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DATE: July 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
For Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey

I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). As a result of our analysis, and based on our findings at verification, we made certain changes to the margin calculations for Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir), one of the two mandatory respondents in this case. For the other mandatory respondent, MMZ Boru Profil Uretim Sanayi Ve Tic. A.S. (MMZ), we find that necessary information is not on the record, and that MMZ withheld information, significantly impeded the proceeding and provided information that could not be verified.[1] Additionally, we find that MMZ failed to cooperate by not acting to the best of its ability to comply with requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to section 776(b) of the Act. As such, we determined the final estimated weighted-average dumping margin for MMZ based on total adverse facts available (AFA). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

1. Assignment of Margin Based on AFA to MMZ
2. Weight Basis for Comparison Methodology
3. Calculation of Duty Drawback Adjustment
4. Which DIIBs to Include in Calculating the Duty Drawback Adjustment

[1] See sections 776(a)(1) and (a)(2)(A), (B), (C), and (D) of the Tariff Act of 1930, as amended (the Act).

5. Offset of Duty Drawback Adjustment for Related Expenses
6. Application of the Duty Drawback Adjustment in the Margin Program
7. U.S. Date of Sale
8. Short-Term Interest Rate in the Home Market
9. Returns
10. Adjustment to Ozdemir's Cost of Manufacturing
11. Reallocation of Costs for Non-Prime Merchandise

II. Background

On March 1, 2016, the Department of Commerce (the Department) published the Preliminary Determination of sales of HWR pipes and tubes from Turkey at LTFV.[2] We invited parties to comment on the Preliminary Determination. The period of investigation (POI) is July 1, 2014, through June 30, 2015.

On February 26, 2016, we issued a supplemental questionnaire to MMZ requesting additional information regarding the weight basis upon which MMZ made sales to the home market during the POI. MMZ submitted its response on March 7, 2016. On March 14, 2016, Department officials met with counsel for MMZ to discuss certain sales documents submitted in MMZ's March 7, 2016, supplemental questionnaire response. In March and April 2016, we conducted verification of the cost of production (COP) and sales information submitted by MMZ and Ozdemir, in accordance with section 782(i) of the Act. [3]

On May 19, 2016, we requested that Ozdemir submit revised home market and U.S. sales databases and a revised COP database. On May 23, 2016, we received Ozdemir's revised databases. On May 26, 2016, the petitioners[4] submitted a letter rebutting, clarifying or correcting alleged new factual information in Ozdemir's response to the Department's request for revised databases. On May 31, 2016, the respondents and the petitioners submitted case briefs. On June 3, 2016, we rejected the petitioners' May 26, 2016, submission after determining that it contained untimely-filed new factual information. At the same time, we rejected the

[2] See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 10583 (March 1, 2016) (Preliminary Determination).

[3] See Memorandum to the File from Rebecca Trainor and Aqmar Rahman, "Verification of the Sales Response of MMZ Onur Boru Profil Uretim Sanayi Ve Tic. A.S. in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey," dated May 16, 2016 (MMZ Sales Verification Report); Memorandum to the File from Gary Urso and Stephanie Arthur, "Verification of the Cost Response of MMZ Onur Boru Profil Uretim Sanayi. Ve Tic. in the Antidumping Duty Less Than Fair Value Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated May 6, 2016; Memorandum to the File from Ross Belliveau, "Verification of the Sales Response of Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey," dated May 17, 2016 (Ozdemir Sales Verification Report); Memorandum to the File from Stephanie Arthur and Gary Urso, "Verification of the Cost Response of Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. in the Antidumping Duty Less Than Fair Value Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated May 6, 2016 (Ozdemir Cost Verification Report)..

[4] The petitioners in this investigation are Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; EXLTUBE; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc.

petitioners' case brief because it contained references to the untimely filed new factual information in the petitioners' May 26, 2016, submission. The petitioners resubmitted their case brief with the new factual information redacted on June 6, 2016.[5] On June 7, 2016, the petitioners and respondents submitted rebuttal briefs. On June 10, 2016, the petitioners submitted a letter requesting that the Department reconsider its rejection of the petitioners' May 26, 2016, submission, to which the Department responded on June 16, 2016. On June 20, 2016, we held a public hearing at the request of the petitioners and MMZ.

Based on our analysis of the comments received and our verification findings, we revised the weighted-average dumping margins for MMZ and Ozdemir from those calculated in the Preliminary Determination.

III. Scope of the Investigation

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for

[5] See Letter to the Secretary from the petitioners, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Petitioners' Administrative Case Brief, dated June 6, 2016 (Petitioners' Case Brief).

convenience and customs purposes, the written description of the scope of this investigation is dispositive.

IV. Margin Calculations

For Ozdemir, we calculated export price (EP) and normal value (NV) using the same methodology as stated in the Preliminary Determination,[6] except as follows:[7]

1. We revised Ozdemir's margin calculations to take into account our findings from the sales and cost verifications.[8]

2. We used theoretical weight rather than actual weight in our margin calculations. See "Discussion of the Issues" section at Comment 2.

3. We recalculated home market credit expenses to take into account interest-free loans during the POI. See "Discussion of the Issues" section at Comment 6.

For MMZ, we applied a margin based on total AFA, as discussed in the "Application of Facts Available and Use of Adverse Inference" section, below.

V. Application of Facts Available and Use of Adverse Inference

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

As discussed in Comment 1 below, during our verification of MMZ's questionnaire responses, we found numerous discrepancies, including significant, unresolved errors with respect to MMZ's reporting of steel grade, per-unit weight, and per-unit price for its home market sales.[9]

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[6] See Preliminary Determination and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (Turkey)" (Preliminary Decision Memorandum), at pages 4 - 8.

[7] See Memorandum to the File from Ross Belliveau, entitled, "Final Determination Calculations for Ozdemir Boru Profil San Ve Tic. Ltd Sti.," dated July 14, 2016 (Ozdemir Final Calculation Memo) and Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Ozdemir Boru Profil San. Ve. Tic. Ltd. STI" dated July 14, 2016.

[8] See Ozdemir Sales Verification Report at 2-3 and 11-12, and Ozdemir's revised cost, home market, and U.S. sales databases submitted on May 23, 2016.

[9] See MMZ Sales Verification Report at 2, and 6-9.

We find that these errors undermine the reliability of the entire home market sales database, as well as the cost test results utilizing the home market sales database, for purposes of calculating a dumping margin for MMZ. And as discussed below in Comment 1, the Department concludes that application of total facts available with adverse inferences is appropriate with respect to MMZ, pursuant to sections 776(a)(1), (2)(A)-(D), and 776(b) of the Act.

Selection of MMZ's AFA Rate and Corroboration

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping (AD) and countervailing duty (CVD) law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[10] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[11]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[12] In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[13] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[14]

When using facts otherwise available, section 776(c) of the Act provides that, generally, where the Department relies on secondary information rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[15] The SAA clarifies that "corroborate" means that the

[10] See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

[11] See Applicability Notice, 80 FR at 46794-95. The 2015 amendments may be found at the following website address: https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

[12] See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

[13] See section 776(b)(1)(B) of the Act.

[14] See 19 CFR 351.308(c).

[15] See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).

Department will satisfy itself that the secondary information to be used has probative value.[16] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Finally, section 776(d) of the Act also makes clear that when selecting information as AFA, the Department is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the information used as AFA reflects an "alleged commercial reality" of the interested party.[17]

In a LTFV investigation, the Department's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculated dumping margin of any respondent in the investigation.[18] In this investigation, the dumping margins alleged in the petition range from 102.1 to 113.75 percent.[19] When we compared the highest dumping margin alleged in the petition with the estimated weighted-average dumping margin of zero percent, calculated for Ozdemir in this final determination, we find that the highest petition rate of 113.75 percent should be considered as a potential AFA rate. However, we were unable to corroborate this rate; the 113.75 percent rate is significantly higher than the range of Ozdemir's transaction-specific dumping margins. Furthermore, other information on the record does not corroborate, pursuant to section 776(c) of the Act, the secondary information contained in the petition which is the basis for the highest petition rate. We performed the same exercise for each of the petition margins and obtained the same result.[20] Therefore, we are unable to corroborate any of the dumping margins alleged in the petition.[21]

While petition rates are permissible as adverse rates in some instances, it is not appropriate to use any of the petition rates here because the Department is unable to corroborate them.[22] Therefore, based on record evidence, the Department has assigned to MMZ as AFA the highest transaction-specific margin, 35.66 percent, of the cooperating company, Ozdemir. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation

[16] See SAA at 870; see also 19 CFR 351.308(d).
[17] See section 776(d)(3) of the Act; TPEA, section 502(3).
[18] See Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 20.
[19] See Letter from the petitioners regarding "Responses to Supplemental Questions Regarding the Petition Against Turkey for the Imposition of Antidumping Duties: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated July 27, 2015 (Petitioners' Supplement to the Petition), at Exhibit IV-26.
[20] See Memorandum to the File from Rebecca Trainor, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Corroboration of Margin Based on Adverse Facts Available," dated July 14, 2016 (Corroboration Memorandum).
[21] See Monosodium Glutamate from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26408 (May 8, 2014), and accompanying Preliminary Decision Memorandum at "Corroboration" section (unchanged in Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and the Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014)).
[22] See Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1190 (Fed. Circ. 1990).

and, therefore, is not secondary information.[23] The transaction underlying this dumping margin is neither unusual in terms of transaction quantities nor otherwise atypical.[24]

VI. Discussion of Issues

Comment 1: Assignment of Margin Based on AFA to MMZ

The petitioners contend that the Department should apply a final margin based on total AFA to MMZ because MMZ has displayed a pattern of misreporting throughout the course of the investigation, beginning with the events that caused the Department to assign a preliminary margin to MMZ based on the facts available. The petitioners argue that a margin based on the facts available remains appropriate for the final determination. They assert that, although only one of the criteria under section 776(a) of the Act is necessary for the Department to resort to the facts available, in this case, each of the statutory criteria is satisfied, as MMZ significantly impeded the investigation, withheld information requested by the Department, failed to provide information by the deadlines, provided information that could not be verified, and left the administrative record devoid of necessary information.

First, the petitioners claim, it is undisputed that necessary information is missing from the record pursuant to section 776(a) of the Act. The petitioners assert that at verification, MMZ acknowledged extensive errors with respect to the reported weight of HWR pipes and tubes that resulted in the Department finding that one quarter of the observations it sampled were invalid;[25] however, corrected home market weight data were not obtained for the remaining observations. Similarly, the petitioners argue, MMZ acknowledged at verification that it misreported the steel grade for 37.5 percent of home market sales reported in its supplemental database, caused by an error that allegedly only involved those data; however, the Department found that steel grade was misreported for 8.67 percent of the sampled transactions for the initial database.[26] Again, the petitioners argue, corrected data were not obtained for the remaining transactions. The petitioners add that, although the Department found that MMZ substantially underreported its indirect selling expenses, the Department was only able to correct MMZ's indirect selling expense ratio calculation for selected months.[27] Therefore, the petitioners conclude, MMZ's extensive and unresolved errors involving the reported weight, steel grade and ISEs compel resort to statutory facts available, given the evidentiary gap in the administrative record.

Second, the petitioners argue, by not providing the correct weight, steel grade, and indirect selling expense information through its questionnaire responses, MMZ withheld "information that has been requested by the Department," and "fail{ed} to provide such information by the deadlines for submission or in the form and manner requested" pursuant to sections 776(a)(2)(A) and (2)(B) of the Act. The petitioners maintain that the latter statutory facts available criterion applies to all of MMZ's misreporting because, while errors can and do occur, the breadth and

[23] See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information).
[24] See the Corroboration Memorandum.
[25] The petitioners cite to MMZ Sales Verification Report at 7.
[26] Id. at 2 and 9.
[27] Id. at 14.

pervasiveness of MMZ's errors in this investigation cannot be characterized as minor, and are not curable. The petitioners list MMZ's reporting deficiencies as follows:

- reporting one weight methodology and thereafter completely reversing itself after the petitioners raised the issue before the Department;
- submitting an unsolicited cost database which the Department rejected;[28]
- misreporting production quantities by a significant amount;[29]
- underreporting its general and administrative (G&A) expense ratio by failing to deduct fiscal year 2014 packing expenses and extraordinary losses from its G&A expenses;[30]
- underreporting its financial expense ratio by failing to subtract fiscal year 2014 packing expenses and to include net foreign currency exchange losses in its financial expense ratio;[31]
- underreporting the per-unit direct materials value by not including raw materials costs in beginning inventory for the POI;[32]
- failing to remove packing costs from the cost of sales denominator, prompting Department officials to obtain production records at the close of verification;[33]
- misreporting the steel grade for a significant number of home market sales;[34]
- misreporting per-unit prices and quantities for a significant number of home market sales;[35] and
- substantially underreporting indirect selling expenses.[36]

The petitioners conclude that, given these extensive failures, MMZ provided information that "cannot be verified," pursuant to section 776(a)(2)(D) of the Act. Moreover, the petitioners claim, MMZ significantly impeded the proceeding pursuant to section 776(a)(2)(C) of the Act by acknowledging that it employed a weight reporting methodology that is diametrically opposed to the one described to the Department only after the petitioners raised the issue. Finally, the petitioners assert that, despite the extraordinary amount of the time the Department spent at verification attempting to resolve MMZ's reporting errors, the record remains devoid of correct data with respect to weight, steel grade, and indirect selling expenses.

The petitioners further argue that the Department should find that an adverse inference is warranted pursuant to section 776(b) of the Act, because MMZ neither acted to the best of its ability, nor submitted reliable data. The petitioners cite to Nippon Steel v. United States,[37] and

[28] The petitioners cite to Letter from Melissa G. Skinner, Director, Enforcement and Compliance Office II, to Dentons U.S. LLP, (March 18, 2016).
[29] The petitioners cite to MMZ Cost Verification Report at 3.
[30] Id. at 2.
[31] Id.
[32] Id.
[33] Id. at 16.
[34] The petitioners cite to MMZ Sales Verification Report at 9.
[35] Id. at 7.
[36] Id. at 14.
[37] See Nippon Steel v. United States, 337 F.3d 1371, 1382 (Fed. Cir. 2003) (Nippon Steel) ("Compliance with the 'best of the ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness,

Steel Nails from Malaysia[38] to argue that the extent to which a respondent's failures or inconsistencies were inadvertent is not dispositive with respect to whether the facts available should be adverse. The petitioners point out that this case is strikingly similar to Nails from Malaysia in which the Department declined to apply "partial" AFA, finding that extensive weight reporting errors discovered at verification rendered all data submitted by the respondent unreliable.[39]

As the AFA rate, the petitioners urge the Department to assign to MMZ the highest margin alleged in the petition—113.7 percent.[40] In the event that Ozdemir's margin remains de minimis, the petitioners assert, the Department should follow its recent practice of calculating the all-others rate based on the simple average of the de minimis margin and the margin based on AFA.[41]

MMZ admits that it made mistakes during the investigation, but argues that, with some "minor exceptions," the errors have been resolved, and the necessary information to calculate a margin is on the record. MMZ adds that, although the Department found errors in the steel grades it reported for home market sales, the Department found no discrepancies with respect to the other product characteristics. Regarding the mistakes the Department found concerning home market sales weight and gross unit prices, MMZ points out that these errors affected reportedly high-priced home market sales, according to the Department's verification report. Therefore, these errors do not benefit MMZ, but will only increase MMZ's margin.

Finally, MMZ contends that the law requires that the Department examine a respondent's actions, and assess the extent of its abilities, efforts, and cooperation in responding to the Department's requests for information when considering applying AFA to a respondent.[42] MMZ asserts that the Department should conclude in this case that a deficiency in the record is simply the inability of a first time respondent to explain its record keeping and accounting methodology in a foreign language and in the specific manner requested by the Department.

Department's Position:

We agree with the petitioners and determine that the application of total facts available with adverse inferences is warranted for MMZ in the final determination. In the Preliminary Determination, we based MMZ's margin on facts available, in part, pursuant to section 776(a)(1) of the Act, because MMZ informed us shortly before the due date for the Preliminary Determination that it had misstated in its questionnaire responses the basis of its home market price and quantity as actual weight rather than theoretical weight. Because we were missing the

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or inadequate record keeping."

[38] See Certain Steel Nails from Malaysia: Final Determination of Sales at Less Than Fair Value, 80 FR 28969 (May 20, 2015) (Nails from Malaysia), and accompanying Issues and Decision Memorandum (Nails IDM) at 16.

[39] The petitioners cite the Nails IDM at 5-17.

[40] Id. at 16 (citing Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 65 FR 34660 (May 21, 2000)).

[41] The petitioners cite Certain Uncoated Paper from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 51771, 51772 (August 26, 2015) (Uncoated Paper from Indonesia).

[42] MMZ cites Nippon Steel at 1383.

necessary clarity with respect to MMZ's reporting of home market prices, as facts available, we compared MMZ's reported home market prices to its U.S. prices based on theoretical weight. We also increased home market prices by the average difference between the theoretical and actual weights reported for MMZ's U.S. sales.

During verification of MMZ's cost and sales responses, we found numerous discrepancies, as detailed by the petitioners, concerning MMZ's reporting of production quantities, G&A expenses, financial expenses, and indirect selling expenses, among other items.[43] Of particular concern, however, are two systemic, unresolved errors found during MMZ's sales verification that undermine the integrity of MMZ's home market sales database. First, we found pervasive misreporting of steel grades, and consequently, control numbers (CONNUMs), for home market sales. While MMZ stated at verification that the error was limited to its most recently-submitted database and that its grade reporting was correct in its prior database, we tested 175 transactions as reported in the prior database and found that steel grade was incorrectly reported for approximately nine percent of the sales we examined.[44] MMZ's rationalization that steel grade is the only product characteristic that the Department found to be problematic belies the fact that steel grade is an essential product characteristic for purposes of product matching in this case. The misreporting renders the home market sales database unreliable for purposes of determining a margin because incorrect steel grades can result in mismatches by either matching products that otherwise might not be compared or preventing matches that otherwise could result absent the misreporting. Thus, inappropriate product matching undermines the integrity of the margin calculation.

We also found at verification that MMZ misreported the per-unit product weight (reported as "quantity" in the sales databases), and consequently, the gross unit price, for an unknown number of home market sales, because its accounting system contained erroneous weight information for over 60 sizes of pipe. Of the 34 individual transactions tested at verification, we found that MMZ had incorrectly-reported the prices and quantity for ten transactions.[45] In Nails from Malaysia, we emphasized the important role that product weight plays in the margin calculations, explaining that weight discrepancies impact not only prices, but also expense allocations, the cost test results, the calculation of individual margins and the averaging of those margins. We concluded that, for the calculations to be meaningful, the weights reported in all three databases (i.e., home market sales, U.S. sales and COP) must be accurate and consistent.[46] We conclude the same in this case.

Contrary to MMZ's assertion, neither of these significant discrepancies with respect to steel grade and weight was resolved at verification. Although the Department's verification team spent considerable time testing MMZ's reported grade and quantity data, their purpose was not to resolve the problems, but to attempt to understand the magnitude of MMZ's reporting mistakes. In any event, because the errors were so pervasive, it was not possible or appropriate to resolve them at verification, as the only appropriate cure would be to construct an entirely new

[43] See MMZ Sales Verification Report at 2, 7, 9, and 14; and MMZ Cost Verification Report at 2, 3, and 16.
[44] See MMZ Sales Verification Report at 9.
[45] See MMZ Sales Verification Report at 7.
[46] See Steel Nails IDM at 10.

database.[47] Consequently, we find that the discrepancies with respect to steel grade and quantity in MMZ's home market database render it unreliable for purposes of calculating a dumping margin for MMZ in the final determination. Therefore, we find that a margin based on the facts available pursuant to section 776(a)(1) of the Act is appropriate, because necessary information is not available on the record. Further, the use of facts available pursuant to sections 776(a)(2)(A), (C) and (D) of the Act is also appropriate because MMZ: withheld information requested by the Department by not providing correct grade and weight information; significantly impeded a proceeding by reporting data with pervasive errors that render its home market database unreliable and thereby preventing the Department from using MMZ's home market database to calculate a dumping margin for MMZ; and provided information that could not be verified.

Moreover, we find that MMZ did not cooperate to the best of its ability to respond to the Department's requests for information in this investigation because it did not respond accurately to the Department's requests for information; rather MMZ reported information that contained pervasive errors. MMZ blames the deficiencies in the record on the fact that MMZ is a first time respondent who found it difficult to explain its record keeping and accounting methodology in a foreign language and in the specific manner requested by the Department. However, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[48] In Nippon Steel, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."[49] The Federal Circuit stated,

> Simply put, there is no *mens rea* component to the section 1677e(b) inquiry. Rather, the statute requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information. In preparing a response to an inquiry from Commerce, it is presumed that respondents are familiar with their own records. It is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think through inadvertence, neglect, or otherwise to look beyond the files immediately available.[50]

Consequently, we find that MMZ did not cooperate to the best of its ability in this investigation. MMZ's incorrect characterization of the weight basis upon which it makes sales in the home market prior to the preliminary determination, and the above-described data reporting errors found at verification have precluded us from calculating a meaningful dumping margin for MMZ. As a result, we made an adverse inference in selecting the facts available for the final determination pursuant to section 776(b) of the Act. As explained above, as AFA for MMZ, we

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[47] See Micron Tech., Inc. v. United States, 117 F.3d 1386, 1396 (Fed. Cir. 1997) (noting that "it would be unrealistic to require a full-scale audit of the foreign entity" at verification, and upholding as reasonable the Department's spot-check of financial figures at verification).

[48] See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997); see also, Nippon Steel at 1382-84.

[49] Id. at 1383.

[50] Id.

selected the highest transaction-specific margin calculated for Ozdemir because we could not corroborate the margins alleged in the petition.

MMZ and the petitioners submitted arguments concerning the appropriate date of sale and weight basis for price comparisons; and whether the Department should allow an offset to MMZ's COP for sales of scrap, reallocate costs for sales of non-prime merchandise, and make certain cost adjustments mentioned in the Cost Verification Report.[51] We have not addressed these comments, however, as our determination to apply a margin based on AFA to MMZ renders them moot.

Comment 2: Weight Basis for Comparison Methodology

In the Preliminary Determination, we compared Ozdemir's NVs with EPs based on Ozdemir's reported actual weight data.[52] The actual weights reported by Ozdemir were based on an allocation of total shipment weights as measured by either the company's factory weighbridge or Turkish customs' weighbridge (domestic sales were weighed at Ozdemir's production facility, while export sales were weighed at the port). Production weights, which are based on the dimensions of input coil used to manufacture the finished product, and which are maintained in the company's production system, were used to allocate the scale weights to individual products within a shipment.

The petitioners argue that the Department should instead base the comparison methodology on theoretical weights for the final determination, stating that the Department has expressed a preference for making sales comparisons on the basis on which U.S. sales are made.[53] The petitioners also cite several pipe and tube cases in which the Department used, and expressed a preference for using, the basis on which products were sold as the basis for comparison.[54]

The petitioners argue that the record of this investigation is clear that HWR pipes and tubes from Turkey are sold on the basis of length in the United States. The petitioners explain that length and theoretical weight are joined together by the theoretical mass/length ratio, and that, unlike

[51] See MMZ's May 31, 2016, Case Brief at 1-5; MMZ's June 7, 2016 Rebuttal Brief at 10-12; the petitioners' June 6, 2016, case brief at 20-57; and the petitioners' June 7, 2016, Rebuttal Brief at 10-16.
[52] See Preliminary Decision Memorandum at 5.
[53] As support for their assertion, the petitioners cite to Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 57 FR 53693 (Nov. 12, 1992) (Welded Steel Pipe from Korea); Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 57 FR 17885 (Apr. 28, 1992) ("We made sales comparisons on the basis of theoretical weight, the weight basis on which respondents reported that U.S. sales were made."); and Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (Sept. 2, 2004) and accompanying Issues and Decision Memorandum at Comment 16 (where the Department converted home market prices to a theoretical basis to be on the same basis as costs and U.S. sales).
[54] The petitioners cite Certain Welded Stainless Steel Pipes from Taiwan: Final Determination of Sales at Less Than Fair Value, 57 Fed. Reg. 53,705 (Nov. 12, 1992); Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 61 Fed. Reg. 1328 (Jan. 19, 1996); Certain Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 65 Fed. Reg. 30,071 (May 10, 2000); and Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 Fed. Reg. 53,677 (Sept. 2, 2004) and accompanying Issues and Decision Memorandum at Comment 16.

scale weight—where every piece of pipe has a different ratio between scale weight and theoretical weight—the mass/length ratio remains intact, regardless of whether the seller chooses to express the sale in terms of total length, total theoretical weight, or pieces.

The petitioners argue that the Department adopted contradictory bases for calculating per-unit values in the Preliminary Determination, as it relied upon actual weight for Ozdemir and theoretical weight for MMZ. The petitioners contend that, for the final determination, the Department must articulate its rationale for finding that Ozdemir's reporting basis is reasonable, as it is in direct conflict with the other respondent, as well as Department precedent.[55]

The petitioners then argue that scale weights are unreliable, as they are influenced by a variety of factors, including: (a) mechanical (concerning the weighbridge); (b) environmental (such as wind, snow and mud); (c) truck-related (such as differences in packing materials or fuel levels present when trucks are weighed); (d) human-related (involving either driver error or bridge operator error); and (e) system-related (i.e., how frequently scales are recalibrated and stored-tare weight systems are refreshed).

The petitioners claim that scale weight inaccuracy is magnified when respondents allocate scale weight values to truckload weights that contain different products. The petitioners assert that such methodology averages out the weight differences that derive from different tolerance allowances, thereby distorting the actual scale weight of individual products, and provide hypothetical examples to illustrate this point.[56] The petitioners claim that these examples show that the allocated scale weight methodology used by the respondents yields results that are arbitrary and capricious. Lastly, the petitioners point out that because Ozdemir uses different scales for home market and U.S. sales (home market sales are weighed at Ozdemir's production facility, while export sales are weighed by Turkish customs), and because the two scales used are not in synch, the weights are not comparable. Therefore, the petitioners argue, Ozdemir's scale weights cannot be used in the final determination.

Rather, the petitioners argue, the Department must use theoretical weights for the final determination. However, because the theoretical weights on the record are reported based on different industrial specifications in the U.S. and home markets (e.g., EN in the home market and ASTM in the U.S. market) with different nominal wall thickness tolerances, the petitioners assert that those weights cannot be used as the basis for comparison. Instead, the petitioners argue that the Department should convert all theoretical weights to the same basis, and provide programming language and a SAS database that it suggests the Department use to set all sales on a uniform theoretical basis.[57] With regard to cost, the petitioners suggest that the Department issue a supplemental questionnaire to Ozdemir to obtain a revised cost database.

[55] The petitioners cite to China Nat'l Mach. Imp. & Exp. Corp. v. United States, 27 CIT 255, 270, 264 F. Supp. 2d 1229, 1242 (2003) (quoting Queens Flowers De Columbia v. United States, 21 CIT 968, 978 (1997)) in support of their assertion that the Department has failed to fulfill its obligation to articulate a "rational connection between the facts found and the choice made."
[56] See Petitioners' Case Brief at 33 to 36.
[57] Id. at 42 to 44, and at attached SAS files.

For future pipe cases, the petitioners also urge the Department to require length as a reporting basis, or to create a special questionnaire to be used in all pipe cases that requires respondents to report the information necessary to calculate theoretical weight, and to adopt a uniform formula for doing so. They suggest that length is free of the inaccuracies and distortions of scale weight and does not require the additional scrutiny to ensure a uniform theoretical weight has been reported.[58]

The petitioners argue that by using actual weights for some respondents, and theoretical weights for other respondents, the Department is required, as a general matter, to provide a sufficient explanation for this varying treatment.[59] The petitioners assert that because such an unexplained difference in treatment is contrary to law, the Department should revert to its general preference for making sales comparisons on the basis on which U.S. sales were made, and its practice of using a theoretical measure in pipe and tube cases.

Lastly, the petitioners propose that the Department adopt a uniform lexicon with regard to weight terminology, as the usage of the word "actual" will cause confusion amongst parties. The petitioners suggest that the Department use this terminology uniformly in this and all subsequent determinations.

Ozdemir argues that the Department has a long history of utilizing actual weight in pipe cases, and that it should continue to utilize actual weight in its margin calculation for the final determination in this investigation. Ozdemir points out that actual weights are used in the company's ordinary course of business, and claims that they provide the most accurate view of the company's sales. Ozdemir asserts that actual weight is a superior measurement because it accounts for the producer's "weight gain," which occurs when a company manufactures a product under a given specification (i.e., EN or ASTM) and maximizes its profit by producing toward the lower end of the tolerance of that specification. The company insists that it would be wrong for the Department to use its reported theoretical weights without accounting for weight gain. Ozdemir further contends that using theoretical weight also erases "weight loss," which occurs when a producer uses material inputs at the higher end of a given specification as part of its coil inventory management.

Additionally, Ozdemir explains that differences in the radii at the corners of HWR pipes and tubes, which also affect weight, would be negated by the usage of theoretical weight. The company claims that it is particularly sensitive to this issue, as one of its largest customers in the home market purchases narrow-radius profiles.

Ozdemir admits that there are certain imprecisions that arise when using scale weights, but points out that such variances equally affect all sales, whether domestic or export, and amount to less than one tenth of one percent of the weight of an average shipment.

Ozdemir then dismisses petitioners' other arguments concerning scale error as purely speculative, stating that there is no evidence that its weighbridge is affected by wind, that the

[58] In support of their position, the petitioners cite Steel Wire Rope from Japan: Final Results of Administrative Review of Antidumping Finding, 47 FR 3395 (January 25, 1982) at Comment 3.
[59] The petitioners cite Martin v. Franklin Capital Corp., 546 U.S. 132, 139, 126 S. Ct. 704 (2005).

company allows ice and frozen mud to collect in and around the load cells, that the company is inconsistent in allowing drivers to remain in trucks during loading, or that incorrect tare weights are used when taking measurements. Ozdemir stresses that the pipe industry relies on weighbridges, and states that the Department has used actual weights based on weighbridge measurements in virtually every Turkish pipe case.

Regarding the petitioners' argument that the Department apply a single theoretical weight formula, Ozdemir argues that the resulting quantities and values would not reconcile with the company's accounting systems. It would also require the conversion of non-subject merchandise weights in order to properly allocate the company's costs. Ozdemir asserts that doing so would require the submission of a new database at this late point in the investigation.

With respect to the petitioners' suggestion that future reporting in pipe cases be done on a length basis, Ozdemir argues that such reporting would create conversion problems. Ozdemir points out that certain expenses, such as inland freight, are incurred on an actual-weight basis. Also, cost per meter would not be comparable, as a single CONNUM can include more than one thickness and size. Additionally, labor, overhead, and the costs of the input coil itself would need to be converted.

Finally, Ozdemir argues that should the Department choose to use the reported theoretical weights in the final determination, it should calculate a weight gain adjustment to capture the differences in profitability between EN and ASTM standards.[60]

Department's Position:

In previous pipe cases, the Department has based price comparisons on theoretical or actual weight, depending on the particular facts of each case.[61] Upon further consideration of the facts in this investigation, we find that, in general, theoretical weight is the more appropriate basis for price comparisons in this investigation for several reasons. We disagree with Ozdemir that the use of actual weight is preferable in this case. It is within the Department's prerogative to choose between two methods so long as it articulates a rationale that is based on substantial record evidence.[62]

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[60] To support its argument, Ozdemir cites to Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey (Pipe and Tube from Turkey), 61 FR 69067, 69074-5 (December 31, 1996), and Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review (Pipe and Tubes from Thailand), 61 FR 1328, 1336 (January 19, 1996).

[61] For instances in which we have used theoretical weight, see e.g., Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 57 FR 53693 (November 12, 1992) at Comment 3, and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 57 Fed. Reg. 17,885 (Apr. 28, 1992); for instances in which we have used actual weights, see e.g., Welded Carbon Steel Pipe and Tube Products from Turkey: Final Results of Antidumping Administrative Review and Final Determination of No Shipments, 2013-2014, 80 FR 76674 (December 10, 2015), and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Results of Antidumping Administrative Review, 75 FR 61127 (October 4, 2010) (Light-Walled Rectangular Pipe and Tube from Turkey).

[62] See Hynix Semiconductor Inc. v. United States, 391 F.Supp.2d 1337, 1342 (CIT 2005), which states: "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."

First, the product CONNUM, which is used to match sales in the home and U.S. markets, is created from the nominal product dimensions as reported by the respondents in their responses to the Department's questionnaire, and theoretical weight is derived from nominal dimensions. Accordingly, there is a correspondence between the product CONNUM, i.e., the basis for market comparisons, and theoretical weight. This correspondence does not exist between the product CONNUM and actual weight. Second, U.S. customers normally order products based on nominal dimensions, and are normally invoiced on a theoretical weight basis, as is the case for Ozdemir.[63] In addition, we are able to compare sales and costs on a consistent weight basis, as Ozdemir provided theoretical weight data for its home market and U.S. sales, and a cost database based upon those theoretical weights.

With regard to Ozdemir's argument that the Department should calculate a weight gain adjustment if it uses theoretical weight in the final determination, we disagree. Attempting to capture differences in profitability resulting from different tolerances between the EN and ASTM standards, or between pipes and tubes of different radii, goes beyond the product characteristics (i.e., nominal perimeter and wall thickness) enumerated in the antidumping questionnaire and used in the model-matching process, which serves as the basis for the Department's calculation of Ozdemir's weighted-average dumping margin. Additionally, we note that Ozdemir cites to Light Walled Rectangular Pipe and Tube from Turkey, in which the respondent in that case provided the Department with a weight-savings adjustment ratio. Ozdemir has provided no such information in this case, nor has it explained how the Department should calculate a weight gain adjustment. Ozdemir also cites to Pipe and Tubes from Thailand, in which the Department converted the respondent's hot-rolled coil costs to a theoretical weight basis. We note that consistent with that case, we calculated Ozdemir's dumping margin using the coil costs in Ozdemir's most recently submitted cost database, which are calculated using the same theoretical weights as those reported in Ozdemir's sales databases.

Finally, the petitioners argue for the application of a uniform theoretical weight formula in this and potential future segments of the proceeding. They also suggest that in future pipe cases, the Department should require length as a reporting basis, or create a special questionnaire that requires respondents to report the information necessary to calculate theoretical weight using a uniform formula. It is not practicable to implement a uniform theoretical weight formula in this investigation because the necessary cost information is not on the record. However, should this investigation result in an antidumping duty order, we intend to reevaluate the reporting requirements in our questionnaire in order to take the concerns expressed by both parties into account.

Comment 3: Calculation of Duty Drawback Adjustment

Ozdemir argues that the duty drawback adjustment is statutory, and that, according to section 772(c)(1)(B) of the Act, Commerce is required to increase U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not

[63] See Letter to the Secretary from Ozdemir, "Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to §A/B/C Supplemental Questionnaire," dated December 17, 2015 (December 17, 2015, SQR) at 10.

been collected, by reason of the exportation of the subject merchandise to the United States." Ozdemir reasons that the clear statutory language ties "the amount of any import duties … rebated" to the "exportation of the subject merchandise to the United States." It argues that the Department's longstanding methodology requires a link between the rebate or non-collection of the duty and the U.S. exportation of the subject merchandise.

Ozdemir asserts that the test for whether a drawback adjustment may be granted is whether: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another; and, (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. Ozdemir asserts further that, for the Preliminary Determination, the Department found that Turkey's inward processing regime (IPR) meets the requirements of the U.S. statute and the Department's longstanding test.

Ozdemir maintains that by measuring the value of the drawback adjustment over the total raw material (i.e., hot-rolled coil) cost in the period, the Department divorces the import taxes foregone from the exports of subject merchandise and the subsequent forgiveness of the tax liability. Ozdemir further maintains that the Department exacerbates the disconnect by applying the duties recovered in the "lifetime" of one or more particular inward processing certificates, known as DIIBs, to the product costs incurred during the POI, a completely different "lifetime." By using the total value of inputs consumed as the denominator instead of the quantity of export sales, Ozdemir asserts that the Department divorces the calculation from the statute.

Ozdemir argues that when it assigns exported products to a DIIB, it receives relief from the liability for the proportional amount of the duty imposed on the imports. Ozdemir argues that at verification the Department reviewed these figures, and examined the workings of the IPR system and inspected Ozdemir's online account in the Turkish customs portal. Ozdemir points out that the Department has an obligation to calculate margins accurately.[64] Ozdemir argues that when the Department, for example, subtracts a properly granted discount from a gross unit price, it is not because of a policy relating to discounts; it is because of the requirement of accuracy. The requirement of accuracy is an overarching obligation.

Ozdemir argues that the record shows that during the POI it received forgiveness of an average of $22 per metric ton (MT) on the active DIIBs, and that a methodology that results in a drawback adjustment of only $6 per MT is intrinsically faulty, as it gives a result at odds with the economic reality of Ozdemir's activity.

Ozdemir argues that the duty drawback adjustment under section 772(c)(1)(B) of the Act is similar to the adjustments that the Department makes for rebates. Ozdemir asserts that the clearest analogy for the duty drawback adjustment is to the treatment of rebates given by a seller of goods, such as year-end quantity rebates. Ozdemir asserts that for both duty drawback and price rebates, the economic activity that underlies the adjustment is not coterminous with the

[64] In support, Ozdemir cites to Rhone Poulenc, Inc.v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990); Fujian Mach. & Equip. Imp. & Exp.Corp. v. United States, 178 F. Supp. 2d 1305, 1322(Ct. Int'l Trade 2001); Timken US Corp. v. United States, 318 F. Supp. 2d 1271, 1275 (Ct. Int'l Trade 2004); Taian Ziyang Food Co. v. United States, 918 F. Supp. 2d 1345, 1355 (2013) (holding Commerce must calculate margins "as accurately as possible") (quoting Shakeproof Assembly Components v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001)).

POI/period of review (POR) (i.e., there is a timing difference), and so the Department calculates the adjustment ratio based on the period of the adjustment (i.e., in one case the rebate period for sales rebates, and in the other, the DIIB period for duty drawback), and applies that adjustment to POI/POR sales. Ozdemir notes, for example, that in the case of year-end rebates granted by a seller, the Department's methodology is to allocate the rebate granted in the fiscal year over the total net sales value by customer in the same period, and then to apply that ratio to POI/POR sales. What is important, Ozdemir asserts, is that the numerator is the total rebate granted, and the denominator is the sales value that was the basis on which the rebate was granted. Ozdemir argues that the Department applies the rebate value to sales, not to COP. Ozdemir asserts that similarly, for duty drawback, the numerator is the total duty drawback granted and the denominator is the sales value that was the basis on which the duty drawback was granted.

In conclusion, Ozdemir argues that the measure of the amount of drawback the respondent received by reason of its U.S. exportation must be linked to the total drawback received (as numerator) and the total export sales (as denominator). Use of any other denominator, it asserts, violates the statute and is inconsistent with the Department's usual treatment of rebates.

The petitioners argue that the Department's duty-neutral methodology used to calculate Ozdemir's drawback adjustment in the Preliminary Determination is lawful and appropriate. They argue that Ozdemir's challenges are without merit because: (a) no methodology for calculating the per-unit value of the drawback adjustment is specified by the statute, regulations, courts, or the Department's two-prong test; (b) the new methodology is not manifestly inaccurate; and (c) the new methodology is consistent with both applicable court precedent and legislative history.

The petitioners note that Ozdemir argues that the Department's methodology is unlawful because it divorces the imports foregone from the exports of subject merchandise. They note that Ozdemir basically argues that the methodology differs from the Department's past methodologies and that the adjustment is now connected to the value of inputs consumed, which Ozdemir concludes makes it unlawful. The petitioners assert that Ozdemir's argument is fatally flawed because there is no method prescribed by the statute, the courts, or the Department's two-prong test that ties the calculation of the duty drawback adjustment to the export sales. The petitioners assert further that Congress provided no guidance in the statute on the mechanics of implementing the drawback adjustment, other than to treat it as an addition to the starting price.

Accordingly, the petitioners argue, the Department correctly used its discretion to calculate the per-unit addition to U.S. price and the cost-side adjustment. Moreover, they assert that because the General Agreement on Tariffs and Trade, the statute, and the regulations all fail to prescribe a methodology for calculating the duty drawback adjustment – and the courts have blessed the Department's discretion in implementing the adjustment – Ozdemir has narrow grounds to appeal the Department's exercise of its discretion.

Furthermore, the petitioners maintain that while Ozdemir purports to argue why it believes the Department's preliminary duty drawback adjustment methodology is inaccurate, Ozdemir has failed to explain in detail exactly how the methodology is inaccurate. The petitioners contend further that while Ozdemir finds intrinsic fault with the Department's per-unit duty drawback

calculation, as it is less than what it expected to receive, Ozdemir fails to explain what the fault is, and add that the statute does not limit the Department to methodologies that meet a respondent's expectations.

Finally, the petitioners argue that the Department's duty-neutral methodology is consistent with the U.S. Court of Appeals for the Federal Circuit (CAFC) decision in Saha Thai.[65] The petitioners argue that the Department's current practice is to correspondingly increase the COP for duty drawback costs associated with the exempted duties, even though such costs were not actually paid, or even recorded in the company's normal books and records. They note that both the U.S. Court of International Trade (CIT) and CAFC upheld this practice in Saha Thai, recognizing as reasonable the Department's policy to make a corresponding upward adjustment to COP, when a duty drawback adjustment is granted to U.S. export price.[66]

The petitioners argue that the "matching principle" articulated in Saha Thai as it applies to the drawback adjustment is more than a half century old, pointing out that it is reflected in a 1957 report, wherein the Treasury Department explained its margin calculations to Congress, as part of a package of amendments to the Antidumping Law of 1921. With respect to duty drawback, the petitioners note that Treasury explained: "Remission of import duties and internal taxes -- Further, by way of reducing the price to the United States market and the home consumption price to comparable terms, provision is made that allowance shall be made, in calculating price to the United States market, for import duties or internal taxes … which are remitted by the country of export. In each case the amount remitted is added to the price to the United States market; and in calculating the home-consumption price the import duty or internal tax will similarly be included. To the extent that the figures are the same, and ordinarily they will not differ materially – they will cancel out." [67] The petitioners emphasize that there are two takeaways from this report. First, they state, it is clear from this explanation that Treasury's practice was to add two "figures" representing taxes and/or duties: one to U.S. price and the second to home market price. Second, they explain, Treasury expected that the net effect would be zero, as the figures "will cancel" each other out. Thus, the petitioners argue that while the addition of drawback would effectively be rendered superfluous by operation of the secondary adjustment to NV, this result was the expected outcome. Accordingly, the only way to arrive at figures that cancel each other out is to calculate per-unit values using a single allocation method, as the Department has done in its "duty-neutral" methodology. In the period between Saha Thai and the instant case, the petitioners argue, the administering authority has simply reestablished its original posture. The reason for this duty-neutral approach, they assert, was explained in the

[65] The petitioners cite to Saha Thai Steel Pipe Pub. Co. v. United States, 635 F.3d 1335 (2011) (Saha Thai).
[66] The petitioners note that in Saha Thai the CAFC stated: "It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all."
[67] The Customs Simplification Act of 1956, Pub. L. 927, 84th Congress, required the Treasury Department to submit a report to Congress with recommendations for amendments considered desirable or necessary to improve enforcement of the Antidumping Act of 1921. Treasury submitted its report to Congress on February 7, 1957, and it was incorporated into the subsequent hearings. See Report of the Secretary to the Congress on the Operation and Effectiveness of Antidumping Act and on Amendments to the Act Considered Desirable or Necessary, Hearings before the House Ways & Means Committee on H.R. 6006, 6007, 5120, 85th Cong., 1st Sess. (1957), at 13.

Preliminary Determination and reiterated in the recent remand in Rebar from Turkey.[68] Here, the petitioners claim, Ozdemir has not challenged whether its inputs derive from both domestic and foreign sources. Therefore, the Department's preliminary duty-neutral approach remains consistent with Saha Thai.

Department's Position:

The Department continues to make a duty drawback adjustment for Ozdemir in this final determination. Ozdemir begins its argument by presenting a statement of selected facts, and discloses that it reported a duty drawback adjustment of approximately $22 per MT.[69] Ozdemir then describes certain aspects of the Turkish government's Domestic Processing Regime, also known as "Inward Processing Regime"[70] (IPR), and explains that there were three DIIB open during the POI under which Ozdemir imported hot-rolled (HR) coils.[71] Ozdemir notes that for the Preliminary Determination, to calculate the percentage of uncollected duty to be added to its cost of manufacturing (COM) and for determining the amount of duty drawback adjustment to be added to its U.S. price, the Department divided the duties forgone from only one DIIB[72] and divided that amount by its total HR coil costs. The resulting percentage was used to calculate an adjustment of approximately $6 per MT as compared to Ozdemir's reported $22 per MT.[73] In its arguments, Ozdemir actually combines two issues: whether the Department's new duty drawback adjustment methodology was lawful, and whether Ozdemir's documentation for the two disallowed DIIBs provided enough record evidence to support the conclusion that the duty liability associated with them was forgiven. These are two separate issues, the first of which we address here, the second of which we address at Comment 4, below. We note that if the Department had allowed all three DIIBs, the duty drawback adjustment would have been approximately $18 per MT, as compared with Ozdemir's reported $22 per MT.[74] We also note that while the Department only allowed $6 per MT for the Preliminary Determination for the upward adjustment to U.S. price, it likewise added only $6 per MT of uncollected duty to Ozdemir's COM.[75]

[68] The petitioners note that in that remand, the Department reiterated its conclusions as follows: "In the underlying investigation, the Department divided the amount of the duty forgiven or rebated by a denominator limited to exports instead of all production. However, we find that, upon closer examination of the calculation of the duty drawback adjustment, in situations in which the inputs are sourced from both domestic and foreign sources, such a calculation results in an imbalance in the comparison of EP or CEP with NV." See Rebar Trade Action Coal. v. United States, Consol. CIT Court No. 14-00268, Final Results of Redetermination Pursuant to Court Remand (April 7, 2016) (Rebar from Turkey).

[69] See Ozdemir Case Brief at 2-4.

[70] We note that according to the Turkish Duty Drawback Governance & Regulation, the proper term seems to be "Domestic Processing Regime." See Exhibit C-7 - Duty Drawback Package, in Ozdemir's November 4, 2015 section C response at 16-32 (Duty Drawback Package).

[71] See Ozdemir Case Brief at 2-4.

[72] And then only for the imports assigned to the DIIB that occurred during the POI.

[73] See Ozdemir Case Brief at 2-4.

[74] While the average actual duty assessed under each DIIB varied, and is proprietary, we use here the $6 per MT disclosed by Ozdemir in its case brief to estimate the total for all three DIIBs (i.e., 6 x 3 = 18). For the actual amounts, see Ozdemir Case Brief at 3.

[75] See Memorandum to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Özdemir Borrofil San. Ve Tic. Ltd. STI, dated February 22, 2016.

For the reasons explained in detail below, we disagree with Ozdemir on the first issue. Ozdemir argues that the Department is required to increase U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States" (section 772(c)(1)(B) of the Act).[76] Thus, Ozdemir reasons that the "clear" statutory language ties "the amount of any import duties … rebated" to the "exportation of the subject merchandise to the United States."[77] There are numerous problems with Ozdemir's approach to calculating the duty drawback adjustment.

First, Ozdemir's interpretation of section 772(c)(1)(B) of the Act--its assertion that the duty drawback adjustment calculation must be an allocation over the export sales -- lows from thinking that the duty transactions are primarily on the subject merchandise. For example, Ozdemir argues that a duty drawback adjustment is akin to the adjustments the Department makes to price for year-end rebates granted by a respondent to its customer. Ozdemir argues that because of timing differences surrounding year-end price rebates and duty drawback, one cannot reconcile them to the POI, and they are "not coterminous with the POI."[78] Ozdemir also argues that, "for duty rebates (drawback), the statute – and hence the calculation – begins with U.S. sales: the rebate must be granted *by reason* of U.S. sales of subject merchandise."[79]

However, a year-end price rebate is a post-sale reduction to the customer's sale price, granted by the respondent, usually for purchasing a set quantity of the finished goods over a period of time. As an aggregate reduction to all of the related sales transactions with that customer, the Department appropriately allocates the year-end price rebate proportionally across all of the underlying sales, using the aggregate sale prices. In contrast, the duty liability assessment and forgiveness of the liability (i.e., duty drawback) are nothing like year-end price rebates. The customer neither pays the duty nor receives the rebate. The customer need not be aware of the duty liability assessment, nor of the duty drawback, as the customer is not a party to these transactions. These transactions do not involve the customer, and thus are not primarily linked. The duty assessment and the forgiveness are transactions between the respondent and the government of the exporting country. Moreover, the assessed duty liability is not a tax on the subject merchandise (i.e., HWR pipes and tubes), but rather it is a tax on the respondent's imported raw material purchases (i.e., HR coils). Likewise, the forgiven duty is granted for the re-exportation of the HR coil, by reason of export of the subject merchandise, not upon the sale of the subject merchandise or on its price.[80] As demonstrated in Ozdemir's calculations of its reported duty drawback adjustment, the amount of the tax forgiven is based on the quantity of HR coil physically incorporated within the heavy walled pipe, not the gross quantity imported or consumed, nor on the quantity of the exported finished goods.[81] The Turkish government only forgives the tax based on a productivity rate, which excludes losses for scrap and second quality pipe.[82] The statutory language in section 772(c)(1)(B) of the Act, "by reason of exportation of

[76] See Ozdemir Case Brief at 5.
[77] Id. at 6.
[78] Id. at 8.
[79] Id. at 9 (emphasis in original).
[80] Turkey's IPR allows for substitution.
[81] See Duty Drawback Package at 2, where the duty drawback adjustment is reduced by the "scrap ratio."
[82] Id. at 22 (per the Duty Drawback Governance & Regulation, the quantity is "to be determined according to the rate of productivity. The rate of productivity is defined as "Productivity rate: Quantity or percentage of processed

the subject merchandise," is not indicative of how to calculate the duty drawback adjustment, but rather is simply recognizing that the tax has been remitted, or uncollected, on one product because of the exportation of a second product. The statute is simply directing Commerce to account for a particular type of tax (a duty and the associated drawback) by adding it to U.S. price.

The second problem with Ozdemir's interpretation that the duty drawback adjustment must be calculated using export sales as the denominator is that the average amount of duty accounted for under the DIIBs tends to be arbitrary. Ozdemir itself recognizes the non-coterminous nature of the constituent parts of this issue. Additionally, Ozdemir itself argues that its, "reported drawback, on a DIIB-specific basis, ranged from about $13 to $28 per MT."[83] We note this is a 115 percent difference among DIIBs that were open during the same period.[84] The cause of the differences relates more to the nature of the DIIBs themselves and the way Ozdemir calculated its reported duty drawback adjustment. Ozdemir divided the total net duties assessed on the purchases assigned to the DIIBs by the total export sales it assigned to the DIIB.[85] First, we note that Ozdemir calculated the duty drawback adjustment using the lives of each respective DIIB, not the POI, so neither the duty drawback amount nor the export sales used match the POI.[86] Another issue arises because the exports on the DIIBs are satisfied with both domestic purchases and foreign purchases, the proportions of which varied significantly.[87] While the duty is assessed only on the foreign purchases of HR coil (i.e., the numerator), the denominator of Ozdemir's rate (export sales) includes products made from both domestic HR coils and foreign HR coils. This creates a mismatch between the numerator (the duty liability) and denominator (the export sales), neither of which coincides with the POI.

Moreover, the IPR program does not require the tracing of an imported HR coil, and the corresponding duty assessment, through the many stages of purchase, inventory, production and sale. The IPR program only generally requires that it, "should be possible to determine that the imports were used in the manufacture of the processed products," and that they match "at least by 8 (eight) digits" under the Customs Tariff code.[88] This is commonly referred to as "substitution," whereby materials imported under the DIIB do not have to match specifically the materials used to produce the exported products. Moreover, the IPR states that, "Instead of the imported goods used in obtaining the processed products, under a Domestic Processing Authorization Certificate, those goods in free movement {domestic goods}which have the same Customs Tariff Position based on at least 8 digits as the imported goods and bear the same commercial qualities and characteristics may be used as equivalent goods."[89] The IPR resolution further explains that "This system enables {the company} to realize exportation in advance and importation afterwards {(i.e., of raw material)} under a Domestic Processing Certificate."[90] Therefore, while the IPR and DIIBs may satisfy the first prong of the Department's test

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products {the finished good} obtained as a result of processing a defined quantity of goods {the raw materials}).
[83] See Ozdemir Case Brief at 4.
[84] ((28 – 13 = 15) ÷ 13 = 1.15)
[85] See Duty Drawback Package at 2-4.
[86] See Ozdemir Case Brief at 6.
[87] See Duty Drawback Package at 2-4. See also Ozdemir Case Brief at 3.
[88] See Duty Drawback Package at 22.
[89] Id. at 4.
[90] Id.

establishing the existence of a real program, the amounts Ozdemir assigns on the DIIBs do not necessarily reflect the "amount of any import duties imposed … which have been rebated, or not collected" on the merchandise under consideration by the Department for use in the margin program.

The third problem with Ozdemir's position is methodological. While we disagree with Ozdemir that year-end rebates tell us anything about the calculation of the duty drawback adjustment, value-added taxes (VAT) shed some light.[91] The Department is directed under section 773(a)(6)(B)(iii) of the Act to reduce normal value by "the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise." (Emphasis added) The Statement of Administrative Action (SAA) explains that, "The deduction from normal value for indirect taxes {a tax collected by an intermediary} constitutes a change from the existing statute. The change is intended to ensure that dumping margins will be tax-neutral."[92] The Department both excludes the VAT paid by the home market customer (i.e., collected by the respondent) from the home market price and excludes from COP the VAT tax paid by the respondent on inputs. This is necessary to be tax-neutral, as VAT is not typically charged or collected on export sales and the VAT charged on the respondent's material purchases by its suppliers are rebated or uncollected by the government if the processed good is exported. The SAA is clear in that the statute is intended to be tax-neutral. Interestingly, Ozdemir reports to the government its domestic purchases of HR coil used in the production of exported products on the same DIIBs, in part for VAT forgiveness purposes. That is, Ozdemir requests that the government exclude it from paying VAT because it cannot pass on the tax to the foreign customer.[93] Again, the point here is that the intent of the statute is to be tax-neutral, whereby duty forgiveness is not treated as a rebate or revenue.

We agree with the petitioners that the history of section 772(c)(1)(B) of the Act shows that the purpose of the adjustment is to be tax-neutral. As stated above, the petitioners cite to a public announcement on the topics of a committee hearing that was inserted into the record of the Committee on Ways and Means on July 29, 1957. The announcement explains the issue of the "Remission of import duties and internal taxes" as follows:

> Further, by way of reducing the price to the United States market and the home consumption price to comparable terms, provision is made … in calculating price to the United States market, for import duties or internal taxes … which are remitted by the country of export. In each case the amount remitted is added to the price to the United States market; and in calculating the home-consumption price the import duty or internal tax will similarly be included. To the extent that

[91] We note that VAT and import duties are both tax transactions with the government, and not the customer. Further, VAT and import duties both have a tax component and a recovery component.
[92] See SAA at 823.
[93] See Duty Drawback Package at 18 ("Domestic Processing Authorization Certificates: A certificate to be issued by the Under-secretariat to enable importation with Customs duty immunity and/or realization of domestic purchases, in exports or in sales and deliveries considered as exports" and at 21 "The tax refund system involves the refunding of the tax (excluding the value added tax and special consumption tax related to the operating supplies) collected during importation when the processed product obtained by using raw materials ... is exported").

> the figures are the same, and ordinarily they will not differ materially – they will cancel out.

Therefore, as reflected above, the question of the amount of duties imbedded in NV is key to making a proper price comparison. Further, the amounts added to U.S. price and the amount in the NV should not "differ materially," such that they will be tax-neutral and "cancel out."

We agree with Ozdemir that the purpose of the drawback adjustment is to prevent an imbalance in the margin calculation from occurring when the exporting country rebates, or exempts, import duties that are imposed upon raw materials used to produce merchandise which is subsequently exported. However, the question at issue is how to calculate such an adjustment and to ensure a fair price-to-price comparison for these complicated fact patterns, so that dumping margins are neither created nor masked. A duty drawback adjustment to EP or CEP is based on the principle that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not." [94] Home market sales prices and COP are import duty "inclusive," while export market sales prices are import duty "exclusive." In Saha Thai, the CAFC stated:

> 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 draw-back 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.[95]

The CAFC makes clear that the focus of the duty drawback adjustment is on the amount of duty in NV but not in the export price, or an imbalance could otherwise occur. As discussed below, our duty drawback adjustment complies with the CAFC's guidance, and avoids an imbalance. The amount of import duties "imposed" on the inputs used to produce the exported goods must be determined and, as they remain present in NV but not in EP, if supported by the record evidence, should be added to the EP.

Ozdemir argues that nothing in the statute supports the notion that drawback adjustments should be allocated over anything other than U.S. sales. However, section 772(c)(1)(B) of the Act is silent as to how the adjustment is to be calculated or over what the amount of the duties is to be allocated. Because the statute does not prescribe a specific methodology to make this adjustment, the discretion is given to the Department to determine a reasonable methodology for calculating the adjustment. As we explain, it is reasonable to make the adjustment based on the amount of duty reflected in NV, as this approach is consistent with the intent of the statute, and will result in dumping margin calculations that are duty-neutral.[96]

Moreover, as explained in Saha Thai,

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[94] See Saha Thai at1339.
[95] Id.
[96] See SAA at 823; see also Chevron, USA, Inc. v. NRDC, 467 U.S. 837, 843 (1984).

> An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV. Thus, because COP and CV are used in the NV calculation, COP and CV should be calculated as if there had been no import duty exemption. It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all.[97]

If all the raw materials are imported, the merchandise sold domestically would presumably incorporate the imported raw material and the imposed duty.[98] A duty drawback adjustment to the U.S. price would then be necessary in order to offset the amount of the duty imposed on the material used in domestically-sold merchandise, and therefore present in the home market price. We note that the CAFC in Saha Thai assumes that the NV increases as a result of the duty that remains applicable to the merchandise sold in the home market. However, this assumption cannot be maintained when a portion of inputs is obtained from domestic sources, as a full measure of the duty cannot be presumed to be present in the NV. The home market product, and therefore its price, cannot be presumed to be made only from materials upon which duties have been imposed and collected. Thus, NV will not have increased proportionally and a distortion will result if the duty drawback adjustment is calculated in the manner advocated by Ozdemir.

We have shown above that Ozdemir's calculation based on the DIIBs is not reliable for purposes of calculating the duty drawback adjustment, because of timing differences and policies such as substitution, and that the portions of imports and domestic purchases affect the DIIB-specific calculations. Therefore, we consider it appropriate to focus on the POI imported raw material quantities subject to duty and possible drawback. We are determining the amount of the duty drawback adjustment based on the duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration. In looking to the duty imbedded in the COP, we would consider inputs from both foreign and domestic sources. That is, for dumping purposes, in calculating the cost of producing merchandise, we allocate the cost of the imported raw materials and the domestically sourced raw materials proportionally based on actual consumption regardless of whether the processed product was sold domestically or exported. As further explained below, the average duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably assumed to be present in the home market price.[99] This would assume that the respondent provided evidence of participation in a legitimate duty drawback program.

Why is the average duty imbedded in the cost of producing the merchandise under consideration a reasonable amount of duty that we can consider as being present in the NV price? The natural inclination at first is to think that the imported raw material inputs are consumed in the exported merchandise, as the producer would seek to claim a duty drawback on the re-exportation of the

[97] See Saha Thai at 1342-43.
[98] In this case, respondent obtained materials from both inside and outside of Turkey.
[99] The average import duty cost imbedded in the cost of producing the merchandise is the duty cost "reflected in NV," whether NV is based on home market prices or constructed value.

imported inputs contained therein. Under this reasoning, the domestically-purchased inputs not subject to duty would be consumed in the domestically-sold merchandise. Therefore, if the imported raw materials are assumed to be consumed in the exported merchandise and the domestically-purchased raw materials were presumed to be consumed in the domestically-sold merchandise, no duty offset adjustment can be justified, as NV would no longer be duty-inclusive as presumed by the CAFC in Saha Thai. The import duties and the forgiven duties net out on the export product, while there are no duties in the home market product. The duty-exclusive U.S. price should then be matched directly with the duty-exclusive home market price.

Conversely, if the imported inputs were presumed to be consumed first in the products sold domestically, thus creating a fully-loaded duty-inclusive NV, there would still be no justification for a duty drawback claim, as a precondition of a duty drawback is the consumption and subsequent re-export of the raw material as part of another good and the collection of the drawback.[100] It would be nonsensical to claim duty drawback for re-exporting the imported input while simultaneously claiming that the same input was consumed in a domestically-sold product. Therefore, a reasonable assumption is that the imported raw materials and domestically-sourced raw materials are consumed proportionally between the corresponding domestic sales and export sales, as then both the U.S. price and home market price will be duty-inclusive. In the final determination of this investigation, we are merely recognizing the implications that result when raw material inputs are sourced in part from domestic sources. Moreover, we are recognizing that a drawback adjustment that overstates the amount of duty in NV will distort the margin of dumping.

We find that a focus on the U.S. export rebate, or uncollected duty, as reflected in Ozdemir's arguments, rather than a focus on the average duty in the COP, will lead to distortions. We are simply implementing the full logic of Saha Thai:

> As discussed above, the entire purpose of increasing EP is to account for the fact that the import duty costs are reflected in NV (home market sales prices) but not in EP (sales prices in the United States).[101]

Finally, we note that the Department is not attributing the drawback to domestic sales, we are attributing a proportionate amount of the duty (i.e., the tax) to the merchandise sold domestically. As shown, it is necessary to attribute a portion of the duty to the domestic sales as the presence of the duty in the prices of those sales is the justification for the making a duty drawback adjustment to EP or CEP. Also, we believe that the proper interpretation of the statute was described in Saha Thai. Finally, we note that, when the Department applies its cost test to home market sales, those sales are tested against costs that include imputed duties, and the average cost of raw materials is included in the COP, which is the proportional amount of domestic and imported (dutiable) raw materials. Home market sales that pass the cost test will necessarily be at levels that would recover all costs, including the average duty amount. By basing the duty drawback on the average amount of duty reported in the COP, we make the price-to-price comparison symmetrical, as NV and U.S. price are adjusted in a balanced manner. We note

[100] We note that if all of the duties were assigned to NV sales and the COP increases accordingly, more sales are likely to be found below cost, increasing NV and thus the margin of dumping. See infra footnote 80.
[101] See Saha Thai at 1342-43.

further that if constructed value (CV) is used as NV, we would likewise have balance, as the average amount of duty reported in the COP would form the basis for CV.

We have shown above that the DIIBs offer no clear solution to the calculation of the duty drawback adjustment. The fact remains that the justification for the adjustment is the duty-inclusive NV, and thus relying on the average duty in COP is necessary so that a duty drawback adjustment to EP and CEP will not create an imbalance in the price-to-price comparison. We must, therefore, look to both sides of the price-to-price comparison when calculating a fair, accurate and balanced duty drawback adjustment. Indeed, the Department's overriding purpose in administering the antidumping laws must be "to calculate dumping margins as accurately as possible."[102] The CAFC in Nan Ya recently held that the case law and statute "teach that a Commerce determination . . . is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence."[103]

Comment 4: Which DIIBs to Allow for a Duty Drawback Adjustment

In the Preliminary Determination, we allowed a duty drawback adjustment for Ozdemir. Specifically, we made an upward adjustment to EP based on the amount of duty imposed on the material input incorporated in the merchandise under consideration by properly allocating the amount to all production that consumed the input during the POI, in order to achieve duty neutrality in making fair value comparisons. The adjustment was based on exports associated with inward processing certificate (DIIB) 3432, one of three DIIBs for which Ozdemir claimed a duty drawback adjustment. Following our practice in Welded Line Pipe from Turkey, we disallowed two of the three DIIBs because they were not closed during the POI.[104] Ozdemir requested suspension of closure for DIIB 6034, and DIIB 1138 remained open as of the last day of the POI.

Ozdemir argues that the Department should utilize all three DIIBs in its duty drawback calculation, irrespective of the status of the DIIB as closed, suspended, or open, because Ozdemir will ultimately receive a duty exemption from U.S. exports made under all three DIIBs. Ozdemir points out that all of its U.S. exports were recorded on a DIIB, and that every DIIB in question reported enough imports to cover the related exports. Ozdemir contends that there is no reason to doubt that the import duties under DIIB 6034 will be foregone, and asserts that its request for suspension of closure of DIIB 6034 is not related to the import or export amounts under that DIIB.

The petitioners agree with the Department's duty drawback calculation methodology, and did not comment on which DIIBs to include in the calculation.

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[102] See Yangzhou Bestpak Gifts & Crafts Co. v. United States, 716 F.3d 1370, 1379 (Fed. Cir. 2013); see also SNR Roulements v. United States, 402 F.3d 1358, 1363 (Fed.Cir.2005) ("Antidumping laws intend to calculate antidumping duties on a fair and equitable basis.")

[103] See Nan Ya Plastics Corp. v. United States, 810 F.3d 1333, 1344 (Nan Ya) (citing Essar Steel Ltd. v. United States, 678 F.3d 1268, 1275-76 (Fed. Cir. 2012) and KYD, Inc. v. United States, 607 F.3d 760, 768 (Fed. Cir. 2010)).

[104] See Welded Line Pipe from the Republic of Turkey: Final Affirmative Determination in the Less-Than-Fair-Value Investigation, 80 FR 61,362 (October 13, 2015) (Welded Line Pipe from Turkey), and accompanying Issues and Decision Memorandum (Welded Line Pipe IDM) at Comment 3.

Department's Position:

For the final determination, we continue to base the duty drawback adjustment on only closed DIIBs as we did in the Preliminary Determination, consistent with our past practice, because: 1) Turkish companies are liable for the amount of duties forgone until satisfying the export requirements under a DIIB; and 2) we cannot be certain that a company has satisfied the export requirements under a DIIB until the DIIB is closed. We consider a DIIB to be closed when the Turkish government no longer permits the company to add import or export information to the DIIB.[105] For practical purposes, we consider this to be when the exporting company has applied to the Turkish government for closure of the DIIB.

The Resolution Concerning Domestic Processing Regime, which governs Turkey's duty drawback program, stipulates that Turkish companies are liable to pay any export duties forgone where:

> the taxes not collected for the goods which were imported under the Conditional Immunity System but whose exportation as processed products was not realized in accordance with the requirements of the Certificate/Authorization… shall be collected in accordance with the Provisions of Article 22.[106]

Because Ozdemir's request for closure of DIIB 6034 remains suspended, and the company has yet to apply for closure of DIIB 1138, we find that Ozdemir is still liable for the duties forgone under those DIIBs. It is, therefore, inappropriate to grant a duty drawback adjustment for those DIIBs.

Comment 5: Offset of Duty Drawback Adjustment for Related Expenses

The petitioners argue that the Department should offset Ozdemir's duty drawback adjustment with any expenses associated with the company's participation in the program (i.e., bank fees, the opportunity cost associated with guarantees paid to the government, and guarantees not returned by the government). The petitioners argue that the Department has a long history of deducting such expenses from any adjustments.[107]

Ozdemir argues that there is nothing on the record of the investigation concerning any such duty drawback-related expenses, and that the figures put forth by the petitioners are speculative. Ozdemir argues that it is too late in the proceeding to impute such expenses.

Department Position:

There is insufficient information on the record to assign Ozdemir's reported banking expenses on a DIIB-specific basis. Moreover, we note that even applying the total amount of these expenses to the DIIB we included in our duty drawback adjustment calculation would not materially affect

[105] See Welded Line Pipe IDM at Comment 1.
[106] See Ozdemir's Sections B - D Response at Exhibit at PDF Page 257.
[107] The petitioners cite to Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759 (Oct. 21, 1999).

the margin.[108] With regard to guarantees, we find that there is no indication on the record of this investigation that Ozdemir incurred such expenses. Therefore, we have not made any offset to the duty drawback adjustment as requested by the petitioners.

Comment 6: Application of the Duty Drawback Adjustment in the Margin Program

While the petitioners agree with the Department's duty drawback calculation methodology, they argue that the Department's margin program incorrectly applies the duty drawback adjustment by adding it to gross unit price, and creates distortions. First, they argue that it overstates profitability as well as results in double-counting in the CEP profit calculations. Second, the petitioners maintain that the U.S. price used in the differential pricing analysis of the margin program should not contain the duty drawback adjustment, as the U.S. price is by definition exclusive of duties. Third, the petitioners contend that the duty drawback adjustment is incorrectly treated as an adjustment to U.S. gross price in the Department's margin program because it is not reflected in the U.S. price like other adjustments, such as different types of selling expenses. Rather, they assert, the duty drawback adjustment as calculated in the Preliminary Determination is a fair comparison adjustment made to balance NV, and is based on cost. As such, they contend, the adjustment is philosophically detached from the calculation of net U.S. price used as the denominator of the margin calculation.

The petitioners assert that the statute does not prescribe any implementing methodology other than that the duty drawback adjustment is an addition to U.S. price. Consequently, the petitioners argue, the Department has the authority to exercise discretion in its placement of the duty drawback adjustment in the margin program.[109] They suggest that the Department change the macro and margin programs so that the duty drawback adjustment is no longer added to U.S. gross unit price, but is instead added to U.S. net price at the step in the program when it is subtracted from NV prior to calculating the margin, and should be excluded from the U.S. net price in calculating the margin (i.e., the duty drawback adjustment should be included in the numerator but not the denominator of the margin calculation).

Ozdemir argues that U.S. price is not by definition exclusive of duties, as it is entirely logical for a respondent to account for the drawback adjustment in pricing its goods to the U.S. market. Ozdemir also asserts that balancing NV is not a goal of the statute or regulations, and that doing so leads to manifest inaccuracies. Ozdemir argues that the statutory fact that the adjustment is only on the U.S. side compels the conclusion that it is not a candidate for "balancing."

Department's Position:

We disagree with the petitioners, and continue to apply the duty drawback adjustment in the margin program in the same manner as in the Preliminary Determination. Section 772(c)(1)(B) of the Act states that the price used to establish EP/CEP "shall be increased by…the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."

[108] See Ozdemir's December 17, 2015, SQR at Exhibit S-26.
[109] To support their argument, the petitioners cite to Daewoo Elecs. Co. v. United States, 712 F. Supp. 931 (CIT 1989), and Zenith Elecs. Corp. v. United States, 770 F. Supp. 648 (CIT 1991).

As the petitioners themselves acknowledge, the statute directs us to treat the duty drawback adjustment as an addition to U.S. price, and it is our longstanding practice to make this adjustment to the starting price in our margin calculations.[110] The petitioners' arguments do not compel us to depart from this practice.

First, as there are no CEP sales involved in our margin calculations in this investigation, the issue raised by the petitioners pertaining to CEP profit is moot. Second, as the duty drawback adjustment is calculated on a CONNUM-specific basis, there is no distortive effect on the differential pricing analysis, as all prices of products with identical CONNUMs are increased by an equal amount and the differential pricing analysis is conducted using CONNUM-specific comparisons. Third, even if we were to interpret the statutory definition of EP/CEP loosely to allow for a repositioning of the duty drawback adjustment later in the margin program (i.e., not treating duty drawback as a direct adjustment to U.S. gross unit price), the petitioners' proposal would fundamentally redefine our margin calculation methodology and would create distortions by including the duty drawback adjustment in the numerator but not the denominator of the overall margin calculation. In fact, repositioning the duty drawback adjustment as the petitioners suggest would have the effect of making an adjustment to NV, rather than to U.S. price, which is a result not contemplated by the statute.

Comment 7: U.S. Date of Sale

Ozdemir reported the invoice date as the date of sale to its U.S. customers. The petitioners argue that the contract date is the appropriate date of sale, because Ozdemir intended that the terms of sale be final prior to the invoice date. The petitioners dispute that documents on the record demonstrate that changes to the material terms of sale (i.e., quantity) occurred after the contract date.[111] Specifically, the petitioners assert that the contract Ozdemir provided in its December 17, 2015, SQR does not represent the preponderance of Ozdemir's U.S. sales, and that there is insufficient detail in the documents to tie the sales invoice to the sales contract. The petitioners also offer possible explanations for the difference between the quantity shown in the contract and the quantity shipped.[112] They also argue that: 1) destination is not a relevant material term of sale in this case; and 2) even changes in quantity do not change the date of sale, as according to the CIT, "the salient question has been held to be that of when the parties to the transaction intended the terms to be final."[113]

The petitioners urge the Department to issue additional supplemental questionnaires to obtain all relevant information, such as dates for each purchase order or contracts for subject merchandise, as well as any evidence in support of the position that the terms of sale were not intended to be final before the invoice date. Should the Department decline to issue additional supplemental questionnaires, the petitioners argue that necessary information will not be on the record, and the Department would be authorized to apply facts available in the final determination.

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[110] See, e.g. 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 Decision Memorandum.
[111] The petitioners cite Ozdemir's December 17, 2015, SQR.
[112] See the petitioners Case Brief at 50-51; these arguments, are predominantly business proprietary.
[113] The Petitioners cite to Rebar Trade Action v. United States, 2015, CT. Intl. Trade LEXIS 132, *30 (Rebar Trade Action).

Ozdemir argues that it has been transparent from the beginning of this investigation as to its date of sale methodology, and that the petitioners' claim that Ozdemir misreported the date of sale for its U.S. sales is based purely on speculation. Ozdemir adds that the petitioners' inference that price changes are the only relevant issue when selecting between contract date and invoice date as the date of sale is false. Ozdemir asserts that the party claiming a date of sale other than invoice date has the burden of establishing that an alternative date of sale is the date on which all material terms of sale were agreed to between the parties.[114] Ozdemir points out that it has been fully responsive to the Department's questions on this issue, and has submitted its databases and its reconciliations using invoice date as the date of sale. Ozdemir concludes that it is much too late in the proceeding to change the date of sale methodology.

Department's Position:

We disagree with the petitioners, and continue to find that Ozdemir's invoice date correctly reflects the date on which the material terms of Ozdemir's U.S. sales are established. The Department's regulations at 19 CFR 351.401(i) direct the Department to define the date of sale as the date on which the material terms of sale are established. Specifically, 19 CFR 351.401(i) states:

> In identifying the date of sale of the subject merchandise or the foreign like product, the Secretary will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

The CIT has held that the material terms of sale normally include the price, quantity, delivery terms and payment terms.[115] Ozdemir reported the date of the invoice to its U.S. customers as the date of sale, stating that quantities can and do change between the contract date and the date of invoice.[116] At verification, we reviewed the sales documents Ozdemir submitted in its December 17, 2015, SQR, as well as those relating to another U.S. sale where the quantities shipped exceeded the tolerances set forth in the original sales contract.[117] Based on our review of these documents, we find that a material term of sale (i.e., quantity) as stated in Ozdemir's sales contracts, changed during the POI.

We disagree with the petitioners that the contract date represents a more appropriate date of sale than invoice date. In analyzing the changes between order date and invoice date, we have no reason to believe that the sales documents on the record are not representative of Ozdemir's sales practices, nor have the petitioners provided evidence to support their conjectures regarding the reasons for the apparent changes in quantities. Therefore, we find that the documentation on the

[114] Ozdemir cites to Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27349 (May 19, 1997).
[115] See USEC Inc. v. United States, 31 CIT 1049, 1055 (CIT 2007).
[116] See Ozdemir's response to Section A of the Questionnaire, dated October 14, 2015 (Ozdemir's Section A Response), at A-15; its response to Sections B, C, and D of the Questionnaire, dated November 4, 2015 (Ozdemir's Sections B - D Response), at B-15 and C-11; and the December 17 SQR at 4.
[117] See Ozdemir Sales Verification Report, at 6 and Sales Verification Exhibit 7, Ozdemir's Section A response at pages A-23 to A-24.

record reflects changes to the material terms of sale after the purchase order date, thus demonstrating that the order date is not the actual date on which the material terms of sale are established, pursuant to 19 CFR 351.401(i).

Comment 8: Short-Term Interest Rate in the Home Market

Ozdemir claimed that it had no short-term Turkish Lira (TL) borrowings during the POI. Therefore, it used a short-term interest rate published in The Economist to calculate imputed home market credit expenses.[118]

The petitioners argue that documentation contained at Exhibit VE-34 of the Ozdemir Verification Report demonstrates that Ozdemir had short-term borrowings in TL during the POI. The petitioners cite activity in the chart of accounts corresponding to loans in TL, and argue that, as no interest was paid in association with the activity, and that there are no loans other than the no-interest loans in Ozdemir's loan account, the appropriate interest rate to use as Ozdemir's short-term borrowing rate is zero percent. The petitioners cite to the Department's inclusion of zero-interest loans in calculating companies' short-term interest rates in previous cases.[119]

Ozdemir argues that there is no documentation on the record concerning these purported loans, and therefore, the Department cannot assume the activity in its loan account is in fact reflective of loans. Ozdemir further argues that even if the entries were loans, the small duration of the loans in question (one day) makes them commercially dissimilar to, for example, a 30-day short-term loan that a company would use to finance the time between shipment of goods and payment. Ozdemir contends that the criteria for a short-term rate establishes that it should be "reasonable, readily obtainable, and representative of usual commercial behavior."[120] Finally, Ozdemir reasserts that there is insufficient evidence on the record of this investigation to recalculate the company's short-term interest rate, and suggests the Department revisit the matter should there be an administrative review of Ozdemir in this case.

Department's Position:

While we stated in the Ozdemir Verification Report that we found no discrepancies in our review of Ozdemir's home market credit expense calculations,[121] upon further review of the record, we find that the entries in the account in question are in fact short-term TL-denominated loans. We note that Ozdemir recorded these entries in the specific account in its chart of accounts reserved for short-term loans. As these loans, on which no interest was paid, are the only short-term loans on record for Ozdemir, we recalculated home market credit expenses using an interest rate of zero percent. The Department has previously included loans of a similarly short duration in the calculation of home market credit expenses.[122]

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[118] See Ozdemir's Sections B-D Response at B-29.
[119] The petitioners cite Welded Line Pipe IDM at Comment 13, and Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of the Antidumping Duty Administrative Review, 76 FR 76,939 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 10.
[120] Ozdemir cites to DOC Policy Bulletin 98.2, dated February 23, 1998.
[121] See Ozdemir Sales Verification Report, at 13.
[122] See Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Welded Line Pipe from the Republic of Turkey, dated October 5, 2015, at Comment 13.

Comment 9: Returns

The petitioners argue that, to the extent that the home market database contains returned quantities, such sales should be eliminated from the home market database. The petitioners also argue that the cost of such sales and any associated expenses should be allocated over the remaining sales.

Ozdemir argues that its methodology for returns is straightforward – i.e., the quantity returned is reported in the home market sales database in field RETURNH, and the net quantity is captured in the database field NETQTYH. Ozdemir explains that all sales with a zero quantity are automatically dropped from the margin calculation, and that there were no expenses incurred for returned merchandise.

Department's Position:

We agree with Ozdemir that the margin calculations appropriately account for returned merchandise by removing sales with a quantity of zero from the home market database. However, contrary to its assertion, there are expenses associated with returned sales reported in Ozdemir's sales database.[123] Because these expenses are insignificant, we disregarded them in our final margin calculations pursuant to section 777A(a)(2) of the Act and 19 CFR 351.413.

Comment 10: Adjustment to Ozdemir's Cost of Manufacturing

The petitioners argue that the Department should adjust Ozdemir's COM for a difference between the COM recorded in the company's normal books and records and the reported COM, as highlighted in the Ozdemir Cost Verification Report.[124]

Ozdemir responds that it has accounted for the difference between the COM per its books and the reported COM, and that the petitioners have not pointed to any error in the company's accounting for this difference.

Department's Position:

As discussed in the Ozdemir Cost Verification Report, there was a difference between the total costs recorded in Ozdemir's accounting system and the total costs that were reported to the Department. Company officials surmised that this difference resulted from a combination of two factors related to the valuation of raw material consumption when comparing its normal accounting records and its reporting methodology.[125] However, Ozdemir was unable to document that this amount did not relate to the merchandise under consideration. Where a respondent is not able to provide evidence that the unreconciled amount is appropriately excluded from reporting, the Department normally includes differences between the normal

[123] See Ozdemir's revised cost, home market, and U.S. sales databases submitted on May 23, 2016.
[124] See Ozdemir Cost Verification Report at 11.
[125] Id.

books and records and the reported costs in the calculation of COP.[126] Therefore, for the final determination, we have increased Ozdemir's reported COM for the amount of the unreconciled difference.

Comment 11: Reallocation of Costs for Non-Prime Merchandise

The petitioners note that both MMZ and Ozdemir had sales during the POI of non-prime or "second-quality" merchandise (i.e., products with various physical defects that cannot be sold according to any specification). Neither company was able to assign a CONNUM to non-prime goods, and sales of this merchandise were not included in the sales databases. The petitioners urge the Department to, as a general rule, adopt the practice of treating sales of non-prime merchandise as they treat any other scrap if the respondent cannot assign a CONNUM. The petitioners assert that respondents should not benefit from the assignment of costs to products that fail to undergo the scrutiny of the margin program. According to the petitioners, this treatment was adopted in Welded Line Pipe from Turkey, where the Department revised the respondent's reported cost of non-prime merchandise.[127] The petitioners argue that, in accordance with Welded Line Pipe from Turkey, the Department should revise Ozdemir's allocation of full costs to non-prime merchandise and reallocate "the residual manufacturing costs to the prime products during the POI."[128]

Ozdemir counters that, for reporting, it assigned a cost only to prime quality finished goods and took the sale of seconds as an offset, in accordance with the Department's preferred methodology.

Department's Position:

With regard to Ozdemir, we disagree with the petitioners that a reallocation of costs related to non-prime products is warranted. In Welded Line Pipe from Turkey, the respondent valued non-prime products at the same manufacturing costs as their prime-quality counterparts.[129] For the final determination in that case, the Department increased the cost of prime pipes by the difference between the cost allocated to the second-quality pipes and the second-quality pipes' sales revenue.[130] Ozdemir, however, did not allocate full costs to non-prime production as the petitioners have alleged. Instead, for reporting to the Department, Ozdemir assigned total manufacturing costs (i.e., for all products, whether prime or non-prime) to prime-quality finished goods only, and offset those costs with revenue earned on sales of non-prime merchandise.[131]

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[126] See Stainless Steel Bar from Italy: Final Determination of Sales at Less Than Fair Value, 67 FR 3155 (July 22, 2002), and accompanying Issues and Decision Memorandum at Comment 50.
[127] See Line pipe from Turkey, and accompanying Issues and Decision Memorandum at Comment 4.
[128] Id.
[129] The Department normally values non-prime products that cannot be used in the same applications as the prime quality merchandise at their sales price rather than at their full production costs. See, e.g., Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61,366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 9.
[130] Id.
[131] See Ozdemir's January 7, 2016, supplemental section D response at Exhibits D-1 and D-2 (showing the assignment of total costs from the trial balance to prime-quality production only). See also Exhibit D-4 of that submission (showing the calculation of the offset to total costs for non-prime merchandise and scrap).

Because Ozdemir's reporting methodology appropriately allocates full manufacturing costs only to prime production, while treating the sales revenue earned on non-prime products as a scrap offset, we have made no adjustments to the company's reported costs related to its non-prime goods.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 July 2016
(Date)