty."[160] Borusan contends that the Turkish duty drawback system permits it to apply for a duty exemption on a quantity of a coil that is greater than the quantity of the finished product that it exports.[161] Borusan explains that the difference between the two amounts is the yield loss, some of which may be recovered as scrap or second-quality pipe. Borusan argues that while Turkish law requires it to pay normal duties on scrap and second-quality pipe generated during the export production process, the import duty on scrap and second-quality pipe is zero.[162] Thus, Borusan maintains, the benefit of not having to pay duties on the entire amount of imported coil, including any portion that was recovered and sold as scrap or second-quality pipe in Turkey, is directly correlated with the exportation of the finished product to the United States.[163] In other words, "due to the fact that the finished goods were exported to the United States, Borusan paid no duties on the coil used for the production of the standard pipe," including any portion of the yield loss that was recovered and sold domestically as scrap or second-quality pipe.

Borusan claims that it has consistently calculated its adjustment for duty drawback by applying yield loss factors in every administrative review completed in this proceeding since the order was issued in the mid-1980s, and that the Department has accepted Borusan's adjustment as reported,[164] with the exception of the 2011-2012 administrative review, which is under appeal, and the 2012-2013 administrative review.[165] Borusan further maintains that the Department granted Borusan the full duty drawback adjustment as reported and did not make any reductions for yield loss in the investigation of OCTG from Turkey.[166]

Based on the foregoing, Borusan argues that for the final results, the Department should use the duty drawback amounts reported DTYDRW1U and OTHER1U, which reflect the duties exempted on the quantity of product exported to the United States and the additional quantity representing the yield loss.

Petitioner claims the Department should not grant Borusan any duty drawback adjustment for the final results because it has not demonstrated its eligibility for a duty drawback adjustment.[167] With respect to the yield loss issue, petitioner argues the Department considered Borusan's claims in the prior administrative review and rejected them.[168] Petitioner urges the Department to continue to deny Borusan's request for an adjustment for products that are not exported.

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[160] Id. at 11-12, citing Saha Thai, 635 F.3d at 1338, 1341.
[161] Id. at 13, citing Borusan's September 24, 2014 section C questionnaire response at C-34-C-39 and Exhibit C-17.
[162] Id., citing Borusan's September 24, 2014 section C questionnaire response at C-36.
[163] Id. at 13.
[164] Id. at 14, citing, e.g., 2009-2010 Final Results; Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 69 FR 48843 (August 11, 2004); and Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067 (December 31, 1996).
[165] Id. at 14-15, citing Borusan v. United States, Consol. Ct. No. 14-0009 (CIT 2014).
[166] Id. at 14, citing OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1.
[167] See Petitioner's Rebuttal Brief at 4-7, citing Petitioner's Case Brief at 13-18.
[168] Id. at 6-7, citing 2012-2013 Final Results and accompanying Issues and Decision Memorandum at Comment 4.

Department's Position:

The Department disagrees with Borusan and continues to find that the DTYDRW2U and OTHER2U fields, which do not include amounts for yield loss, reflect the appropriate amounts with which to calculate Borusan's duty drawback adjustment.

Borusan reported that the Turkish government exempted it from paying import duties on hot-rolled coils that it imported to produce welded pipe and tube which it subsequently exported to the United States.[169] However, in producing welded pipe and tube for export to the United States, Borusan did not export as subject merchandise the entire quantity of hot-rolled coils that it imported. The "yield loss" reflects the difference between the quantity of hot-rolled coils that Borusan imported into Turkey to produce welded pipe and tube for export to the United States and the resulting quantity of subject merchandise that Borusan exported to the United States.[170] Borusan recovered this amount as scrap and second-quality pipe and sold those products in Turkey.[171]

Borusan's scrap and second-quality pipe fails to qualify for a duty drawback because neither was exported to the United States during the POR. The statute only permits the Department to grant an adjustment for duty drawback for import duties not collected "by reason of the exportation of the subject merchandise to the United States."[172] In the two prior reviews of this order where this issue was raised, we have not granted duty drawback adjustments for the portion of inputs that resulted in non-subject merchandise (e.g., scrap) and second-quality pipe.[173] Therefore, for these final results we continue to use the fields DTYDRW2U and OTHER2U in granting duty drawback adjustments for Borusan.

Borusan's remaining claims are unpersuasive. First, we find that Borusan's reliance on Saha Thai is misplaced. Borusan argues that the yield loss amounts should be included in the duty drawback adjustment because without "the exportation of the subject merchandise to the United States, the manufacturer would have shouldered the cost of an import duty."[174] However, in Saha Thai, the Federal Circuit also stated that:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.

[169] See Borusan's September 24, 2014 section C questionnaire response at C-34.
[170] See Borusan's December 2, 2014 section C supplemental questionnaire response at 10.
[171] See Borusan's September 24, 2014 section C questionnaire response at C-36.
[172] See section 772(c)(1)(B) of the Act; see also Saha Thai, 635 F.3d at 1338.
[173] See 2011-2012 Final Results and accompanying Issues and Decision Memorandum at Comment 4 and 2012-2013 Final Results and accompanying Issues and Decision Memorandum at Comment 4.
[174] See Borusan's Case Brief at 11-12, citing Saha Thai, 635 F.3d at 1341.

In this case, it cannot be said that "the cost of the duty is reflected in NV but not in EP," because neither the scrap (which is non-subject merchandise) nor the second-quality merchandise is included in Borusan's home market database. Thus, NV does not reflect an import duty that causes an imbalance between EP and NV that needs to be corrected.

Regarding Borusan's claim that the Department, with the exception of the two prior administrative reviews in this proceeding, has consistently allowed duty drawback adjustments that include values associated with yield loss quantities since the institution of the order, Borusan provides no evidence of this issue having been addressed in those earlier administrative reviews. Similarly, while the Department acknowledges that Borusan was granted the duty drawback adjustment without adjustments for yield loss in the investigation of OCTG from Turkey,[175] the Department also notes that it did not directly confront the yield loss issue in that case as here. In the two prior reviews of this order where the Department has directly confronted the yield loss issue, we have denied a yield loss adjustment.[176]

Finally, Borusan acknowledges that under Turkish law, the scrap and second-quality pipe that are not re-exported are, in fact, "subject to import duty ... at the rate in effect for imports of the specific byproducts or scrap... as if the byproducts or scrap had been imported into Turkey."[177] Regarding Borusan's argument that it pays no duties on imports of scrap and second-quality pipe, if accurate, the non-collection of duties is simply a result of the applicable rate being zero. In other words, the non-collection of duties is not "by reason of the exportation of the subject merchandise to the United States," as required for a duty drawback adjustment under section 772(c)(1)(B) of the Act.

Comment 10: *Home Market Sales of Overruns and the Ordinary Course of Trade*

Petitioner argues that pursuant to sections 773(a)(1)(B) and 771(15) of the Act, the Department excludes sales of overruns that are outside the ordinary course of trade from the margin calculation.[178] According to petitioner, the CIT has found that the Department has discretion in determining whether overrun sales are outside the ordinary course of trade within the meaning of the Act.[179] Petitioner asserts that no single factor is dispositive,[180] and commonly considered factors include, but are not limited to: whether the merchandise is "off-quality" or manufactured pursuant to unusual specifications; the comparative volume of sales and number of purchasers in the home market; the average quantity of an overrun sale compared to the average quantity of an ordinary sale; and price and profit differentials in the home market.[181]

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[175] See OCTG from Turkey and accompanying Issues and Decision Memorandum at Comment 1.
[176] See 2011-2012 Final Results and accompanying Issues and Decision Memorandum at Comment 4 and 2012-2013 Final Results and accompanying Issues and Decision Memorandum at Comment 4.
[177] See Borusan's September 24, 2014 section C questionnaire response at C-36.
[178] See Petitioner's Case Brief at 1-2. Petitioner also cites the SAA at 834.
[179] Id. at 2, citing Laclede Steel Co. v. United States, 19 CIT 1076, 1078, 1081 (1995) (Laclede Steel).
[180] Id., citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Reviews, 62 FR 18404, 18436-37 (April 15, 1997).
[181] Id., citing Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 13275 (March 10, 2014) and Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 4385, 4386 (January 22, 2013) (CTL Plate from Korea 2011-2012 Preliminary Results), unchanged in Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic

Petitioner contends that Borusan's home market sales of overruns differ fundamentally from its ordinary sales and would distort the Department's analysis if included in the margin calculation. Petitioner claims the following factors establish that Borusan's home market sales of overruns are outside the ordinary course of trade:

- First, overrun sales are made in a distinct channel of distribution, as Borusan only sells overruns in the home market, mainly to distributors, and on a weight (rather than length) basis.[182]
- Second, overruns represented an insignificant percentage of home market sales during the POR, and were made to a limited number of customers in limited quantities.[183]
- Third, on the basis of identical control numbers (CONNUMs), the average quantity of an overrun sale differed significantly from the average quantity of a non-overrun sale;[184] on a weighted-average basis across each identical CONNUM, the average quantity of an overrun sale varied by certain percentages from the average quantity of a non-overrun sale;[185] and on a weighted-average basis across all identical CONNUMs (weighted by the overrun quantity), the average quantity of an overrun sale equaled a certain percentage of the average quantity of non-overrun sales.[186]
- Fourth, on the basis of identical CONNUMs, the weighted-average net unit prices and profits for overrun sales were lower than those for non-overrun sales.[187]

Based on these four factors, Petitioner argues the Department should exclude Borusan's home market overrun sales from its margin calculation in accordance with section 773(a)(1)(B) and 771(15) of the Act, just as it did in NOES from Korea.[188]

In reply, Borusan argues that petitioner did not raise this issue in a timely manner because it first raised this issue in its case brief rather than when the record was still open.[189] As a result, Borusan maintains, it has no opportunity to provide clarification or submit additional factual information regarding its home market sales of overruns. In contrast, Borusan asserts, in NOES from Korea the petitioners submitted comments on the overruns issue before the preliminary determination, and the Department issued a memorandum in conjunction with the preliminary determination that dealt solely with this issue.[190] Because petitioner delayed in raising this issue

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of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 29113 (May 17, 2013) (CTL Plate from Korea 2011-2012 Final Results).

[182] Id. at 3, citing Borusan's September 24, 2014 section C questionnaire response at C-8, Borusan's home market sales database, and Borusan's December 2, 2014 section B supplemental questionnaire response at 14, footnote 3.

[183] Id. at 3 and Exhibit 1, page 100, Exhibit 2, and Exhibit 3.

[184] Id. at 3 and Exhibit 1, page 80.

[185] Id. at 3 and Exhibit 1, pages 81-90.

[186] Id. at 3-4 and Exhibit 1, page 91.

[187] Id. at 4 and Exhibit 1, pages 1-79 and 81-91.

[188] Id. at 4-5, citing Non-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 61612 (October 14, 2014) (NOES from Korea) and accompanying Issues and Decision Memorandum at Comment 2.

[189] See Borusan's Rebuttal Brief at 2.

[190] Id. at 3-4, citing NOES from Korea and accompanying Issues and Decision Memorandum at Comment 2 and Memorandum from Dmitry Vladimirov through Minoo Hatten to Thomas Gilgunn, "Non-Oriented Electrical Steel from the Republic of Korea, Less-Than-Fair Value Investigation: POSCO/DWI – Home Market Sales of Overruns,"

with the Department, petitioner has failed to provide evidence that rebuts the presumption that the sales in question are outside the ordinary course of trade.[191]

Borusan contends the Department finds sales to be outside the ordinary course of trade when, upon evaluating all of the circumstances related to the sales in question, it concludes such sales have characteristics that are extraordinary for the market in question.[192] Borusan claims the Department looks at the totality of the circumstances in determining whether sales are outside the ordinary course of trade, with no single factor being dispositive, and argues the totality of the circumstances in this case shows that its home market sales of overruns are made in the ordinary course of trade.[193]

In arguing that Borusan's home market sales of overruns are outside the ordinary course of trade, Borusan maintains petitioner fails to consider whether the merchandise is off-quality or manufactured pursuant to unusual specifications. Borusan contends that its home market sales of overruns consist of almost every grade Borusan sold in the home market, and all are prime grade material, which shows that these sales are not unusual or extraordinary.[194]

Borusan then rebuts the four factors addressed by petitioner. First, Borusan claims petitioner is incorrect in asserting that overrun sales are made in a distinct channel of distribution. Borusan contends it is unremarkable that overruns are only sold in the home market, since export sales often consist of larger volume sales that are produced to order.[195] Further, Borusan argues, a significant percentage of all home market sales are made to distributors, not just sales of overruns.[196] Finally, Borusan maintains that petitioner has not explained why it is relevant that overruns may be sold on a weight rather than length basis, and, at any rate, overruns are sometimes sold on a length basis and non-overruns are sometimes sold on a weight basis.[197] Borusan contends that in the instant case, where all home market sales are made through one distribution channel (direct sales from the mill) can be distinguished from NOES from Korea, where the Department found overrun sales were made largely through a distinct distribution channel (over the Internet).[198] Instead, Borusan submits that this case is more akin to Hot-Rolled from India, where the Department did not treat overruns as outside the ordinary course of trade given that the sales "have characteristics that are comparable to those of sales generally made in the home market."[199]

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dated May 15, 2014.

[191] Id. at 2-4, citing United States Steel Corp. v. United States, 953 F. Supp. 2d 1332, 1343 (CIT 2013) (US Steel).

[192] Id. at 5, citing 19 CFR 351.102(b)(35).

[193] Id. at 5-6, citing US Steel, 953 F. Supp. 2d at 1342.

[194] Id. at 6. Citing NOES from Korea and accompanying Issues and Decision Memorandum at Comment 2, Borusan contrasts that case with the instant case, stating the Department found in NOES from Korea that the respondent classified overruns with non-prime merchandise.

[195] Id. at 7.

[196] Id. at 7 and Attachment 1.

[197] Id. at 7, citing Borusan's March 6, 2015 section B supplemental questionnaire response at 10-11.

[198] Id. at 8, citing Borusan's September 24, 2014 section B questionnaire response at B-17 and NOES from Korea.

[199] Id. at 8, citing Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008) (Hot-Rolled from India) and accompanying Issues and Decision Memorandum at Comment 2.

Second, with respect to petitioner's argument that overruns represented only a small percentage of home market sales during the POR, Borusan asserts this percentage is not insignificant, but rather is a meaningful threshold in other aspects of AD cases.[200] Borusan claims this is especially true here when one considers the percentage of home market customers purchasing both overrun and non-overrun merchandise, and the fact that these same customers purchase a certain percentage of all merchandise (both overrun and non-overrun) sold in the home market.[201] Borusan avers it is logical to focus on the number of customers buying both overrun and non-overrun material rather than those only buying only overrun material, because "{i}f the same purchaser is buying both overrun and non-overrun material, both of which are prime grade material, it is more likely that the material is being used for the same purposes and is made in the ordinary course of trade."[202]

Third, regarding petitioner's comparison of the average quantity of an overrun sale versus the average quantity of a non-overrun sale, Borusan argues that what appears to be a significant difference is actually the result of petitioner's distortive rounding of the two averages (i.e., the rounding up of one figure, and the rounding down of another, where the figures are otherwise very similar).[203] As such, Borusan asserts the average quantity of an overrun sale is nearly the same as the average quantity of a non-overrun sale.

Finally, with respect to prices and profits, Borusan maintains that while the prices and profits for overruns were, on average, slightly lower than the prices and profits for non-overruns, this is not always the situation.[204] Nonetheless, Borusan contends a minor difference in average prices and profits is not enough to determine that overrun sales are made outside the ordinary course of trade, since the Department considers the totality of the circumstances in making such a determination. Borusan claims that in past cases, the Department examined the totality of the evidence and found that overruns had been made in the ordinary course of trade even though there were differences in prices and profits.[205]

In conclusion, Borusan argues the record contains no evidence that its home market sales of overruns were made outside the ordinary course of trade, and therefore it urges the Department to continue to find these sales were made in the ordinary course of trade.

Department's Position:

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." Furthermore, section 771(15) of the Act indicates that we shall consider, "among others," sales and transactions made

[200] Id. at 8-9.
[201] Id. at 9 and Attachment 1.
[202] Id. at 9.
[203] Id. at 10.
[204] Id., citing Petitioner's Case Brief at Exhibit 1.
[205] Id. at 11, citing Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14051 (March 29, 1996).

below the cost of production pursuant to section 773(b)(1), and certain sales between affiliated parties within the meaning of section 773(f)(2) of the Act, to be outside the ordinary course of trade. Other than these two statutory exclusions, the Act provides "'little assistance in determining what is outside the scope of that definition.'"[206] What may constitute "among others" in the statute is informed by statements in the SAA:

> Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market. Examples of such sales or transactions include merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale. As under existing law, amended section 771(15) does not establish an exhaustive list, but the Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.[207]

Additionally, the Department's regulations at 19 CFR 351.102(b)(35) further define sales outside the ordinary course of trade as: "sales or transactions {that} have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price." Thus, the Department broadly possesses the "discretion to determine what sales are outside the ordinary course of trade."[208]

With specific regard to "overrun" sales, the Department examines various non-dispositive factors to determine whether overrun sales are in the ordinary course of trade, including, but not limited to, the following: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.[209]

As discussed below, the Department considered each of these four factors. As an initial matter, we note that the record contains very little evidence or argument regarding Borusan's sales of overrun merchandise, other than the following: (1) Borusan sold overruns in the home market and identified these sales in its home market database;[210] (2) overruns are identified in Borusan's

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[206] See US Steel, 953 F. Supp. 2d at 1341 (quoting NSK Ltd. v. United States, 170 F. Supp. 2d 1280, 1296 (CIT 2001)).
[207] See SAA at 834.
[208] See US Steel, 953 F. Supp. 2d at 1341 (citing, e.g., Torrington Co. v. United States, 146 F. Supp. 2d 845, 861 (CIT 2001), aff'd, 62 F. App'x 950 (Fed. Cir. 2003)); see also Laclede Steel, 19 CIT at 1078.
[209] See, e.g., CTL Plate from Korea 2011-2012 Preliminary Results and accompanying Preliminary Decision Memorandum at 7 (unchanged in CTL Plate from Korea 2011-2012 Final Results).
[210] See Borusan's September 24, 2014 section B questionnaire response at B-10.

system by order type ("stock overrun");[211] (3) Borusan had no sales of overrun merchandise in the United States during the POR;[212] and (4) sales made on a weight basis rather than a meter basis tend to be sales of overrun material.[213] Prior to the Preliminary Results, no party commented on the issue of whether Borusan's home market sales of overruns may be outside the ordinary course of trade. Thus, there is a paucity of record evidence or argument related to this issue.

Quality and Specifications of Merchandise and Distribution Channel

The Department examined the data reported in Borusan's home market sales database and found that every grade which Borusan sold in the home market consisted of both overrun and non-overrun merchandise.[214] In addition, the Department finds that, since Borusan's home market database only includes sales of prime merchandise, all of Borusan's home market sales of overruns are of prime grade material.[215] However, the record does not contain any information regarding the specifications of Borusan's overrun merchandise or the uses for such merchandise. Therefore, we are unable to conclude whether Borusan's home market sales of overruns consist of any "off-quality" merchandise or merchandise with unusual specifications.

Petitioner also asserted that that Borusan's home market sales of overruns are made in a distinct channel of distribution. With respect to the argument that Borusan sells overruns mainly to distributors, we examined the information on the record and find that a substantial percentage of all of Borusan's home market sales is made to distributors.[216] Borusan also reported that all of its home market sales were made through one channel of distribution, direct sales from the mill.[217] This is in contrast to NOES from Korea, where the Department concluded, based on record evidence, that the respondent used a unique channel of distribution, internet auctions, as its preferred means of selling overrun products.[218]

In regard to petitioner's bare argument that Borusan's sales of overruns constitute a separate channel of distribution because they are made on a weight instead of on a length basis, we are unable to draw any conclusions due to the dearth of information on the record. As part of its response to a supplemental question in which the Department asked Borusan to provide documentation to support the theoretical weights reported in Borusan's home market database, Borusan stated, "in limited instances in the domestic market, the sale is made on a kilogram rather than a meter basis"[219] and, in a footnote to that statement, "As indicated by the sample transactions in Exhibit B-27, the sales made on a weight rather than a meter basis tend to be sales

[211] Id.
[212] See Borusan's September 24, 2014 section C questionnaire response at C-7-C-8.
[213] See Borusan's December 2, 2014 section B supplemental questionnaire response at 14, footnote 3 (responding to a question regarding quantity and gross unit price of home market sales).
[214] See Memorandum from Deborah Scott through Robert James to the File, "2013 – 2014 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey; Borusan Mannesmann Boru Sanayi ve Ticaret A.S.'s Home Market Sales of Overruns," dated December 2, 2015 (Overruns Memorandum) at 3.
[215] See Borusan's September 24, 2014 section B questionnaire response at B-11; see also Overruns Memorandum at 3.
[216] See Overruns Memorandum at 3.
[217] See Borusan's September 24, 2014 section B questionnaire response at B-17.
[218] See NOES from Korea and accompanying Issues and Decision Memorandum at Comment 2.
[219] See Borusan's December 2, 2014 section B supplemental questionnaire response at 14.

of overrun material."[220] In a subsequent supplemental questionnaire response, Borusan clarified that "{o}verruns are the main category of sales invoiced on a kilogram basis but are not always invoiced on a weight basis."[221] These statements suggest that overruns are not always sold on a weight basis, and non-overruns are not always sold on a length basis. However, because no party questioned whether Borusan's home market sales of overruns were outside the ordinary course of trade prior to the Preliminary Results, the Department did not request any further information from Borusan about its tendency to sell overruns on a weight basis. Thus, based on the limited record, and petitioner's failure to provide any meaningful analysis in support of its argument, it is unclear how the unit of measure of Borusan's home market overrun sales might impact our analysis in terms of determining whether these sales are outside the ordinary course of trade.

Comparative Volume of Sales and Number of Purchasers

The Department considered the quantity of home market sales of overrun merchandise in relation to the total quantity of home market sales and found that overruns do not constitute an insignificant percentage of total home market sales.[222] In addition, the Department considered the number of home market customers buying overruns (those buying overruns only and those buying both overruns and non-overruns) and found that not only does this group of customers make up a significant proportion of total home market customers, this group of customers also purchased a sizeable amount of the total quantity of merchandise (both overruns and non-overruns) sold in the home market.[223] For this same group of customers, the Department also considered the volume of their overrun purchases as a ratio of all of their purchases and found that the percentage of overruns purchased by this group of customers is not insignificant.[224]

Average Sale Quantity

For those CONNUMs that were sold as both overruns and overruns, the Department compared the average quantity of overrun sales to the average quantity of non-overrun sales and found that the average sales quantities of overrun and non-overrun merchandise are similar.[225] We agree with Borusan that rounding results in the significant difference cited by petitioner with respect to this specific comparison.

Prices and Profits

Finally, the Department compared the prices and profits of overrun and non-overrun sales and found that the prices and profits are consistently lower for overrun sales.[226] Though low prices and profits "may be indicative of sales outside the ordinary course of trade," this single fact

[220] Id. at 14, footnote 3.
[221] See Borusan's March 6, 2015 section A-D supplemental questionnaire response at 10-11.
[222] See Overruns Memorandum at 3.
[223] Id. at 3-4.
[224] Id. at 4.
[225] Id.
[226] Id.

standing alone "does not necessarily mean that such sales are outside the ordinary course of trade, as Commerce must evaluate all the circumstances particular to the sales in question."[227]

Analysis

Considering the above factors in toto, and the fact that this issue was not raised prior to the submission of case briefs in this review, the Department finds that the record does not contain sufficient information to determine that Borusan's home market sales of overrun merchandise are outside the ordinary course of trade. The record does show that Borusan's home market sales of overruns are not made in a unique channel of distribution; the volume of overrun sales is not insignificant in comparison to Borusan's total volume of home market sales, nor is the percentage of customers buying overruns in the home market small; and the average quantity of overrun sales is similar to the average quantity of non-overrun sales. However, the record lacks information regarding the specifications of Borusan's overrun merchandise or the uses for this merchandise, information as to why Borusan tends to sell overruns on a weight basis, and information about why the prices and profits of overrun sales are consistently lower than for non-overrun sales, even though both are classified as prime merchandise. Due to the limited record in this review, we have not excluded Borusan's home market sales of overruns from our analysis for these final results. However, the Department intends to examine this issue further in future segments of this proceeding.

Comment 11: *Domestic Inland Freight Expenses*

Petitioner states that in determining whether transactions between affiliated parties have been made at arm's length, the Department compares the transfer price to either (1) prices charged to unaffiliated parties for the same service or (2) prices paid by the respondent to unaffiliated parties for the same service. Noting that Borusan utilizes an affiliated company, Borusan Lojistik, to arrange freight services, petitioner argues that the record shows the fees charged by Borusan Lojistik for inland freight are not at arm's length, despite Borusan's claims to the contrary.[228] According to petitioner, Borusan explained that Borusan Lojistik is the only provider of transportation services from the factory to the port, "which therefore provides no opportunity for the company to provide evidence on the arm's-length nature of this specific charge."[229] Petitioner maintains that while Borusan provided sample documents reflecting loading and ocean freight charges, Borusan did not furnish examples of charges specifically requested by the Department.[230]

Petitioner compares the average amount reported in the field DINLFTPU (domestic inland freight from the factory to the port) to certain information on the record and asserts this

[227] See Appvion, Inc. v. United States, Slip Op, 15-104 (CIT September 17, 2015), at 9.
[228] See Petitioner's Case Brief at 5-6, citing Borusan's September 4, 2014 section A questionnaire response at 8, Borusan's September 24, 2014 section B questionnaire response at B-31, footnote 2 and Borusan's September 24, 2014 section C questionnaire response at C-27, footnote 2.
[229] Id. at 6, citing Borusan's December 2, 2014 section B supplemental questionnaire response at 18 and Borusan's December 2, 2014 section C supplemental questionnaire response at 4.
[230] Id., citing Borusan's December 2, 2014 section B supplemental questionnaire response at 18-19, Borusan's December 2, 2014 section C supplemental questionnaire response at 4-5, and Borusan's March 6, 2015 section A-D supplemental questionnaire response at 13-14 and 18-19.

comparison demonstrates that Borusan Lojistik did not provide domestic inland freight at arm's length.[231] Therefore, petitioner asserts the Department should adjust Borusan's reported domestic inland freight costs to reflect arm's-length transactions based on the result of this comparison.[232]

Borusan responds that petitioner's proposed adjustment overstates freight and brokerage costs and should be rejected by the Department because it is based on an apples-to-oranges comparison.[233] Borusan contends that petitioner's argument is flawed because it is based on a comparison of a single invoice submitted for a containerized shipment to the reported average movement costs for non-containerized, break bulk shipments to the United States.[234] Borusan claims that in addition to inland freight and brokerage, containerized shipments include charges such as port storage fees and container demurrage charges, charges for moving containers at the port, fees for loading and unloading containers at the port area, port congestion charges, surcharges for currency differences, and overweight loading charges for inland transport.[235] In contrast, Borusan argues, the cost for non-containerized shipments is minimal, as the distance from the plant to the port is very short, and Borusan Lojistik uses its own trucks, which have no license plates and only operate at the plant.[236]

Borusan asserts that if the invoice for the containerized shipment were to be used to examine the arm's-length nature of Borusan's transactions with Borusan Lojistik, it would be more appropriate to compare the overall charge on that invoice with the sum of domestic inland freight, domestic brokerage, and international freight expenses for non-containerized shipments to the same destination (Baltimore).[237] Borusan argues the difference in cost between the two amounts is due to containerization, and is also in line with the difference for shipments to Houston where the difference between the high and low per-metric ton costs is more than a certain amount.[238]

Lastly, Borusan contends the record contains other information showing that it does not receive any benefit as a result of its affiliation with Borusan Lojistik. Borusan claims it provided documentation with respect to its home market sales showing that Borusan Lojistik charges Borusan an amount comparable to the amount it charges unaffiliated customers for shipments to the same location.[239] Specifically, Borusan argues, it provided documentation establishing that Borusan Lojistik charged Borusan and an unaffiliated customer roughly the same rate for shipments from Gemlik, the town where the plant is located, to the town of Bilecik; Borusan claims the per-unit cost to Borusan was slightly higher than the cost to the unaffiliated customer,

[231] Id. at 6-7, citing Borusan's December 2, 2014 section C supplemental questionnaire response at Exhibit C-26 and Borusan's section C database.
[232] Id. at 7 and Exhibit 5.
[233] See Borusan's Rebuttal Brief at 12-13.
[234] Id., citing Borusan's December 2, 2014 section C supplemental questionnaire response at Exhibit C-26 and Borusan's March 6, 2015 section A-D supplemental questionnaire response at Exhibit C-39.
[235] Id. at 13.
[236] Id., citing Borusan's March 6, 2015 section A-D supplemental questionnaire response at 18 and Exhibit C-37.
[237] Id. at 14 and Attachment 2. Borusan states that it did not use the invoice for the containerized shipment as the basis for confirming the arm's-length nature of the shipments handled by Borusan Lojistik because of the different charges incurred.
[238] Id. at 14.
[239] Id. at 14-15.

which shipped a larger quantity than Borusan.[240] Borusan maintains that, although this example does not relate specifically to freight from the plant to the port, it shows that Borusan Lojistik treats affiliated and unaffiliated customers in the same manner in regard to pricing.[241]

In sum, Borusan asserts the Department correctly determined in the Preliminary Results, as it did in prior segments of this proceeding, that no adjustment to Borusan's reported domestic inland freight is needed because the charges from Borusan Lojistik to Borusan are at arm's length.[242]

Department's Position:

We disagree with petitioner that we should make an adjustment to Borusan's reported domestic inland freight expenses, because we find that they reflect arm's-length transactions. In determining whether to use transactions between affiliated parties, the Department's practice is to compare the transfer price to (1) prices charged to other unaffiliated parties who contract for the same service or (2) prices for the same service paid by the respondent to unaffiliated parties.[243]

In making its argument, petitioner cites Borusan's December 2, 2014 supplemental questionnaire response, in which Borusan states that Borusan Lojistik, its affiliated freight provider, is the "only supplier of transportation services from the factory to the port, which therefore provides no opportunity for the company to provide evidence on the arm's length nature of this specific charge."[244] However, in its April 3, 2015 supplemental questionnaire response, Borusan clarified that "Borusan Lojistik does transport material for other unaffiliated customers but not to all locations that it ships for Borusan" and that its statement (the one above cited by petitioner) "pertained to inland freight from Borusan's factory to the port for export sales."[245] In fact, in its March 6, 2015 supplemental questionnaire response, Borusan provided documentation comparing the rates that Borusan Lojistik charged an unaffiliated customer in Turkey and Borusan for freight services from Gemlik to Bilecik;[246] this documentation shows the per-unit rate that Borusan Lojistik charged the unaffiliated customer was slightly higher than the per-unit rate that Borusan Lojistik charged Borusan for inland freight services for the same distance. Thus, we find this documentation shows that Borusan Lojistik provided inland freight services to Borusan on an arm's-length basis. Although Borusan was unable to provide documentation showing that the rate Borusan Lojistik charged Borusan for the specific route cited by petitioner (i.e., from the factory to the port) was at arm's length, we find that other information on the

[240] Id. at 15, citing Borusan's March 6, 2015 section A-D supplemental questionnaire response at Exhibit B-41.
[241] Id. Borusan also cites its March 6, 2015 section A-D supplemental questionnaire response at Exhibit C-37 and its September 24, 2014 section C questionnaire response at Exhibit C-8, claiming these exhibits contain evidence showing that Borusan Lojistik charged for loading services on an arm's-length basis.
[242] Id. at 12 and 15-16, citing numerous prior administrative reviews, Borusan's December 2, 2014 section C supplemental questionnaire response at 4-6 and Borusan's March 6, 2015 section A-D supplemental questionnaire response at 18.
[243] See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) (Orange Juice from Brazil) and accompanying Issues and Decision Memorandum at Comment 8.
[244] See Borusan's December 2, 2014 section B supplemental questionnaire response at 18 and Borusan's December 2, 2014 section C supplemental questionnaire response at 4.
[245] See Borusan's April 3, 2015 section B-D supplemental questionnaire response at 3.
[246] See Borusan's March 6, 2015 section A-D supplemental questionnaire response at Exhibit B-41.

record (i.e., the documentation Borusan provided in its March 6, 2015 supplemental questionnaire response regarding freight rates from Gemlik to Bilecik) is evidence that Borusan Lojistik does provide domestic inland freight services on an arm's-length basis.

With respect to petitioner's comparison between the average amount reported in DINLFTPU and other information on the record, we disagree that this should compel us to make an adjustment to Borusan's reported domestic inland freight expenses. First, as explained above, Borusan has provided documentation establishing that it provides domestic inland freight on an arm's-length basis. However, even if it were necessary in this case to make an adjustment to Borusan's domestic inland freight expenses to reflect arm's-length transactions, we find that petitioner's suggested adjustment would be inappropriate, as it is based on an apples-to-oranges comparison. That is, petitioner calculated its adjustment by comparing the charges on an invoice for a containerized shipment, which reflects various charges, with data that Borusan reported in its U.S. database for non-containerized shipments, which do not appear to involve the various charges shown on the invoice for the containerized shipment.

Based on the foregoing, we have not made any adjustments to Borusan's domestic inland freight expenses for these final results.

Comment 12: *International Freight Expenses*

Petitioner maintains that in a recent situation where an affiliated freight provider applied a markup to the freight rates charged by the companies making the actual shipments, the Department determined the markup did not accurately represent the affiliated freight provider's actual experience as reflected in its financial statements. As a result, petitioner contends, the Department found the affiliated freight provider's rates were not at arm's length and adjusted the reported freight expenses by incorporating an amount for the selling, general, and administrative (SG&A) expenses incurred by the affiliated freight provider.[247] Petitioner asserts the Department should similarly adjust Borusan's reported international freight expenses based on the financial statements of Borusan's affiliated freight supplier, Borusan Lojistik, because the reported expenses are not at arm's length.[248]

In rebuttal, Borusan argues there is no basis on which to adjust its reported international freight expenses. Borusan asserts it submitted evidence showing the rate that Borusan Lojistik charged Borusan was always higher than the rate the unaffiliated ocean freight provider charged Borusan Lojistik, and it objects to the insinuation that the amount Borusan Lojistik charges is not an arm's-length rate.[249] Borusan also strongly opposes the SG&A ratio calculated by petitioner, claiming it is overstated and does not correctly account for the services which Borusan Lojistik

[247] See Petitioner's Case Brief at 7-8, citing Certain Oil Country Tubular Goods From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR. 41983 (July 18, 2014) (OCTG from Korea) and Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413 (March 26, 2012).

[248] Id. at 8-9 and Exhibits 4 and 6, citing Borusan's October 21, 2014 section A supplemental questionnaire response at Exhibit A-36 and Borusan's March 6, 2015 section A-D supplemental questionnaire response at Exhibit A-49.

[249] See Borusan's Rebuttal Brief at 16, citing Borusan's March 6, 2015 section A-D supplemental questionnaire response.

performs in arranging ocean freight.[250] Borusan avers that Borusan Lojistik both acts as a freight forwarder for Borusan Group companies and manages the port at Gemlik.[251] According to Borusan, Borusan Lojistik's general expenses chiefly relate to the operation of the port, which accounts for a much greater share of Borusan Lojistik's operations than the freight it arranges for Borusan.[252] Borusan claims that since the information on the record does not divide Borusan Lojistik's general expenses between port operations and freight arrangements, nor was this information ever requested from Borusan, there is no basis on which to properly estimate the costs related to arranging freight for Borusan. Moreover, Borusan argues, the information it provided for non-containerized shipments in regard to the domestic inland freight issue offers further proof that the rates Borusan Lojistik charged Borusan are at arm's length.[253]

Borusan maintains the SG&A ratio calculated by petitioner is also overstated because petitioner included non-operating income and expense items.[254] Borusan argues it is these items, especially the financing-related items (financing expense, gains and losses on exchange gains and losses) that constitute the difference between the operating profit recorded by Borusan Lojistik and the ordinary loss, which in turn petitioner included in the total general expenses used to derive the ratio.[255] According to Borusan, none of these financing-related items should be included because they are already included in consolidated interested expenses, as Borusan Lojistik is part of the Borusan Group. Borusan maintains that in accordance with normal Department practice, if these items are excluded, Borusan Lojistik's SG&A ratio drops considerably.[256]

Department's Position:

We disagree with petitioner that we should make an adjustment to Borusan's international freight expenses to reflect arm's-length transactions. In determining whether to use transactions between affiliated parties, the Department's practice is to compare the transfer price to (1) prices charged to other unaffiliated parties who contract for the same service or (2) prices for the same service paid by the respondent to unaffiliated parties.[257]

In the instant case, Borusan's affiliate, Borusan Lojistik, invoices Borusan for international freight services that are provided by unaffiliated shipping companies.[258] For each shipment reported in its U.S. database, Borusan provided extensive information detailing the ocean freight charges from the unaffiliated freight carrier to Borusan Lojistik as well as the freight rates that Borusan Lojistik charged Borusan.[259] Specifically, in response to the Department's requests, for

[250] Id. at 16.
[251] Id. at 16-17, citing Borusan's September 4, 2014 section A questionnaire response at Exhibit A-14.
[252] Id. at 17, citing Borusan's September 4, 2014 section A questionnaire response at Exhibit A-13 and Borusan's October 21, 2014 section A supplemental questionnaire response at Exhibit A-36 (comparing Borusan's accounts payable to Borusan Lojistik in Borusan Mannesmann Boru Sanayi ve Ticaret A.S.'s 2013 consolidated financial statements to the total cost of goods sold in Borusan Lojistik's 2013 income statement).
[253] Id. at 17 and Attachment 2.
[254] Id. at 17-18.
[255] Id. at 18.
[256] Id. at 18, citing Borusan's October 21, 2014 section A supplemental questionnaire response at Exhibit A-36.
[257] See, e.g., Orange Juice from Brazil and accompanying Issues and Decision Memorandum at Comment 8.
[258] See Borusan's September 24, 2014 section C questionnaire response at C-29.
[259] See, e.g., Borusan's December 2, 2014 section C supplemental questionnaire response at Exhibit C-24; Borusan's

each U.S. shipment, Borusan provided the invoice from Borusan Lojistik to Borusan; the invoice from the unaffiliated freight provider to Borusan Lojistik; and documentation showing payment from Borusan to Borusan Lojistik, and from Borusan Lojistik to the unaffiliated freight provider.[260] Borusan also provided a summary worksheet showing per-unit costs and, where requested, cargo manifests and reconciling worksheets.[261] For each U.S. shipment, the record shows the per-metric ton amount that Borusan Lojistik charged Borusan is higher than the amount that the unaffiliated ocean freight supplier charged Borusan Lojistik.[262] Because the per-unit prices that Borusan Lojistik charged Borusan were higher than the per-unit prices that Borusan Lojistik paid the unaffiliated freight provider for the same service, we find that the per-unit prices Borusan Lojistik charged Borusan for international freight services were at arm's length.

We acknowledge that in cases involving similar situations, the Department has adjusted the respondent's reported international freight expenses to reflect arm's-length transactions by incorporating an amount for the affiliated freight provider's SG&A expenses.[263] However, in this case, because Borusan provided information establishing that the per-unit prices Borusan Lojistik charged Borusan were higher than the per-unit prices that Borusan Lojistik paid the unaffiliated freight provider for the same service for all U.S. shipments,[264] we find that Borusan's reported international freight expenses are based on arm's-length transactions, and no further adjustment is necessary. Therefore, we have not made any adjustments to Borusan's international freight expenses for these final results.

Comment 13: *Billing Adjustments*

Toscelik argues the Department erred in the Preliminary Results by adding billing adjustments (BILLADJH) to home market price, rather than subtracting them.[265]

Petitioner did not comment on this issue.

Department's Position:

We agree, and have corrected this error in these final results.

March 6, 2014 section A-D supplemental questionnaire response at Exhibits C-38 and C-39; and Borusan's April 3, 2015 section B-D supplemental questionnaire response at Exhibits C-43, C-44, and C-45.

[260] Id. For the containerized shipment discussed in Comment 11, the invoicing for, and payment of, the ocean freight was handled in a different manner; however, Borusan provided the relevant documentation.

[261] Id.

[262] Id. We note that this comparison cannot be made for the containerized shipment discussed in Comment 11 because of the different mechanics of that transaction.

[263] See OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 9; see also Welded Line Pipe From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 29620 (May 22, 2015) and accompanying Preliminary Decision Memorandum at 11, unchanged in Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61366 (October 13, 2015).

[264] Again, we note that we are unable to make this comparison for the containerized shipment discussed in Comment 11 because of the different mechanics of that transaction.

[265] See Toscelik's Case Brief at 3.

Comment 14: *Duty Drawback*

Toscelik argues the Department erred in the Preliminary Results by not increasing U.S. price by its claimed adjustment for duty drawback (DTYDRAWU).[266] Toscelik points out that in the preliminary results decision memorandum the Department stated (at 9), "We also increased the starting price by the amount of duty drawback in accordance with section 772(c)(1)(B) of the Act." It concludes from this statement that the absence of the duty drawback adjustment in the preliminary results calculation was a clerical error.

Petitioner did not comment on this specific issue pertaining to the calculation of duty drawback for Toscelik.

Department's Position:

We agree with Toscelik, and have corrected this error in these final results.

Comment 15: *Duty Drawback Adjustment to Cost*

Toscelik argues that the Department erred in the Preliminary Results by not including the cost of zinc in the denominator of the exempted duty ratio calculation which is expressed as a percentage of direct material costs.[267] According to Toscelik, zinc is a direct material input to subject galvanized pipes and thus, for the sake of calculation transparency did not include the zinc cost in the DIRMAT field of the cost database because subject non-galvanized pipes do not consume zinc. Instead, Toscelik reported the zinc cost in a separate ZINC field of the cost database. Toscelik contends that there is no reason for the Department to treat zinc any differently from any other elements of material costs, and therefore, the Department for the final results should include the cost of zinc in the denominator of the exempted duty ratio calculation.

Petitioner did not submit any comments on this issue.

Department's Position:

We disagree with Toscelik. Toscelik reported the direct material costs incurred during the POR in four separate fields of the cost database: 1) DIRMAT; 2) SCRAP; 3) ZINC; and 4) ZINC_OFFSET.[268] To calculate the exempted duty ratio in the Preliminary Results we included the amount of exempted import duty in the numerator and all DIRMAT and SCRAP items in the denominator. We then applied the exempted duty ratio to the sum of DIRMAT and SCRAP, not to the sum of DIRMAT, SCRAP, ZINC, and ZINC_OFFSET.[269] As such, the denominator of this ratio is on the same basis as the material costs to which this ratio was applied.[270]

[266] Id. at 2-3.
[267] Id. at 3, citing Toscelik Preliminary Cost Memorandum at 2-3 and Attachment 3.
[268] See Toscelik's November 28, 2014 first supplemental section D response at exhibit Q34.
[269] See Toscelik Preliminary Cost Memorandum at 2-4 and Attachment 3.
[270] See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 78 FR 34337 (June 7, 2013) and accompanying Issues and Decision Memorandum at Comment 6.

There are several reasons for not including the cost of zinc in the denominator of the exempted duty ratio calculation. First, the exempted import duty amount used in the numerator is based on all imported materials used in the production of standard pipes and zinc is not one of them.[271] Second, zinc is only consumed by the galvanized pipes while the DIRMAT and SCRAP materials are consumed by both the galvanized and non-galvanized pipes. If we are to include the zinc cost in the denominator as suggested by Toscelik, we will also have to include the ZINC_OFFSET amount in the denominator and apply the ratio to the sum of DIRMAT, SCRAP, ZINC, and ZINC_OFFSET. This would have skewed the costs of the non-galvanized pipes at the expense of galvanized pipes. Accordingly, to avoid distortions, for the final results we continued to exclude the cost of zinc from the denominator of the exempted duty ratio calculation.

Comment 16: *Toscelik's Net Financial Expense*

In the Preliminary Results, the Department increased Toscelik'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.[272] Toscelik contends that the amount should be excluded from the reported costs in the final results.[273]

Toscelik contends that it prepares its statutory financial statements in accordance with Turkish generally accepted accounting principles (GAAP) using Turkish lira as the reporting currency, while the Group's consolidated financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) using U.S. dollar as the functional currency. The consolidation process therefore requires conversion of the Turkish lira accounts to U.S. dollars. According to Toscelik, the foreign exchange gains and losses on amounts originally incurred in U.S. dollars and booked in Turkish lira are eliminated, while foreign exchange gains and losses on amounts originally booked in Turkish lira (or other currencies) and now converted to U.S. dollars are imputed. Consequently, Toscelik maintains that these consolidated foreign exchange losses constitute a notional amount required under IFRS. As such, Toscelik concludes that the amount is an unrealized loss since there is no underlying transaction that constitutes the realization of this loss.

Citing to Fischer 2012, Toscelik claims that it is the Department's consistent policy to exclude unrealized foreign exchange gains and losses because they are not actual costs.[274] Toscelik points out that in this case, the Court held that the variations caused by currency translation to Brazilian reais for reporting purposes are not the actual amounts incurred. Thus, the Court found that the Department's constructed value calculation violated the express language of section 773(e)(2)(A) of the Act because it unlawfully included unrealized expenses. Accordingly, the Court remanded the case to the Department.

[271] See Toscelik's November 28, 2014 first supplemental section D response at exhibit Q4C.
[272] See Toscelik Preliminary Cost Memorandum at 3 and Attachment 4.
[273] See Toscelik's Case Brief at 4-6.
[274] Id. at 5-6, citing Fischer S.A. Comercio v. United States, No. 10-00281, 2012 WL 1942109 (CIT Apr. 30, 2012) (Fischer 2012).

Furthermore, Toscelik claims that in requesting clarification on the remand from the Court the Department explicitly noted that its consistent practice is to exclude all unrealized foreign exchange translation gains and losses because they are not actual expenses. According to Toscelik, in the Fischer 2012 remand results memo the Department again made it clear that it has never considered unrealized foreign exchange gains and losses as part of cost because they are not an actual cost.

Finally, Toscelik asserts that in the Preliminary Cost Memo, the Department did not provide the reasons for increasing the reported net financial expense by the amount attributable to foreign exchange loss arising from assets and liabilities other than borrowings. Toscelik maintains that the Department was incorrect to include these losses because they represent unrealized expenses that are not a part of Toscelik's cost of producing pipe. Hence, Toscelik proffers that the Department's actions violate sections 773(b)(3)(B) and 773(e)(2)(A) of the Act which require that the cost of production and constructed value are calculated based on actual amounts incurred and realized. Consequently, Toscelik requests that the Department reverse this decision for the final results.

Petitioner argues that the Department should continue to include the foreign exchange losses at question in Toscelik's financial expense ratio for the final results.[275] Petitioner maintains that, contrary to Toscelik's assertions, Fischer 2012 does not stand for a consistent Departmental practice of excluding unrealized losses; rather, Fischer 2014[276] clarified that the Department's practice is to include such losses and characterized any past actions to the contrary as aberrant. Moreover, petitioner contends that Toscelik has failed to provide evidence that the losses were indeed unrealized.

Regarding Toscelik's reference to section 773(e)(2)(A) of the Act (". . .actual amounts incurred and realized. . ."), petitioner contends 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."[277] Similarly, petitioner argues that Toscelik has also failed to substantiate how the inclusion of the foreign exchange losses in Toscelik's financial expense ratio would distort costs.

Finally, petitioner points out that Toscelik does not question the Department's practice of using the highest level of consolidated financial statements, nor does Toscelik raise any objections to the particular consolidated financial statements that were used in the calculation of the financial expense ratio. Thus, petitioner argues that the financial expense ratio must be based on Toscelik's consolidated financial statements and not on Toscelik's separate company financial statements. Petitioner maintain that since Toscelik failed to provide evidence of the differences between Turkish GAAP and IFRS, the Department should reject Toscelik's arguments and

[275] See Petitioner's Rebuttal Brief at 7-10.
[276] Id., citing Fischer S.A. Comercio, Industria and Agricultura v. United States, No. 12-00340, 2014 WL 2853909 (CIT May 27, 2014) (Fischer 2014).
[277] Id. at 8-9. Specifically, Petitioner argues 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.

continue to include the foreign exchange losses in Toscelik's financial expense ratio for the final results.

Department's Position:

We disagree with Toscelik and have 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 results. Initially, we note that in a recent case Toscelik raised the same issue and the Department 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.[278]

Contrary to Toscelik'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.[279] 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.[280]

We find Toscelik's reliance on Fischer 2012 is 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.[281] 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.[282]

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

[278] See Welded Line Pipe from Turkey and accompanying Issues and Decision Memorandum at Comment 15.
[279] 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).
[280] 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.
[281] 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 2010) 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.
[282] See Orange Juice from Brazil 2010 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 equity, and is an actual expense incurred by the company during the POR."

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.[283] 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 fluctuations.[284] 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.[285] 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 . . . ."[286]

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.

Toscelik 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."[287] 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 are reasonable.[288] Here, both the non-consolidated and consolidated financial statements are prepared in accordance with reporting standards that are permitted under Turkish GAAP. Toscelik's holding company's consolidated financial statements upon which its financial expense ratio is based, reflect IFRS, which is accepted under Turkish GAAP. The Kamu Gozetimi 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.[289] While Toscelik'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.

Further, the Department does not find the inclusion of the foreign exchange losses to be unreasonable. Rather, the financial expense ratio calculation for Toscelik 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.[290]

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[283] See Fischer 2012, 2012 WL 1942109, at *3.
[284] Id.
[285] Id.
[286] See Fischer 2014, 2014 WL 2853909, at *11.
[287] See sections 773(b)(3)(B) and 773(e)(2)(A) of the Act.
[288] 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.
[289] See http://www.ifrs.org/Use-around-the-world/Documents/Jurisdiction-profiles/Turkey-IFRS-Profile.pdf at page 3. See also Toscelik Preliminary Cost Memorandum.
[290] See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping

While Toscelik argues that 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."[291] Here, Toscelik's consolidated financial statements identify the U.S. dollar as the functional currency of both Toscelik and its holding company.[292] 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).[293] Toscelik, however, records its daily transactions in Turkish lira, not in its U.S. dollar functional currency.[294] 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.[295] In accordance with IFRS, this re-measurement from the recording currency to the functional currency should produce the same results had the transactions been initially recorded in the functional currency.[296] Further, all exchange differences should be recognized in the profit and loss in the period in which they arise.[297] We note that Toscelik transacts in multiple currencies, and consequently, Toscelik does, in fact, incur foreign exchange gains and losses that are tied to specific transactions, regardless of whether the company records its transactions in Turkish lira or U.S. dollars.[298] 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.[299] Here, Toscelik'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.

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

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.

[291] See Micron Technology, Inc. v. United States, 893 F. Supp. 21, 33 (CIT 1995).

[292] See Tosyali Audited Consolidated Financial Statements at note 2.3, Toscelik's September 4, 2014 response, at exhibit 12.

[293] See International Accounting Standards 21 "The Effects of Changes in Foreign Exchange Rates" (IAS 21), at paragraphs 8-9.

[294] See Toscelik's September 22, 2014 section D response at exhibits 17 to 20.

[295] See IAS 21, at paragraph 34.

[296] Id.

[297] See IAS 21, at paragraph 28.

[298] See Toscelik's Audited Company-Specific Income Statement, Toscelik's September 4, 2015 response, at exhibit 12. In the income statement there are line items for 'foreign exchange gains" and "foreign exchange losses."

[299] See IAS 21, at paragraph 32.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the Federal Register.

AGREE ✓ DISAGREE _____

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/2/15
Date