A-489-815
Administrative Review
05/01/2015 – 04/30/2016
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DATE: October 4, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director,
performing the duties of Deputy Assistant Secretary
for Antidumping Duty and Countervailing Duty Operations

SUBJECT: 2015 – 2016 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey: Issues and Decision Memorandum for the Final Results

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SUMMARY

On June 6, 2017, the Department of Commerce (Department) published its *Preliminary Results* for the antidumping duty (AD) administrative review of light-walled rectangular pipe and tube (LWRPT) from Turkey covering the May 1, 2015 through April 30, 2016 period of review (POR).[1]

On July 13, 2016, the Department received case briefs from Atlas Tube and Searing Industries (petitioners), CINAR Boru Profil Sanayi ve Ticaret A.S. (CINAR), Noksel Celik Boru Sanayi

[1] *See Light-Walled Rectangular Pipe and Tube From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 26044 (June 6, 2017) (*Preliminary Results*) and accompanying Decision Memorandum from Gary Taverman, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary, Enforcement and Compliance, "Decision Memorandum for Preliminary Results of the 2015-2016 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey," dated May 31,2017 (Preliminary Decision Memorandum).

A.S. (Noksel), and Agir Haddecilik A.S. (Agir).[2] Subsequently, on July 18, 2017 we received rebuttal case briefs from the petitioners and Noksel.[3]

SCOPE OF THE ORDER

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

DISCUSSION OF THE ISSUES

I. General Issues

Comment 1: Cash Deposit Instructions

Petitioners

- The Department should include respondents not selected for individual review in its cash deposit instructions.

No other party commented on this issue.

Department Position: We agree with the petitioners and will include respondents not selected for individual examination in the cash deposit instructions.

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[2] *See* Letter from the petitioners to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Case Brief," dated July 13, 2017 (Petitioners Case Brief), *see also* letter from CINAR to the Secretary of Commerce "Case Brief of CINAR Boru Profil Sanayi ve Ticaret A.S. ("CINAR") to the Preliminary Determination on the Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey," dated July 13, 2017 (CINAR Case Brief), *see also* letter from Noksel to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Case Brief," dated July 13, 2017 (Noksel Case Brief); *see also* letter from Agir to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey (A-489-815): Anti-Dumping Duty Administrative Review (05/01/2015 – 04/30/2016)," dated July 13, 2017 (Agir Case Brief).

[3] *See* Letter from the petitioners to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Rebuttal Brief," dated July 18, 2017 (Petitioners Rebuttal Brief), *see also* letter from Noksel to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Rebuttal Brief," dated July 18, 2017 (Noksel Rebuttal Brief).

Comment 2: Assessment of Antidumping Duties

Petitioners

- A comparison of a U.S. Census Bureau IM-145 report and U.S. Customs and Border Protection's (CBP) data shows that a significant number of entries of subject merchandise were not declared as subject merchandise to CBP.[4]
- The Department has the authority to, and should, modify its assessment methodology when instructing CBP to liquidate entries of subject merchandise for Noksel and CINAR.[5] The Department should over-assess the suspended entries of subject merchandise, such that the total duties collected will equal the total duty assessment calculated in the margin program.[6]
- However, based on a comparison of the reported importers of record and CBP data, the issue of undercollection will not be completely resolved through the application of overassessment of the existing suspended entries (Type 03 entries).[7]
- Other options to remedy undercollection include the assessment of AD duties on entries of merchandise that has not been declared as subject merchandise (Type 1 entries) and the application of total adverse facts available (AFA). In addition, the Department should modify its assessment instructions to resolve undercollection with regard to one importer.[8]

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[4] *See* Letter from the petitioners to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Pre-Prelim Comments Concerning Reporting Anomalies," dated May 1, 2017.

[5] *See Certain Softwood Lumber Products from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 73437 (December 12, 2005) (*Lumber from Canada 2005*) and accompanying Issues and Decision Memorandum at Comment 2 (citing *Torrington Co. v. United States*, 44 F.3d 1572, 1578 (Fed. Cir. 995) ("the statute does not specify particular divisor for calculating either assessment or cash deposit rates; but merely requires that the amount of dumping determined serve as the basis for both assessed duties and cash deposits of estimated duties").

[6] *See Softwood Lumber from Canada 2005* where the Department stated that it "…seeks to assess accurately an amount of duties corresponding to the degree of dumping reflected in the price paid by each importer. To accomplish this, the Department normally calculates an assessment rate in an administrative review by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. See 19 CFR 351.212(b)(1). The Department thus ensures that when these importer-specific rates are applied to the corresponding entered values of the merchandise, the correct amount of the dumping duties is in fact collected. *If, however, an assessment rate is applied to entered values that differ significantly and systematically from the entered values used to calculate the rate itself (the denominator), as is the case here, the correct amount of duties will not be collected*. (emphasis added).;" *see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014) (*Warmwater Shrimp from the PRC 2014*) and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 Fed Reg. 27,039 (June 13, 2017) (*Non-Alloy Steel Pipe from Mexico 2017*) and accompanying Issues and Decision Memorandum at Comment 4.

[7] *See* Memorandum from Patrick O'Connor, International Trade Compliance Analyst, AD/CVD Operations, Office IV to The File "Light Walled Rectangular Pipe and Tube from Turkey U.S. Customs and Border Protection Data," dated May 31, 2017 at 5. *See* memorandum to the File from Jonathan Hill and Patrick O'Connor, International Trade Compliance Analysts, AD/CVD Operations, Office IV regarding "Proprietary Information Relating to Issues in the October 4, 2017 Issues and Decision Memorandum" (BPI Memorandum) at Note 1.

[8] *See* BPI Memorandum at Note 2.

- The U.S. Court of International Trade ("CIT") has indicated that Type 01 entries may be reviewed when Type 03 entries do not accurately reflect subject merchandise sales.[9] Moreover, the statute directs the Department to assess AD liability on "each entry of subject merchandise," as opposed to only those entered as Type 03.[10] Given the entry classification issues noted above, at a minimum the Department should refer this matter to CBP, and it should also obtain and place on the record entry data for non-subject merchandise entries (Type 01 entries). The Department can (and has) assessed antidumping duties on subject merchandise entered as Type 01.
- With respect to the use of AFA, in *Hand Tools from the PRC 2005*, the Department determined that, where information provided in the questionnaire responses differed from the information provided to CBP at the time of importation, "the assessment rate calculated by the Department would be rendered meaningless." The Department resolved this dilemma by assigning total AFA to all involved parties.[11]
- Additionally, in proceedings where potential fraud is involved, the Department has suspended statutory deadlines, in order to protect the integrity of a proceeding.[12] The Department should do so here, until the CBP can resolve any issues with improperly entered subject merchandise sales.
- Lastly, to increase the Department's ability to identify and correct potential assessment issues, it should add certain data fields to the boilerplate questionnaire for future administrative reviews.[13]

Noksel

- Record information indicates that Noksel properly declared all entries of subject merchandise for which Noksel was the importer of record as Type 03 entries.
- There is no basis for the Department to modify its assessment instructions for one importer as suggested by the petitioners.[14]

Department's Position: We disagree with the petitioners' position that we should address the alleged undercollection of AD duties by applying AFA; however, we do find that it is appropriate to modify the assessment calculations with respect to Noksel to prevent the under collections of duties for entries related to a certain importer. There have been cases where the Department adjusted its calculated assessment rates for certain importers in order to collect the

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[9] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 791 F.Supp.2d 1327, 1334 n.19 (CIT 2011) (*Ad Hoc Shrimp v. US)*; *see also Hubbell Power Sys., Inc. v. United States*, 884 F.Supp.2d 1283, 1287-91 (CIT 2012) (*Hubbell v. US*).

[10] *See* section 751(a)(2)(A)(i) of the Tariff Act of 1930, as amended (the Act).

[11] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) (*Hand Tools from the PRC 2005*) and accompanying Issues and Decision Memorandum at Comment 2.

[12] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) (citing Memorandum to Paul Piquado, Assistant Secretary for Import Administration "Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Reviews," dated June 4, 2012).

[13] *See* Petitioners Case Brief at Attachment 1.

[14] *See* BPI Memorandum at Note 3.

proper amount of antidumping duties;[15] however a review of the dumping margin calculations and a comparison of the importers and sales reported by the respondents and business proprietary information (BPI) included in the CBP data demonstrates that, with one exception which is discussed in the BPI Memorandum, this approach is either unnecessary or would not be effective based on the specific fact pattern in this review.[16] The petitioners have acknowledged this fact.[17] Petitioners arguments raise a question about possible misclassification of entries, which is a matter within the jurisdiction of CBP.[18]

To that end, on July 28, 2017, the Department sent a letter to CBP detailing the petitioners' concerns regarding the potential evasion of antidumping duties on imports of LWRPT from Turkey during the POR.[19] In order to assist CBP with an investigation into such concerns, the Department provided certain information that it received in the context of this administrative proceeding, pursuant to section 777(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act). Specifically, the Department provided CBP with the allegations made by the petitioners and information regarding imports of subject merchandise from Noksel and CINAR.

While the petitioners request that the Department "further collaborate with CBP to ensure that the {undercollection} concerns are resolved … by obtaining" and placing on the record information pertaining to Type 01 entries, we do not find that it is appropriate for the Department to do this because the Department already supplied CBP with the information which the petitioners contend demonstrates that entries of subject merchandise from the companies under review have been misclassified as entries of non-subject merchandise and, moreover, CBP has access to Type 01 entry data and possesses the authority to investigate misclassification claims. In fact, the Court of International Trade (CIT) upheld the Department's position that CBP has more expansive authority to investigate such claims.[20] Hence, we have determined that it is not appropriate, or necessary, for the Department to obtain and analyze Type 01 entry data for purposes of identifying entries of subject merchandise that may have been misclassified as non-subject merchandise.

Additionally, we do not find it appropriate to base the respondents' dumping margins on total AFA. The underlying facts in *Hand Tools from the PRC* 2005, in which the Department applied

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[15] For example, revising the importer-specific assessment rate by dividing the total dumping duties calculated for reported sales to an importer by the sum of the entered values of entries of that importer that were declared as subject merchandise entries rather than the sum of the entered values reported in the U.S. sales database for all sales to that importer. The Petitioners refer to this approach as the "overassessment methodlogy" because using this methodology the Department would apply the dumping duties that it calculated on a pool of reported sales to a smaller pool of subject entries (Type 03 entries). *See*, *e.g.*, *Warmwater Shrimp from the PRC 2014*.

[16] *See* BPI Memorandum at 4.

[17] *See* Petitioners Case Brief at 13.

[18] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) where the Department stated that "{t}he CIT upheld the Department's position that CBP has more expansive authority to investigate misclassification claims," (citing *Globe Metallurgical Inc., v. United States*, 722 F. Supp. 2d 1372, 1381 (CIT 2010)).

[19] *See* Letter from Wendy J. Frankel, Director, Customs Liaison Unit, Antidumping Countervailing Duty Operations, Enforcement & Compliance "Light-Walled Rectangular Pipe and Tube from Turkey," dated July 28, 2017.

[20] *See Globe Metallurgical Inc., v. United States*, 722 F.Supp.2d 1372, 1381 (CIT 2010).

AFA, differ from those in this review. In *Hand Tools from the PRC 2005*, the parties participated in a sales scheme to circumvent antidumping duties. The Department found that the parties significantly impeded the proceeding and the Department's ability to impose antidumping duties and issue instructions to CBP to assess the correct antidumping duties.[21] In the instant review, the petitioners have not alleged, nor have they provided any evidence, that CINAR or Noksel engaged in a scheme to circumvent antidumping duties.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Moreover, 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.

Here, other than the evidence relating to the sales for which the Department is applying partial AFA (*see* Comment 12), the petitioners have not pointed to any evidence that the respondents withheld requested information, failed to provide information within the deadlines established, significantly impeded the proceeding, or provided information that cannot be verified; nor have the petitioners claimed (or at a minimum provided evidence), other than with respect to the sales for which the Department is applying partial AFA, that either respondent failed to cooperate by not acting to the best of its ability to comply with a request for information. Thus, we have not applied total AFA to either respondent.

Finally, with respect to the petitioners' request that the Department add entry data fields to its AD questionnaire in future segments of this proceeding to aid in identifying possible entry issues, we will consider any properly filed comments regarding the addition of entry data fields in the segment of the proceeding in which the comments are filed.

II. Company Specific Issues

Agir

Comment 3: Finding of No Shipments

Agir

- The Department should have rescinded its review with respect to Agir and not assigned it a dumping margin because Agir submitted a timely claim of no shipments and data obtained from CBP and the Department's no shipments inquiry to CBP corroborate this claim.[22]

[21] *See Hand Tools from the PRC 2005* at Comment 2.

[22] *See* Letter from Agir to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey (A-489-815): Anti-Dumping Administrative Review (05/01/15 – 04/30/16)," dated August 9, 2016; *see also* Letter from Robert James, Program Manager, Office VI, AD/CVD Operations, Import Administration dated August 10,

Petitioners

- The record is not clear that Agir made no shipments during the POR because: (1) a no-shipments inquiry regarding suspended subject entries (type 03 entries) is not conclusive since the record indicates only a fraction of subject entries were correctly suspended (as type 03 entries)[23] and (2) the record indicates that Agir may have been involved with shipments of subject merchandise.[24] Such involvement requires further analysis as to whether Agir had knowledge of such sales.
- Thus, the Department is not compelled to rescind the review. Even the regulations providing for rescission based on no shipments use the word "may" which indicates that the Department's authority to rescind is discretionary, not mandatory.[25]

Department Position: The record does not contain any evidence that Agir shipped subject merchandise to the United States during the POR. The petitioners' claim is speculative and based on assumptions, rather than facts, related to certain BPI.[26] Likewise, the petitioners' doubts regarding the efficacy of the Department's no shipments inquiry is not based on any evidence that importers of Agir's merchandise have been misclassifying entries.

Data obtained from CBP corroborates Agir's no-shipments claim,[27] and CBP has not responded to the Department's no shipments inquiry with any contrary information.[28] Thus, for the final results of this review, we continue to find that Agir did not have shipments of subject merchandise to the U.S. during the POR.

Despite the evidence of no shipments by Agir, we disagree with Agir's claim that the Department should have rescinded its review of Agir. As stated in the *Preliminary Results*, "{c}onsistent with the Department's practice regarding no shipment claims, we are completing the review with respect to Agir and will issue appropriate instructions to CBP based on the final results of the review."[29] This practice allows the Department to address potential entries of

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2016 at Attachment I. Additionally, Agir claims that CBP responds to the Department's inquiry when there are records of shipments from the company in question. *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products from Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 65453 (October 25, 2010).

[23] Moreover, there is no CBP inquiry on the record.

[24] *See* Letter from Noksel to the Secretary of Commerce "Light-Walled Rectangular Pipe And Tube from Turkey: Noksel Section B-D Questionnaire Response," dated November 28, 2016 at Exhibit C-5.

[25] *See* 19 CFR 351.213(d)(3).

[26] *See* BPI Memorandum at Note 5.

[27] *See* Letter from Robert James, Program Manager, Office VI, AD/CVD Operations, Import Administration dated August 10, 2016 at Attachment I.

[28] Although, the record does not contain the Department's no shipment inquiry, the Department in the *Preliminary Results*, did cite the CBP message date and number and provided the website at which the message can be reviewed (*i.e.*, CBP Message Number 7130307, May 10, 2017, available at http://adcvd.cbp.dhs.gov/adcvdweb/).

[29] *See Preliminary Results* at 4; *see also Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011); *see also, e.g.*, *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments*; 2012-2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review*; 2012-2013, 79 FR 51306, 51306-308 (August 28,

Agir's merchandise by resellers in its CBP instructions.[30]

Lastly, we agree with Agir that the Department should not have assigned a dumping rate to Agir in the *Preliminary Results* where we preliminarily found that it had no shipments during the POR. The Department inadvertently assigned Agir a rate in the *Preliminary Results*. For the final results, we have noted in the rate table that Agir had no shipments or sales subject to this review.

CINAR

Comment 4: Certificate of Service

Petitioners

- CINAR's case brief was not accompanied by a certificate of service nor was it served on counsel for the petitioners and, thus, should be not be considered for the final results.
- The Department's regulations (19 CFR 351.303(f)) provides that: (1) "each document filed with the Department must include a certificate of service" and (2) briefs be served "by personal service on the same day the brief is filed or by overnight mail or courier on the next day."

No other party commented on this issue.

Department Position: We agree with the petitioners that CINAR failed to include a certificate of service in its case brief as required by 19 CFR 351.303(f). The Department's regulations at 19 CFR 351.303(f) provide that the Department "may refuse to accept any document that is not accompanied by a certificate of service." However, we do not normally reject such documents and not consider them, as advocated by the petitioners, without providing the party an opportunity to correct any filing deficiencies.[31] Thus, on September 20, 2017, the Department requested that CINAR serve its case brief on all persons on the service list and submit to the Department the corresponding certificate of service properly certifying its sevice.[32] On September 22, 2017, CINAR filed a letter confirming that it corrected the filing deficiencies.[33]

Furthermore, in this case, the missing certificate was not noticed until the petitioners raised the issue in their rebuttal brief. At this stage of the review, we do not find it practical to reject CINAR's case brief and allow it to refile the brief, after correcting the filing deficiencies, given

2014).

[30] *Id*.

[31] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44399 (July 24, 2014) and accompanying Decision Memorandum at "Respondent Selection " section.

[32] *See* Letter from Howard Smith, Program Manager, Office IV, AD/CVD Operations, Enforcement and Compliance "Light-Walled Rectangular Pipe and Tube from Turkey: Opportunity to Correct Filing Deficiency," dated September 20, 2017.

[33] *See* Letter from CINAR to the Secretary of Commerce "Certificate of Service for the Case Brief of ÇINAR Boru Profil Sanayi ve Ticaret A.ù. ("CINAR") to the Preliminary Determination on the Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey," dated September 22, 2017.

that the petitioners acknowledged that they had access to CINAR's Case Brief, and also addressed CINAR's Case Brief comments via their rebuttal brief. Thus, in this case, the petitioners were not "prejudiced."[34]

Furthermore, the only general argument raised by CINAR in its case brief that would be relevant to all other interested parties involves steel input product characteristics. *See* Comment 6 below. CINAR raised the exact same issue in its pre-preliminary comments, and no other interested party commented on the issue in their case briefs. Thus, as each company had the opportunity to comment on the issue raised by CINAR, we also find that Agir and Noksel were not prejudiced by the lack of service.[35] Therefore, we have not rejected CINAR's Case Brief at this point in the proceeding and have considered its content for the final results.

Comment 5: Duty Drawback Adjustment

CINAR

- The Department should grant CINAR a duty drawback adjustment.
- CINAR provided both closed (2015-D00787) and open (2015/D1-04090 and 2016/D1-00009) inward processing certificates (DIIBs) for each of its U.S. sales[36] and provided the drawback benefit during the POR for them.[37]
- At a minimum, the Department should grant the adjustment for CINAR's closed DIIBs.

Petitioners

- CINAR's duty drawback adjustment reported in the U.S. database was not based the Department's "duty neutral" methodology.
- Duty drawback adjustments are limited to DIIBs that have been closed during the period being reviewed.[38] In almost every case, CINAR has failed to demonstrate that its DIIBs were closed. Moreover, for its closed DIIB, CINAR failed to demonstrate that the exports applied in order to close the DIIB were sales of the subject merchandise to the United States.[39]

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[34] *See*, *e.g.*, *PAM, S.p.A. v. United States*, 463 F.3d 1345, 1348-49 (Fed. Cir. 2006) ("Even if a regulation is intended to confer an important procedural benefit, if the failure of a party to provide notice as required by such a regulation does not prejudice the non-notified party, then we think neither the government, the non-serving party, nor the public should be penalized for such a failure"). Like PAM in that case, the petitioners have not made such a showing of "substantial prejudice."

[35] *Id*.

[36] *See* Letter from CINAR to the Secretary of Commerce "Response of CINAR Boru Profil Sanayi ve Ticaret A.S. ("CINAR") to the Supplemental Sections A,B,C, and D questionnaire for the 2015/2016 Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey," dated March 24, 2017 (CINAR March Response) at SAD-8.

[37] *See* Letter from CINAR to the Secretary of Commerce "Response of to the Supplemental Sections C and D questionnaire for the 2015/2016 Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey," dated April 26, 2017 at Exhibits SCD-8 and 10.

[38] *See Welded Line Pipe from the Republic of Turkey: Final Affirmative Determination in the Less-Than-Fair-Value Investigation*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 3; *see also Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) (*HWRPT*) and accompanying Issues and Decision Memorandum at Comment 4.

[39] *See Welded Line Pipe from the Republic of Turkey: Final Affirmative Determination in the Less-Than-Fair-Value*

- Additionally, CINAR's duty drawback adjustment is based on material not capable of being used to manufacture subject merchandise.[40] In *Carbon Steel Pipes Taiwan 1988* the Department concluded that "the duty drawback adjustment must be limited to the amount of duties paid on coil appropriate for incorporation into the exported merchandise."[41] The Court of Appeals for the Federal Circuit (CAFC) affirmed the Department's interpretation of the duty drawback statute to require that the input be capable of use in manufacturing subject merchandise.[42]
- Should the Department grant CINAR a duty drawback adjustment, it should follow the "duty neutral" approach.[43] Should the Department not employ the duty neutral approach, it must make a circumstance-of-sale adjustment to normal value pursuant to the methodology used in a recent redetermination.[44]

Department Position: Section 772(c)(1)(B) of the Act states that the price used to establish export price (EP) or constructed export price (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." In determining whether an adjustment for duty drawback should be granted we look for a reasonable link between the duties imposed and those rebated or exempted.[45] We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to U.S. price.[46] The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject mechandise); the second prong of the test is that the company must demonstrate that there were sufficient imports of the relevant raw materials to account for the duty drawback or exemption granted for the export of the manufactured product.[47]

Investigation, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

[40] *See* CINAR March Response at Exhibit SAD-8.

[41] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of Antidumping Duty Administrative Review*, 53 FR 41218 (October 20, 1988) (*Carbon Steel Pipes Taiwan 1988*) and accompanying Issues and Decision Memorandum at Comment 5 where the Department concluded "that the duty drawback adjustment must be limited to the amount of duties paid on coil appropriate for incorporation into the exported merchandise."

[42] *See Maverick Tube Corp. v. Toscelik Profil ve Sac Endustrisi A.S.*, 861 F.3d 1269 (Fed. Cir. 2017).

[43] S*ee Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016) and accompanying Preliminary Decision Memorandum at 13-17.

[44] *See*, *e.g.*, Final Results of Redetermination Pursuant to Court Remand, *RTAC v. United States*, Consol. Court No. 14-00268, Slip Op. 16-88 (Ct. Int'l Trade 2016), dated January 13, 2017, 6.

[45] *See, e.g., HWRPT from Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) and accompanying Issues and Decision Memorandum at Comment 4.

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

[47] *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

As stated in the *Preliminary Results*, our practice with regard to the Turkish inward processing regime, which is the official mechanism for applying for exemption from import duties, is to consider only closed DIIBs (*i.e.*, import certificates to which the company was no longer permitted by the government of Turkey to add import or export information) for purposes of calculating a duty drawback adjustment.[48] CINAR provided DIIBs for sales during the POR that were both open and closed.[49] However, as we found in the preliminary results, CINAR has not provided any evidence that two of the three DIIBs related to POR sales have been closed. Thus, we are not reviewing such open DIIBs for purposes of a duty drawback adjustment.

Regarding CINAR's one closed DIIB, the Department preliminarily determined that CINAR did not provide sufficient documentation to tie the DIIB to exports of subject merchandise to the U.S. during the POR and, thus failed to satisfy the first prong of the Department's "two-pronged" test.[50] CINAR claims that DIIB 2015-D00787 relates to sales of subject merchandise exported to the U.S. However, since the *Preliminary Results*, CINAR has not identified any record evidence to contradict the Department's preliminary decision nor has it explained how it has satisfied the first prong of the two-prong duty drawback test. CINAR has simply stated that it provided the Department with the information necessary to grant a duty drawback adjustment. Thus, we continue to find that CINAR did not tie its DIIBs to exports of subject merchandise to the U.S. during the POR. For these reasons, for the final results, we have continued to deny CINAR's request for a duty drawback adjustment.[51]

Comment 6: Product Characteristic Modification

CINAR

- The Department should modify the steel input product characteristic to include the five steel inputs used by CINAR in the production of subject merchandise.[52]
- In the Department's recent antidumping hot-rolled steel investigations, the Department recognized that differences in carbon content, quality, minimum yield strength, and pickling significantly affected the price and cost of hot-rolled steel by including these product characteristics in the control number.[53] The Department should recognize that CINAR's

[48] *See* Preliminary Decision Memorandum at 13; *see also HWRPT from Turkey* and accompanying Issues and Decision Memorandum at Comment 4.
[49] *See* CINAR's March 24, 2017 supplemental questionnaire response at SAD-8 and April 27, 2017 supplemental questionnaire response at SCD-7.
[50] *See Preliminary Results* at 13.
[51] The Department notes that CINAR also argued that the Department should, at a minimum, grant a duty drawback adjustment for its closed DIIBs. However, based on the Department's analysis, this argument is moot as the Department found that CINAR did not tie its DIIBs to exports of subject merchandise to the U.S.
[52] *See* Letter from CINAR to the Secretary of Commerce "Response of CINAR Boru Profil Sanayi ve Ticaret A.S. ("CINAR") to the Sections A,B,C Supplemental Questionnaire for the 2015/2016 Administrative Review on Light-Walled Rectangular Pipe and Tube (LWRP) from Turkey," dated January 17, 2017 (CINAR January Response) at Exhibit SB-1.b where CINAR identified five inputs: commercial grade hot-rolled steel, specialty grade hot-rolled steel, specialty grade hot-rolled pickled & oiled steel, commercial grade cold-rolled steel, and specialty grade cold-rolled steel.
[53] *See* CINAR January Response at Exhibit SB-1.b.

costs and subsequent downstream prices differ as well based on these same characteristics of the input steel.

Petitioners

- The Department's practice is not to alter a model-match methodology developed at an earlier stage of the proceeding unless a party provides compelling and convincing evidence demonstrating that: (1) the current model-match criteria are not reflective of the subject merchandise; (2) there have been industrywide changes to the product that merit a modification; or (3) there is some other compelling reason to warrant a change.[54]
- CINAR has failed to demonstrate that a change is warranted under any of these three pathways, arguing only that the Department considered different types of steel in a case involving hot-rolled steel.
- The appropriate time to consider any potential changes to the physical characteristics and model match criteria is at the beginning of a proceeding.[55] CINAR failed to raise this in a timely manner and the Department should continue to deny its request.

Department Position: As stated by the petitioners, the Department's practice is not to alter a model-match methodology developed at an earlier stage of the proceeding unless a party provides compelling and convincing evidence demonstrating that: (1) the current model-match criteria are not reflective of the subject merchandise; (2) there have been industry-wide changes to the product that merit a modification; or (3) there is some other compelling reason to warrant a change.[56] Compelling reasons that warrant a change to the model-match methodology may include, for example, greater accuracy in comparing foreign like product to the single most similar U.S. model, in accordance with section 771(16)(B) of the Act, or a greater number of reasonable price-to-price comparisons in accordance with section 773(a)(1) of the Act.[57]

CINAR has not demonstrated that there have been industry-wide changes to the product that merit a modification to product characteristics used for matching or that the proposed change would result in greater accuracy in our comparisons or a greater number of reasonable price-to-price comparisons. Moreover, CINAR has not based its request to revise the options for the

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[54] *See*, *e.g.*, *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 22970 (May 19, 2017) and accompanying Issues and Decision Memorandum at Comment 1; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71980 (December 4, 2014) and the accompanying Preliminary Decision Memorandum at 4, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades PRC 2015*); *see also Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076 (July 1, 2010) (*Violet Pigment India 2010*) and accompanying Issues and Decision Memorandum at Comment 2; *see also* Fagersta Stainless AB, v. United States, 1276-77 577 F.Supp.2d at 1270, 1276-77 (CIT 2008) (*Fagersta v US*).

[55] *See Diamond Sawblades PRC 2015* at 4; *see also Violet Pigment India 2010* at Comment 2.

[56] *See e.g.*, *Fagersta v US* at 1270, 1276-77.

[57] *See Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59082 (October 6, 2006), unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 72 FR 17834 (April 10, 2007) (*Stainless Wire Rod Sweden 2006*).

CONNUM characteristic "steel input"[58] on a claim that the current product characteristics used for matching are not reflective of the subject merchandise, other than to claim that different steel input types affect costs and consequently downstream prices. However, CINAR has not provided any evidence to support such a claim regarding its cost. Even if it had done so, the Department's practice is to base its product characteristics and model matching methodology upon important differences in physical characteristics that are determined to be commercially meaningful, rather than differences in costs or prices that may coincide with some type of variation in physical characteristics.[59] The Department has frequently stated that it does not attempt to account for every conceivable difference between products when determining which products are identical to others.[60] Furthermore, the CAFC has stated that merchandise need not be exactly the same in order to be considered "identical," noting also that the Department has "considerable discretion in defining 'identical in physical characteristics."[61]

CINAR's reliance on recent hot-rolled steel investigations is not persuasive. Each proceeding and segment of a proceeding stands on its own based on the separate record developed for the segment. As noted above, in this review, CINAR has not placed information on the record which satisfies any of the criteria considered by the Department when deciding whether to modify the product characteristics used for matching.

Comment 7: Home Market and Margin SAS Program Date Parameters

Petitioners

- The Department assigned the wrong dates to the variables "ENDDAY" and "BEGINWIN," and the variable "BEGINDAY" in CINAR's margin calculation and home market sales programs, respectively.

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[58] Specifically, CINAR requests that the Department revise the options for the type of steel input type from: (1) hot rolled steel and (2) cold rolled steel to: (1) commercial grade hot-rolled steel; (2) specialty grade hot-rolled steel; (3) specialty grade hot-rolled pickled & oiled steel; (4) commercial grade cold-rolled steel; and (5) specialty grade cold-rolled steel.

[59] *See*, *e.g.*, *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value*, 81 FR 49929 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comment 5 ("With respect to cost differences, while we may consider cost differences attributable to significant differences in physical characteristics in determining whether to accept proposed respondent-specific code categories, cost differences alone are not dispositive as to whether to create additional categories. There may be other factors that explain differences in costs between different products besides differences in physical characteristics, such as differences in production quantities, differences in the timing of production, etc.").

[60] *See e.g.*, *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 71087 (December 1, 2014), and accompanying IDM at General Issues Comment 1; *see also Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), and accompanying IDM at General Issues Comment 1; *see also Light Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004), and accompanying IDM at Comment 13; *see also Certain Cold Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 65264, 65271, (December 19, 1995).

[61] *See Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1384 (Fed. Cir. 2001), *see also SKF USA, Inc. v. United States*, 537 F.3d 1373, 1381 (Fed. Cir. 2008).

- In the margin calculation program, the "ENDDAY" date should be determined by considering the latest reported U.S. sales contract date (U.S. sale date) (*i.e.*, it should be the last day of the month of the latest reported U.S. sales date). It is not clear how the Department derived the date assigned to the variable "BEGINWIN" date.[62]
- In the home market sales program, the "BEGINDAY" date should be determined by considering the Department's 90/60 rule for the window period (*i.e.*, it should be day one of the first month of the window period).

No other party commented on this issue.

Department Position: We agree with the petitioners. Based on the Department's comparison methodology and its regulations, the "ENDDAY" and "BEGINWIN" (which are variables in the home market and margin calculation programs that define the "window period") dates in CINAR's margin calculation program should be the last day of the month of the latest reported U.S. sales contract date (sale date) and day one of the first month of the window period (*i.e.*, the third month preceding the month of the earliest reported U.S. sales contract date), respectively.[63] Further, the "BEGINDAY" date in CINAR's home market sales program should be day one of the first month of the window period. We failed to use those dates in the preliminary margin calculation and home market sales programs. We have revised CINAR's home market and margin calculation programs to correct those errors for the final results.[64]

Comment 8: U.S. Brokerage and Handling (B&H) Expenses

Petitioners

- The Department should deduct the amount in the field DBROKU (capturing the B&H expenses that were invoiced in United States Dollar (USD)) and the amount in the field DBROK2U (capturing those B&H expenses denominated in Turkish Lira) from the gross unit price of CINAR's U.S. sales as the fields are not mutually exclusive.[65]

No other party commented on this issue.

Department Position: We agree with the petitioners. CINAR stated that it added a new field (DBROK2U) in which it reported B&H expenses incurred in Turkish Lira.[66] Thus, for the final

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[62] The Department preliminarily determined that contract and invoice date were the appropriate dates of sale for CINAR's U.S. and home market sales, respectively. *See Preliminary Results and accompanying Preliminary Decision Memorandum at 11-12.*

[63] Pursuant to 19 CFR 351.414(f), the contemporaneous window period extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. *See* the Department's market economy home market and margin calculation programs at http://enforcement.trade.gov/sas/programs/amcp.html.

[64] *See* Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV to Howard Smith, Program Manager, AD/CVD Operations, Office IV "Analysis Memorandum for the Final Results in the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey: CINAR Boru Profil Sanayi ve Ticaret A.S.," dated concurrently with this memorandum (CINAR Final Analysis Memorandum).

[65] *See* CINAR January Response at 34 and SC-8.

[66] *Id*.

results, we have revised CINAR's margin calculation program by deducting the amounts reported in both fields ("DBROKU" and "DBROK2U") from the gross unit prices of CINAR's U.S. sales.[67]

Noksel

Comment 9: Duty Drawback Adjustment

Noksel

- In the *Preliminary Results*, the Department did not grant Noksel's claimed duty drawback adjustment because its inward processing certificates (DIIBs) for exports to the United States were not 'closed'.
- In *HWRPT from Turkey*, the Department noted that it

> "considers a DIIB to be closed when the Turkish government no longer permits the company to add import or export information to the DIIB. For practical purposes, we consider this to be when the exporting company has applied to the Turkish government for closure of the DIIB."[68] The policy underlying this practice is that until a DIIB is closed, the exporter "is still liable for duties foregone under those DIIBs"[69]

- All of Noksel's POR sales to the United States involved merchandise that was shipped under two DIIBs. Noksel completed the imports and exports under each of these DIIBs and applied for closure of the DIIBs. Nosel's DIIB applications state that "exports and imports have been completed. And closing requests have been applied in IPR system {sic}."
- Thus, Noksel made it clear that all exports and imports related to the two DIIBs have been completed and Noksel is only waiting for the Turkish government's final determination that the DIIBs are completed.
- The Department's interpretation of the term 'closed' in the *Preliminary Results* was incorrect. These DIIBs are closed, as the Department defines the term. Therefore, the Department should grant Noksel's duty drawback adjustment in full.
- The Department has a statutory obligation to grant Noksel's duty drawback adjustment, and it has accepted that Turkey's duty drawback program is consistent with the first prong of the two-prong test every time the issue has arisen.

Petitioners

- The Department should continue to reject Noksel's claimed duty drawback adjustment for a number of reasons.
- Noksel's DIIBs are in the process of being closed, rather than closed, and the government of Turkey ("GOT") has yet to act on them. A respondent's self-closure of a DIIB does not constitute a completed government action. Rather application for closure of a DIIB is

[67] *See* CINAR Final Analysis Memorandum.
[68] *See HWRPT from Turkey* and accompanying Issues and Decision Memorandum at Comment 4.
[69] *Id.*

a bureaucratic step signaling that the applicant believes it has met its obligations. The language of the statute expressly precludes situations in which an adjustment is granted for a rebate that has not yet occurred. Until the GOT responds to Noksel's DIIB application, Noksel still bears the responsibility for any potential duty liability. Therefore, because the GOT has not closed Noksel's DIIB applications, the Department should continue to deny Noksel's duty drawback adjustment for the final results.

- Noksel failed to demonstrate that exports of subject merchandise to the United States were used to satisfy the DIIBs nor has it demonstrated that imports of inputs listed in a spreadsheet that was supplied as support for a duty drawback adjustment are linked to the DIIBs. These failures involve a threshold issue rendering irrelevant any consideration of whether an open DIIB may form the basis of a duty drawback adjustment.
- Additionally, Noksel's duty drawback claim is inappropriately based on inputs not capable of being used to manufacture subject merchandise. Noksel even admits that its DIIB claim relates to inputs not capable of being used to manufacture the subject merchandise but argues that the inclusion of sales of non-subject merchandise in its duty drawback calculation balances things out. The CAFC ruled in favor of the Department's interpretation of the statute as to disallowing duty drawback for inputs that cannot be used to make subject merchandise.
- Nevertheless, if the Department grants Noksel's duty drawback adjustment, it should rely on the adjustment reported in the cost database rather than the drawback amount reported in the U.S. sales database because that amount was derived using an outdated methodology.

Department's Position:

We disagree with Noksel. Consistent with the Department's practice, and as detailed above in the section relating to CINAR, the Department's current practice with regard to the Turkish inward processing regime (IPR) (which is the official mechanism for applying for exemption from import duties) is to allow only closed DIIBs for purposes of calculating a duty drawback adjustment, 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. The Department has a practice of granting duty drawback adjustments only for DIIBs that have been fully closed (i.e. claims based on import certificates to which the company was no longer permitted by the GOT to add import or export information).[70]

Noksel relies on *HWRPT from Turkey* to argue that merely applying for closure of a DIIB is enough to satisfy the Department's requirements for granting a duty drawback adjustment; however, Noksel ignores critical facts of that case. In *HWRPT from Turkey*, the Department disallowed two of the three DIIBs under which the respondent requested a duty drawback adjustment because one DIIB remained open and the other DIIB was suspended *after* the respondent had applied for closure. Notably, the duty drawback adjustment that the Department

[70] *See Welded Line Pipe from the Republic of Turkey: Final Affirmative Determination in the Less-Than-Fair-Value Investigation*, 80 FR 61362 (October 13, 2015) (*Welded Line Pipe from Turkey*), and accompanying Issues and Decision Memorandum at Comment 3.

granted for the respondent in *HWRPT from Turkey* was for the only DIIB that had been closed by the GOT.[71] Following this, the Department is not considering the application for closure to be the threshold for considering a DIIB to be closed. Rather, *HWRPT from Turkey* demonstrates that a company's application to close a DIIB may be modified or suspended even after it has been submitted to the GOT. Thus the Department is not satisfied that a DIIB has been closed until a respondent can provide sufficient documentation establishing its closure by the GOT.

In the instant proceeding, although Noksel applied for the closure of its two DIIBs, Noksel indicated that these DIIBs are 'in the process of closing.'[72] There is no documentation on the record indicating that the GOT has closed these DIIBs. Short of any certifications or documentation from the GOT indicating that the DIIBs have been formally closed, the record does not demonstrate that Noksel is precluded from suspending its DIIB applications or modifying the applications to add import or export information to the DIIBs. Thus, there is no evidence on the record to support a finding that Noksel's DIIBs have been closed. Therefore, for these final results, we continue to deny Noksel a duty drawback adjustment.

Comment 10: Imputed Home Market Credit Expense

Noksel

- In the *Preliminary Results*, the Department relied on *Welded Pipe from Turkey* to include zero-interest loans in its calculation of home market credit expenses.[73] However, in *Rebar from Turkey*,[74] the Department determined that zero-interest loans should be excluded from the calculation of the short-term interest rate where they are not commercially usual.
- In Noksel's case, zero-interest loans are not "reasonable or representative of usual commercial behavior."
- Noksel's zero-interest loans were of a duration of five days or less.[75] However, over 99 percent of Noksel's home market sales, by weight, were paid more than 30 days from shipment date, while less than 0.5 percent were paid within one to five days of shipment date.
- Thus zero-interest loans are not an ordinary commercial practice for Noksel, and the Department should exclude zero-interest loans from the calculation of the short-term interest rate used to input home market credit expense.

[71] *See HWRPT from Turkey* and Issues and Decision Memorandum at Comment 3.
[72] *See* Letter from Noksel, re: "Section B and C Supplemental Questionnaire Response of Noksel Celik Boru Sanayi A.S.," dated May 22, 2017 at 13 and exhibit S5-6.
[73] See *HWRPT from Turkey* and accompanying Issues and Decision Memorandum at Comment 4.
[74] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Vaue*, 82 FR 23192 (May 22, 2017) (*Rebar from Turkey*) and accompanying Issues and Decision Memorandum at Comment 5.
[75] *See* Supp questionnaire 2 at Exhibit S2-5.

Petitioners

- The Department should continue to include zero-interest loans in the calculation of Noksel's home market imputed credit expense. The Department has a long history of including zero-interest loans in calculating credit expenses for Turkish companies.[76]
- Although Noksel relies on *Rebar from Turkey* to argue that the Department should not include zero-interest loans in its short-term interest rate calculation, *Rebar from Turkey* is inapposite to the facts in this review and was otherwise wrongly decided.
- In *Rebar from Turkey*, the Department distinguished its decision to not use zero-interest rate loans by noting that based on the respondent's average age of receivables, the Department actually calculated an "opportunity cost" rather than a "credit expense"; thus applying a zero-interest rate is not suitable. Yet, in *Rebar from Turkey* the Department then stated that "credit expenses are considered an opportunity cost."
- Moreover, the Department misapplied Policy Bulletin 98.2 in *Rebar from Turkey*. According to Policy Bulletin 98.2, when a respondent has no borrowings in the currency of the home market transaction, the Department must apply three criteria (i.e. whether the rate is reasonable, readily obtainable, and representative of the respondent's commercial reality) when selecting a surrogate short-term interest rate. The Policy Bulletin is clear that this only applies to cases where the respondent has no borrowings in the applicable currency. The Department's determination in *Rebar from Turkey* was flawed because the respondent had borrowings in the same currency of the transaction, which the Department did not rely on.
- Further, in *LMI-La Metalli Industriale, S.p.A. v. United States*, the CAFC reversed the Department's use of an alternative interest rate when the respondent had actual borrowings in the currency of the sale. Thus, the short-term loans in the currency of the transaction are self-affirming of the commercial reality of the interest rates on those loans.
- Here, Noksel has reported loans in the currency of the transactions, and the Department's preliminary use of short-term interest rate based on the weighted average of all short-term loans is consistent with policy Bulletin 98.2 and the CAFC's rulings, as well as prior Department decisions.

Department's Position: We agree with the petitioners that we should include zero percent interest loans in the calculation of Noksel's home market credit expenses. Noksel relies on *Rebar from Turkey* in arguing to exclude zero percent interest rates when calculating home-market credit expenses. However, that case involves unique facts that do not apply here. Specifically, given the average age of the respondent's home market receivables in *Rebar from Turkey*, the Department calculated an 'opportunity cost' using a publicly available interest rate to impute credit cost rather than calculating a 'credit expense,' because the respondent's short-term interest rate (which included zero-percent interest loans), did not meet the criteria of being reasonable or representative of usual commercial behavior.[77] The Department distinguished *Rebar from Turkey* from *Steel Pipe from Turkey*, in which the Department relied on zero interest

[76] *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 939 (December 9, 2011) ("*Steel Pipe from Turkey*") and accompanying Issues and Decision Memorandum at Comment 10; *see HWRPT* from Turkey and accompanying Issues and Decision Memorandum at Comment 4.

[77] *See Rebar from Turkey* and accompanying Issues and Decision Memorandum at Comment 5.

borrowing rates in calculating home market credit expenses. Here, similar to *Steel Pipe from Turkey*, we are calculating home market credit expenses and, where the issue has been the calculation of home market credit expenses, the Department's practice has been to use the short-term borrowing experience of the respondent, including zero-interest loans. In *Steel Pipe from Turkey* the Department noted that Policy Bulletin 98.2 calls for basing the "'interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.…Therefore we have used the short-term borrowing rate as reported by Toscelik {(which reflected certain zero-interest loans)}."[78] In *Welded Line Pipe from the Republic of Turkey,* the Department determined that the respondent "regards both loan types {(interest-bearing and zero-interest loans)} as short-term liabilities" and thus it is "reasonable to continue to include each short-term loan in our calculation of Toscelik's short term borrowing … consistent with our practice." In *HWRPT from Turkey*, the Department noted that:

> … Ozdemir recorded these entries in the specific account in its chart of accounts reserved for short-terms 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.[79]

Therefore, consistent with the Department's practice, we have continued to rely on Noksel's reported short-term borrowings, which includes both zero and non-zero interest loans, to calculate the imputed home market imputed credit expense.

Although Noksel argues that its zero-interest loans are not "reasonable or representative of usual commercial behavior," we disagree. The fact that Noksel receives zero-interest loans from its lenders with some frequency is, in fact, indicative that these rates are representative of usual commercial behavior.

Comment 11: Inclusion of Certain Sales Outside of POR

Noksel

- The Department incorrectly included Noksel's sales of subject merchandise that entered the United States after the POR in its preliminary margin calculations. For these final results, the Department should correct this programming error by excluding these sales from its dumping margin calculation.

No other parties commented on this issue

Department's Position: We agree. For export price (EP) sales, the Department's questionnaire for administrative reviews instructs respondents to "Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry

[78] *See* Policy Bulletin 98.2: Imputed credit expenses and interest rates, (Policy Bulletin 98.2), available at http://enforcement.trade.gov/policy/bull98-2.htm.
[79] *See HWRPT from Turkey* and accompanying Issues and Decision Memorandum at Comment 4.

dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a **date of sale** within the POR. Do not report canceled sales. If you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so."[80] Because Noksel knew the entry date of the sales at issue, and the entry dates for these sales are outside of the POR, for these final results of review the Department has excluded these sales from Noksel's margin calculation.

Comment 12: Application of AFA to a U.S. Sale

Background

Consistent with the instructions in the antidumping duty questionnaire, Noksel reported that if it knew the entry date of an export price sale (*i.e.*, sales for which it was the importer of record, or for which it obtained CBP form (CF) 7501) and that date fell within the POR, it included the sale in its U.S. sales database. In the *Preliminary Results*, the Department based the dumping margin for one of Noksel's sales on AFA because information obtained through a CBP Data Query showed that the merchandise entered the United States during the POR, but Noksel failed to report the sale in its U.S. sales database.[81]

Noksel

- The Department should not base the dumping margin for the sale in question on AFA but should exclude this sale from the dumping margin calculation because evidence available to Noksel shows it was a sale of merchandise entered into the United States before the POR began.[82]
- Noksel's CF 7501 shows the merchandise that was sold entered the United States prior to the POR. To the degree that CBP has contradictory information, there is no record evidence that such information was ever within Noksel's possession, and such information is beyond Noksel's ability to control or know.
- While Section 776(b) of the Act provides that the Department may use an adverse inference in applying 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, the Department cannot conclude that Noksel failed to cooperate when the evidence available to it shows the sale was of merchandise that did not enter the United States during the POR.

Petitioners

- The record contains contradictory information regarding the sale in question. If the entry date in the CBP Data Query results is correct, the Department should apply AFA; if not, the Department should not apply AFA.

Department's Position: We disagree with Noksel. At the heart of this issue is Noksel's claim that despite the results of the CBP Data Query showing that the merchandise in question entered

[80] *See* Letter from the Department to Noksel, dated October 12, 2016 at C-2 (questionnaire).
[81] *See* Memorandum to the File re: "Light Walled Recangular Pipe and Tube from Turkey U.S. Customs and Border Protection Data," dated May 31 2017 (CBP Data Query) at Attachment 2.
[82] *See* BPI Memorandum at Note 6.

during the POR, it did not fail to act to the best of its ability by not reporting the sale because the CF 7501 in its possession showed that the merchandise in question entered before the POR began. The CAFC has held that "compliance with the 'best of its ability' standard is determined by assessing whether {the} respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation."[83] While this standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping. Moreover, the CAFC has indicated that inadequate inquiries in order to respond to agency questions may also constitute a failure to cooperate.[84]

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.
On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) was signed into law.[85] The TPEA made numerous amendments to the antidumping and countervailing duty law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) to the Act. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.[86]
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. 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.[87] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived

[83] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)
[84] *See Nippon Steel*.
[85] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). 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 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 International Trade Commission. *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*). The text of the TPEA may be found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.
[86] *See Applicability Notice*, 80 FR at 46794-95.
[87] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.[88] The SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[89] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[90]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[91] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[92] Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.[93] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[94]

Noksel served as the importer of record for the sale at issue and thus the finalized entry summary form (CF 7501) should have been readily available to Noksel. Yet, proprietary information obtained from CBP indicates that the CF 7501 which Noksel relied upon was not the form submitted to CBP. This indicates that Noksel conducted an inadequate inquiry into records that should have been readily available to it as the importer of record and thus it failed to do the maximum it was able to do (*i.e.* failed to cooperate to the best of its ability). Moreover, where there is conflicting information on the record with respect to a respondent's CF 7501 form and information obtained from CBP, the Department's practice is to rely upon the information obtained from CBP.[95]

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[88] *See also* 19 CFR 351.308(c).
[89] *See* Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.
[90] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).
[91] *See also* 19 CFR 351.308(d).
[92] *See* SAA at 870.
[93] *See* section 776(d)(1)(B) and 776(d)(2) of the Act; TPEA, section 502(3).
[94] *See* section 776(d)(3)(B) of the Act; TPEA, section 502(3).
[95] *See e.g. Certain Circular Welded-Non Alloy Pipe from Mexico: Final Results of Antidumping Duty Administrtaive Review*, 76 FR 77770 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 1; *see also Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of*

As noted in the Partial Adverse Facts Available Memo[96], which accompanied the *Preliminary Results*, on two occasions, Noksel stated that it reported its U.S. sales, where Noksel was importer of record, based on entry date. The CBP data showing the entry which Noksel failed to report were on the record. Nevertheless, Noksel failed to report the entry in question for which Noksel was the importer of record. Petitioners alerted us to inconsistencies in the data reported by Noksel and the data reported by CBP.[97] On May 12, 2017, the Department issued a supplemental questionnaire to Noksel to better understand *possible* reporting deficiencies with Noksel's reported U.S. sales.[98] In its response to a supplemental questionnaire relating to Noksel's Section C response, Noksel explained that it reported that for "sales {where} Noksel is the importer of record, or Noksel could obtain customs form 7501 from the importer of its U.S. sales, Noksel reported its U.S. sales based on entry dates. Otherwise sales are reported based on invoice date."[99] In response to the Department's May 12, 2017, supplemental questionnaire, Noksel identified certain unreported U.S. sales and explained the reason for this reporting deficiency.[100]

Pursuant to sections 776(a)(2)(A) and (B) of the Act, we continue to find the application of partial facts otherwise available is warranted with respect to the missing U.S. sale because record evidence indicates that Noksel withheld information that has been requested and failed to provide the information within the deadlines established.[101]

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. The Federal Circuit, in *Nippon Steel*, provided an explanation of the failure to act to "the best of its ability" standard stating that the ordinary meaning of "best" means "one's maximum effort," and that "ability" refers to " the quality or state of being able."[102] Further, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.[103] The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting, surely evince {} a failure to cooperate," inadequate inquiries in order to respond to agency questions may suffice as well.[104] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to

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Antidumping Duty Administrative Review, 77 FR 65532 (October 29, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

[96] *See* Memorandum to the File, Re: "Light Walled Rectangular Pipe and Tube from Turkey: Application of Partial Adverse Facts Available to Noksel Celik Boru Sanayi A.S.," dated May 31, 2017 (Partial AFA Memo).

[97] *See* letter from the petitioners to the Department, re: "Light-Walled Rectangular Pipe and Tube from Turkey: PrePrelim Comments Concerning Reporting Anomalies," dated May I, 2017 (Petitioners' Pre-Prelim Comments).

[98] *See* Letter from the Department to Noksel, dated May 12, 2017.

[99] *See* letter from Noksel to the Department, re: "SECOND SUPPLENMENTAL QUESTIONNAIRE RESPONSE OF NOKSEL CELIK BORU SANAYI A.S.," dated January 3, 2017 at 8.

[100] *See* the revised "Section B and C Supplemental Questionnaire Response of Noksel Celik Boru Sanayi A.S.," dated May 31, 2017 (Noksel's Supplemental Questionnaire Response); *see also* Partial AFA Memo.

[101] *See* Partial AFA Memo.

[102] *See Nippon Steel*, 337 F.3d at 1382.

[103] *Id.*

[104] *Id.*, at 1380.

provide the Department with full and complete answers to all inquiries in an investigation or review.[105] The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[106]

We continue to find the use of an adverse inference pursuant to section 776(b) of the Act is warranted because Noksel's failed to cooperate to the best of its ability to comply with the Department's requests for Noksel to report all U.S. sales. Noksel demonstrated that it knew it was required to report each U.S. sale of merchandise entered for consumption during the POR. Furthermore, Noksel was the importer of record for the unreported sale and thus it should have known this was a sale of subject merchandise that were entered for consumption during the POR. Given that the finalized entry documentation demonstrating the correct entry dates for the sale in question should have been readily available to Noksel and yet Noksel failed to report these sale, Noksel failed to cooperate to the best of its ability. As noted by the Federal Circuit, the "best of its ability" standard does not condone inattentiveness, carelessness, or inadequate record keeping. Additionally, we also find that the use of an adverse inference is appropriate to ensure that Noksel does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Noksel was provided with several opportunities to ensure that it fully reported its U.S. sales. The onus was on Noksel to properly report its U.S. sales. However, it failed to do so. It was not until the petitioners raised questions regarding whether Noksel appropriately reported all of its U.S. sales that Noksel sought to submit the additional unreported U.S. sale to the Department. For the reasons explained above, we find the application of partial adverse facts available is appropriate with respect to Noksel's unreported U.S. sale. As partial adverse facts available, we assigned the highest transaction-specific dumping margin calculated for Noksel's sales during the POR to the unreported U.S. sale.

Comment 13: Application of AFA Based on a CBP Entry Data

Background

As noted above, Noksel reported sales in its U.S. sales database based on entry dates if it could obtain the CF 7501. Otherwise, Noksel reported sales in its U.S. sales database based on shipment date. The CBP Data Query results identified an entry of Noksel's merchandise during the POR for which no sale was reported.[107] In the *Preliminary Results*, the Department determined, based on Noksel's questionnaire responses and other BPI pertaining to this entry, that Noksel correctly did not report this sale given the likely shipment date of the merchandise (the actual shipment date for this sale is not on the record).

Petitioners

- Given that there is no information regarding the shipment date of the sale in question, the Department's decision with respect to this sale, which was based on CBP information, is speculative. The Department should revisit its decision based on new record evidence provided since the *Preliminary Results* indicating that this sale involved merchandise that

[105] *Id.* at 1382.
[106] *Id.*
[107] *See* CBP Data Query at Attachments 1 and 2.

was shipped during the POR (the export date in CBP data is incorrect). This evidence includes: 1) case information showing CBP data can be incorrect and 2) an analysis of time on the water between shipment date and entry date for all of Noksel's reported U.S. sales.

- CBP data are not always correct. In this review there are numerous discrepancies between one CF 7501 placed on the record by Noksel and the results of the CBP Data Query (*see* Comment 12). In *Aluminum Extrusions*, the Department found missing amounts in the quantity field rendered the CBP data useless. In *Garlic from the PRC*, the Department determined that the entry date was not the date on the CF 7501, but the date the form was submitted to CBP.
- The average number of days on the water for Noksel's reported U.S. sales is not consistent with the days between CBP's export date and entry date for the sale/entry in question. This demonstrates that the Department's analysis using the export date to conclude the sale was shipped before the POR is flawed and compels a different result.
- Addditionally, the Department's analysis of the CBP data is also isolated from other record facts and incomplete. The Department only compared the shipment date of Noksel's reported sales to the export date in the CBP Data Query results for corresponding entries. However, as noted above, record evidence shows that a significant number of entries of subject merchandise were not declared as subject merchandise to CBP (*see* Comment 2). Thus, the Department's preliminary decision was based on incomplete information.
- Because this unreported sale, together with Noksel's other unreported sales, represents a high percentage of Noksel's reported sales, the Department should apply total AFA to Noksel. At a minimum, the Department should apply the same partial AFA methodology to this sale that it applied in the *Preliminary Results* to Noksel's other unreported sales in calculating its final margin.

Noksel

- Although the petitioners speculate that this entry is a potential unreported sale, there is substantial evidence that it should have been excluded from the U.S. sales database.
- First, shipment date is the only date relevant to the decision regarding this sale and thus any argument regarding other dates in CBP data is not relevant.
- Second, Noksel reconciled all of its sales and shipments during the POR to its accounting system and reconciled CBP data to its reported sales. No reportable sale was omitted.
- Third, if any date in CBP data for the entry in question is incorrect, it is the entry date given the sequencing of entry numbers in the CBP Data Query results.
- The Department should continue to exclude this shipment from its margin calculation.

Department's Position: We disagree with the petitioners. Noksel indicated that the booking date in its accounting system is linked to shipment date.[108] Noksel reported the booking date for

[108] Specifically, Noksel reported that it "is required to book an export sale not before the shipment is realized by law… Noksel reported both the invoice date under SALINDTU and the system booking date indirectly by reporting

all sales listed in its U.S. sales reconciliation.[109] Although petitioners argue that the average number of days that Noksel's shipments spent on water is indicative that the entry should have been reported as a POR sale, the booking dates reported by Noksel support the Department's preliminary decision that Noksel correctly did not report the sale at issue.[110] Therefore, we are continuing to exclude this sale from our margin calculation.

Although petitioners cited two instances in administrative proceedings in which the Department did not rely on CBP data because there were specific issues with CBP data, the petitioners have not demonstrated that the CBP on the record of the instant proceeding is unreliable. In one of those proceedings, the Department issued quantity and value questionnaires to potential respondents in a countervailing duty administrative review because there were instances in which entries lacked information in the quantity field. In the other proceeding, a respondent claimed that CBP data was erroneous because the CBP data reflected the date that the entry information was submitted to CBP, rather than the actual entry date. Additionally, as noted above, the booking dates that Noksel relied on to create its U.S. sales database support the Department's conclusion that Noksel should not have reported the sale at issue.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*.

☒	☐
Agree	Disagree

10/4/2017

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

shipment date under SHIPDATU. *See* Letter from Noksel, re: "Second Supplemental Questionnaire Response of Noksel Celik Boru Sanayi A.S.," dated March 27, 2017, ("Noksel Second Supplemental Response") at Sup2-11.

[109] *Id*.

[110] For further discussion, *see* BPI Memorandum at Note 7.