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Investigation
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February 19, 2019

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of 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 Large Diameter Welded Pipe from the Republic of Turkey

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I. Summary

The Department of Commerce (Commerce) finds that large diameter welded pipe (welded pipe) from the Republic of Turkey (Turkey) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through December 31, 2017.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made changes to the *Preliminary Determination*.[1] 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:

General
Comment 1: Allegation of a Particular Market Situation (PMS) in Turkey

Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan)
Comment 2: Borusan's U.S. Date of Sale

[1] *See Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43646 (August 27, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

Comment 3: Borusan's Late Delivery Penalty
Comment 4: Borusan's Affiliated Freight Expenses
Comment 5: Borusan's Affiliated Freight Expense Adjustments
Comment 6: Borusan's Domestic Warehousing Revenue
Comment 7: Borusan's Fees for Vehicle Purchases
Comment 8: Errors in Borusan's Margin Calculation
Comment 9: Borusan's Cost Reporting
Comment 10: Borusan's Surrogate Costs of Production

HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik)
Comment 11: Treatment of HDM Celik's Additional Revenues
Comment 12: HDM Celik's Depreciation and Unused Vacation Expenses

II. Background

On August 27, 2018, Commerce published the *Preliminary Determination* of sales at LTFV of welded pipe from Turkey. We invited parties to comment on the *Preliminary Determination*.

In September and October 2018, we conducted verifications of the sales and cost of production (COP) data reported by the respondents, Borusan and HDM Celik, in accordance with section 782(i) of the Act.[2] Subsequently, in November 2018, we requested, and HDM Celik submitted, revised home market and U.S. sales databases.

On November 19, 2018, American Cast Iron Pipe Company, Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corporation (collectively, the petitioners) and Borusan submitted case briefs.[3] On November 28, 2018, the petitioners, Borusan and HDM Celik submitted rebuttal briefs.[4]

[2] *See* Memorandum, "Verification of the Sales Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) in the Antidumping Investigation of Large Diameter Welded Pipe from the Republic of Turkey," dated October 22, 2018 (Borusan Sales Verification Report); Memorandum, "Verification of the Sales Response of HDM Celik Ticaret Sanayi A.S. (HDM Celik) in the Antidumping Investigation of Large Diameter Welded Pipe from the Republic of Turkey," dated October 22, 2018 (HDM Celik Sales Verification Report); Memorandum, "Verification of the Cost Response of HDM Celik Boru Sanayi ve Ticaret A.S. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey," dated October 24, 2018 (HDM Celik Cost Verification Report); and Memorandum, "Verification of the Cost Response of Borusan Mannesmann Boru Sanayi VE Ticaret A.S. (BMB), in the Antidumping Duty Investigation of Large Diameter Welded Pipe (LDWP) from Turkey," dated November 1, 2018 (Borusan Cost Verification Report).

[3] *See* Petitioners' Case Brief, "Large Diameter Welded Pipe from Turkey: Case Brief," dated November 19, 2018 (Petitioners' Case Brief); and Borusan's Case Brief, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833: BMB's Case Brief," dated November 19, 2018 (Borusan's Case Brief).

[4] *See* Petitioners' Rebuttal Brief, "Large Diameter Welded Pipe from Turkey: Rebuttal Brief," dated November 28, 2018 (Petitioners' Rebuttal Brief); Borusan's Rebuttal Brief, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833: BMB's Rebuttal Brief," dated November 28, 2018 (Borusan's Rebuttal Brief); and HDM Celik's Rebuttal Brief, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833 HDM Celik's Rebuttal Brief," dated November 28,2018 (HDM Celik's Rebuttal Brief).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.[6] The revised deadline for the final determination of this investigation is now February 19, 2019.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

III. Scope of the Investigation

For the scope language, s*ee* the scope in Appendix I of the accompanying *Federal Register* notice.

IV. Margin Calculations

We calculated export price, normal value, and COP for Borusan and HDM Celik using the methodology stated in the *Preliminary Determination*,[7] except as follows:[8]

1. We revised our calculations to take into account our findings at Borusan's sales verification.[9]

2. We revised certain freight expenses incurred for Borusan's home market and U.S. sales that Borusan paid to its affiliate, Borusan Lojistik, to state them on an arm's-length basis. *See* Comments 4 and 5, below, for further discussion.[10]

[5] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[6] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).
[7] *See* Memorandum, "Calculations for the Preliminary Results," dated August 20, 2018 (Borusan Preliminary Sales Calculation Memorandum); Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Borusan Mannesmann Sanayi ve Ticaret A.S.," dated August 20, 2018 (Borusan Preliminary Cost Calculation Memorandum); Memorandum, "Preliminary Determination Calculations for HDM Celik Boru Sanayi ve Ticaret A.S.," dated August 20, 2018; and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – HDM Celik Boru Sanayi ve Ticaret A.S.," dated August 20, 2018.
[8] *See* Memorandum, "Final Determination Sales Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S.," dated February 19, 2019 (Borusan Final Sales Calculation Memorandum); Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Borusan Mannesmann Sanayi ve Ticaret A.S.," dated February 19, 2019 (Borusan Final Cost Calculation Memorandum); Memorandum, "Final Determination Calculations for HDM Celik Boru Sanayi ve Ticaret A.S.," dated February 19, 2019 (HDM Celik Final Sales Calculation Memorandum); and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – HDM Celik Boru Sanayi ve Ticaret A.S.," dated February 19, 2019 (HDM Celik Final Cost Calculation Memorandum); *see also* Borusan Sales Verification Report; HDM Celik Sales Verification Report; HDM Celik Cost Verification Report; and Borusan Cost Verification Report.
[9] *See* Borusan Final Sales Calculation Memorandum.
[10] *Id.*

3. We corrected our calculation of Borusan's home market net price to: 1) subtract the expenses we reclassified from a warranty expense to a billing adjustment; and 2) deduct monthly weighted-average packing costs. *See* Comment 8, below, for further discussion.[11]

4. We reassigned the surrogate cost for an uncoated product that Borusan sold but did not produce during the POI to account for the fact that the product is a bare pipe. *See* Comment 10, below, for further discussion.[12]

5. We relied on HDM Celik's revised home market and U.S. sales databases incorporating corrections presented at the HDM Celik's sales verification, and also revised our calculations to take into account additional findings at HDM Celik's sales verification.[13]

6. We added unused vacation expenses to HDM Celik's COP. *See* Comment 12, below, for further discussion.[14]

7. We revised HDM Celik's scrap offset to reflect the net realizable value of scrap. Accordingly, we also revised the scrap offset reduction to the denominators of HDM Celik's general and administrative (G&A) and financial expense rates.[15]

V. Adjustment for Countervailable Export Subsidies

In a LTFV investigation where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation.[16] Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy."[17]

Commerce determined in the final determination of the concurrent CVD investigation that HDM Celik benefitted from export subsidies.[18] Accordingly, we find that an export subsidy adjustment of 1.00 percent is warranted for HDM Celik.[19] We also find that an export subsidy adjustment of

[11] *Id*.
[12] *See* Borusan Final Cost Calculation Memorandum
[13] *See* HDM Celik Final Sales Calculation Memorandum.
[14] *Id*.
[15] *Id*.
[16] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012).
[17] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[18] *See* the unpublished "Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination," and accompanying IDM. Commerce calculated a *de minimis* CVD rate for Borusan.
[19] *See* HDM Celik Final Sales Calculation Memorandum

1.00 percent to the all-others cash deposit rate is warranted because HDM's export subsidy rate is included in the CVD all-others rate, to which these companies are subject in the companion CVD proceeding.

VI. Discussion of the Issues

Comment 1: Allegation of a PMS in Turkey

In the *Preliminary Determination*, we analyzed the petitioners' PMS allegation and found that a PMS exists in Turkey which distorts the COP of welded pipe. We preliminarily found that the PMS results from the cumulative effects of: 1) the Government of Turkey's (GOT's) control of Eregli Demir Celik Fabrikiler Ticaret A.S. (Erdemir), the largest producer of flat-rolled steel in Turkey, and its affiliate Iskenderun Demir ve Celik A.S. (Isdemir); 2) Turkish subsidies on the hot-rolled coil (HRC) and plate inputs; and 3) Turkish imports of HRC and plate from Russia, as a result of Chinese overcapacity.[20]

Petitioners' Case Brief

- Commerce should adopt the petitioners' proposed alternative PMS adjustment methodology for the final determination and make an upward adjustment to Borusan's and HDM Celik's HRC and plate input costs as determined by their regression analysis.[21]
- The use of Turkish hot-rolled subsidies alone, as a means of offsetting some portion of the distortive effects of the PMS, does not address the depth of the distortion and the impact of global excess capacity on the Turkish market.[22]
- The subsidy rates recently calculated in the *LDWP from Turkey CVD Prelim* significantly understate the extent to which the costs of HRC are depressed as a result of China-driven global excess capacity.[23]
- Commerce should adopt a methodology based on global steel excess capacity to best adjust for an "overcapacity-driven" PMS.[24]
- Import average unit values (AUVs) best reflect the prevailing trade flows and overall dynamics at the national level and are the best measure of the distortive impact of global excess capacity as transmitted to an individual market.[25]
- Further, a fixed effects regression model best measures the impact of global excess capacity at the national level because it: 1) focuses on intra-country variation rather than inter-country variation, which eliminates the potential of omitting variables; 2) is used to determine the impact of global excess steel capacity on a given country by exploring the relationship between the explanatory and outcome variables within an entity.[26]

[20] *See Preliminary Determination*, and accompanying PDM at 11-15.
[21] *See* Petitioners' Case Brief at 2-17.
[22] *Id*. at 3.
[23] *Id*. at 3-4 (citing *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018) (*LDWP from Turkey CVD Prelim*), and accompanying PDM).
[24] *Id*. at 5-8.
[25] *Id*. at 9-10.
[26] *Id*. at 10-14.

- The comparison contained in the petitioners' case brief among various alternative specifications of the regression model illustrates that the effect of global excess capacity on the Turkish import AUV will be overstated if the fixed effects parameter is not included.
- The underlying assumptions to the regression analysis are technically sound, reasonable, and appropriate. However, if Commerce considers modifications to the proposed methodology, the record contains all the programming and data necessary to modify the model.[27]

Borusan's Case Brief

- For the final determination, Commerce should determine that there is no PMS in the Turkish HRC market which distorts the COP of welded pipe producers.[28]
- Commerce failed to address its arguments on the record which demonstrate that there is no PMS in the Turkish HRC market.[29]
- Commerce did not discuss any specific information on the record regarding tangible price effects specific to the input for the merchandise under investigation. Additionally, Commerce failed to explain either the meaning of the phrase "government assistance" in the production of HRC or how this "government assistance" results in a cost distortion.[30]
- Increased imports from Russia do not distort Borusan's COP because Borusan did not purchase any HRC from Russia during the POI. Moreover, it cannot be assumed that Russian imports increased due to overcapacity and this assumption lacks evidentiary support.[31]
- To make the PMS adjustment, Commerce used the CVD rate applied in *Hot-Rolled Steel from Turkey*, but that case never went to order.[32]
- Finally, Commerce lacks any support for the decision to apply the PMS adjustment to imports of HRC.[33]

Petitioners' Rebuttal Brief

- It makes no difference that Borusan did not purchase Russian HRC to produce subject merchandise because Russian imports distort the entire Turkish market and Borusan is not insulated from the distortive impact of global steel overcapacity on the Turkish market.[34]

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[27] *Id*. at 14.
[28] *See* Borusan's Case Brief at 26-32.
[29] *Id*. at 26.
[30] *Id*. at 26-29 (citing *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018) (*TRBs from Korea*), and accompanying IDM at Comment 1).
[31] *Id*. at 29-31.
[32] *Id*. at 32 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Affirmative Determination*, 81 FR 53433 (August 1, 2016) (*Hot-Rolled Steel from Turkey*)).
[33] *Id*.
[34] *See* Petitioners' Rebuttal Brief at 5-6 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 22, 2018), and accompanying IDM at Comment 16)).

- Borusan has provided no rationale in support of excluding HRC and plate purchased from non-Turkish suppliers from the PMS adjustment.[35]
- In the *Preliminary Determination*, Commerce addressed Borusan's claim that it would be inappropriate to make a PMS adjustment based on the CVD rates applied in *Hot-Rolled Steel from Turkey*; Borusan did not provide any argument for Commerce to make a different determination here.[36]

Borusan's Rebuttal Brief

- Commerce should reject the petitioners' regression model and arguments because they rely solely on a general analysis of steel, not the specific steel used in production of welded pipe, which proves that there is no situation "particular" to the hot-rolled steel market in Turkey.[37]
- The petitioners' regression model only focuses on supply considerations and ignores the impact of demand. Furthermore, the petitioners only examined excess capacity in their analysis.[38]
- Commerce did not ask the petitioners for any additional information subsequent to the *Preliminary Determination*, and therefore the petitioners cannot submit additional new models and information on the record in an attempt to bolster their analysis.[39]
- The petitioners' regression analysis is based on flawed UN Comtrade data and Commerce should not rely on it for the following reasons:
    - There are several data points that have large values but no associated quantities, increasing the average unit values;
    - the petitioners' regression analysis does not analyze any other variables that explain changes in the price of steel, including demand factors; and
    - the petitioners provided no evidence that they measured a healthy utilization rate for the global steel market.[40]

Commerce's Position:

In this investigation, the petitioners alleged that a PMS exists in Turkey during the POI which distorts the COP of welded pipe based on the following factors: (1) the GOT's control of Erdemir and Isdemir; (2) Turkish subsidies on the HRC and plate inputs; and (3) Turkish imports of HRC and plate from Russia as a result of Chinese overcapacity. Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) does not specify whether to consider these allegations individually or collectively. Based on record information, we continue to find that a PMS exists in Turkey which distorts the COP of welded pipe.[41] This PMS results from the collective impact of the GOT's control of Erdemir and Isdemir, Turkish HRC and plate subsidies, and Turkish imports of HRC and plate from Russia. We considered the three components of the petitioner's allegation as a whole, based on their cumulative effect on the

[35] *Id*. at 7.
[36] *Id*. at 8.
[37] *See* Borusan's Rebuttal Brief at 2-5.
[38] *Id*. at 3.
[39] *Id*. at 5.
[40] *Id*. at 6-8.
[41] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 385 (2015).

Turkish welded pipe market through the COP for welded pipe and its inputs. Based on the totality of the conditions in the Turkish market, we continue to find that the allegations support a finding of a PMS.

The information on the record shows government assistance in the production of HRC and plate both through subsidies and through the GOT's ownership of Erdemir and Isdemir, which account for a significant portion of Turkey's market of HRC and plate. Erdemir's and Isdemir's involvement in the Turkish flat rolled steel market, coupled with a significant increase in low-priced imports from Russia, result in low-cost sales of HRC to domestic consumers, including producers of welded pipe. These market conditions suggest that the acquisition prices of HRC in Turkey are not reflective of the ordinary course of trade for this input. Thus, based on the totality of the circumstances, as evidenced by the record of this investigation, we continue to find that various market forces cause distortions which affect the COP for welded pipe from Turkey and support a finding that a PMS existed during the POI in this proceeding.

With respect to Borusan's argument that the price of Russian steel in the Turkish market is not relevant because Borusan did not purchase any HRC from Russia during the POI, we disagree. There is data on the record indicating that Russia increased its share of Turkish imports of HRC and plate from approximately 20 percent of the import market in 2013 to over 45 percent in 2017.[42] Therefore, it is reasonable to conclude that Russian prices of HRC had a significant impact on the price of HRC in Turkey, and therefore on the price Borusan pays for its inputs.

Borusan also argues that we should not apply the Turkish CVD rate as an adjustment to imported steel. However, in a market economy where goods are competitively priced, domestic and imported prices will converge at an equilibrium. This is particularly true with a common and fungible commodity such as HRC. Thus, because domestic subsidies lower the cost of production and the price of HRC in Turkey, it is logical to find that, to remain competitive, imported HRC will sell at prices competitive with the domestically produced and subsidized HRC. In other words, domestic and imported prices of HRC converge to a lower market equilibrium price than if the domestically produced Turkish HRC did not benefit from GOT subsidies. Thus, in accordance with our practice,[43] we have continued to upwardly adjust the respondents' acquisition costs to account for the CVD rates for all HRC purchases as reported by the respondents.

We disagree with Borusan that it would be inappropriate to make a PMS adjustment based on the CVD rates applied in *Hot-Rolled Steel from Turkey* because that investigation did not result in a CVD order due to the ITC's negative injury determination. As we stated in the *Preliminary Determination*, this fact alone should not discredit the use of the CVD rates calculated in that investigation in making a PMS adjustment in this proceeding.[44] Injury to the domestic industry is immaterial to the question of whether Commerce found subsidization of the foreign industry. Furthermore, we find that the rates calculated in the CVD investigation on *Hot-Rolled Steel from*

[42] *See* Petitioners' Letter re: Large Diameter Welded Pipe from Turkey: Particular Market Situation Allegation and Factual Information, dated July 10, 2018 at 21-24.
[43] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018), and accompanying IDM at Comment 3.
[44] *See Preliminary Determination* at 14.

Turkey are the best indication of the rate of subsidization of Turkish HRC producers given that Commerce calculated a rate for Erdemir in that proceeding.

While we agree with the petitioners that the use of Turkish HRC subsidies alone, as a means of offsetting some portion of the distortive effects of the PMS, does not address the depth of the distortion and the impact of global excess capacity on the Turkish market, the regression analysis that the petitioners have put forth falls short in several key respects, as discussed below. Therefore, for these final results, the Department has continued to adjust HRS costs only for subsidies. We will continue to refine our analysis going forward.

We agree with the petitioners that "…the global crude steel capacity overhang clearly is related to price changes for HRC and plate…"[45] and that global excess capacity is largely driven by excess capacity in China. We also agree that a PMS adjustment is necessary to account for HRC price distortions in Turkey. However, reasonable quantification of the price effect, including specification of the relevant economic variables and the relationships between them, is necessary to calculate an adjustment to account for the PMS.

In their submissions, the petitioners use the terms "excess capacity," "capacity overhang," and "oversupply" interchangeably, when describing the PMS in steel. For example, the petitioners refer to "capacity overhang" on page 15 of their case brief (as noted above) and state on page 5 of their rebuttal brief that "…the Department must take the additional steps to account for the impact of Chinese oversupply and global excess capacity on the Turkish steel market…"[46] It is certainly true that the concepts are related, and it is understandable and not problematic to conflate the terms when making *qualitative* assessments even though that obscures differences in the economic relationship between each variable and price. However, for the purpose of quantifying the price effect, the economic relationships underlying the model must be made clear.

In the model, the petitioners use an excess capacity variable to explain price and measure excess capacity as the difference between current capacity and production levels. Thus, excess capacity can increase as a result of capacity increasing faster than production, but where it does so the model tells us nothing about the change in price attributable to the increase in capacity and the change in price attributable to the increase in production. Excess capacity can also increase as a result of an increase in capacity with production (supply) constant, but the model tells us nothing about *how* changes in capacity can impact price with production (supply) held constant, outside of changes in market expectations that are not modeled. In the petitioners' model, excess capacity can even increase as a result of a *decrease* in capacity if production *decreases* more, and we would simply note that for *all* the cases above of an increase in excess capacity, the model predicts exactly the *same price effect* even though production *increases* in the first case, *remains constant* in the second and *decreases* in the third. Thus, excess capacity can increase as a result of capacity increasing faster than production, but where it does so the model tells us nothing about the change in price attributable to the increase in capacity and the change in price attributable to the increase in production. Excess capacity can also increase as a result of an increase in capacity with production (supply) constant, but the model tells us nothing about *how*

[45] *See* Petitioners' Case Brief at 15.
[46] *Id*. at 7.

changes in capacity can impact price with production (supply) held constant, outside of changes in market expectations that are not modeled. In the petitioners' model, excess capacity can even increase as a result of a *decrease* in capacity if production *decreases* more, and we would simply note that for *all* the cases above of an increase in excess capacity the model predicts exactly the *same price effect* even though production *increases* in the first case, *remains constant* in the second and *decreases* in the third. The supply and demand relationships and price dynamics that might explain this are not specified.

Further, the petitioners' regression model specifies only one predictor variable, global excess capacity, and thereby omits other variables that affect import AUVs, such as gross domestic product growth, demand growth in key downstream sectors and industries, and the currency exchange rate. While the fixed effects component of the petitioners' model accounts for time-*invariant* variables that differ across countries, it does not account for the omission of time-*variant* variables that are noted above.

Therefore, although Commerce agrees with the petitioners' qualitative assessment of the PMS in the Turkish steel market, the purpose of a regression analysis in this case is not to confirm correlations that are intuitively true and that can be explained easily in qualitative terms, but to reasonably *quantify* price effects for purposes of a PMS adjustment. It is not clear that the petitioners' regression analysis does that.

Comment 2: Borusan's U.S. Date of Sale

In the *Preliminary Determination,* Commerce based the date of sale for Borusan's U.S. sales on the earlier of the invoice or shipment date, in accordance with its long-standing practice. [47]

Borusan's Case Brief

- The crucial question when considering date of sale issues is whether the proposed date of sale demonstrates "a meeting of the minds" between the parties such that the material terms were fixed on this date.[48] The verified record evidence demonstrates that a "meeting of the minds" occurred between Borusan and its customer when they entered into the purchase order and both understood that they had agreed to an enforceable contract specifying: 1) exactly what Borusan would produce and when it would ship this merchandise; and 2) significant penalties if Borusan failed to meet these conditions.[49]
- Borusan could not make any changes to the purchase order without the customer's prior authorization and the issuance of a new purchase order. In any event, the possibility of further change to a purchase order is irrelevant to whether there was "a meeting of the minds;" all contracts can be changed by mutual consent.[50]

[47] *See Preliminary Determination* and accompanying PDM at 8.
[48] *See* Borusan's Case Brief at 5-6 (citing *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1303 (CIT 2009) (*Nucor Corp.*); *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 625 F. Supp. 2d 1339, 1373 (CIT 2009) (*Habas*); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349-50 (May 19, 1997) (*Preamble*)).
[49] *Id.* at 3.
[50] *Id.* at 4.

- Commerce's regulations provide that contract date is the presumptive date of sale for sales involving long-term contracts for large custom-made merchandise where shipments enter the United States long after the contract date.[51]
- In prior cases involving long-term contracts where the contracts were amended, Commerce has used the date of the contract amendment as the date of sale and excluded sales that shipped pursuant to amendments that occurred outside of the POI.[52]
- The U.S. Court of International Trade (CIT) has rejected the argument that the material terms of sale are not established unless they are unchangeable; instead, Commerce must consider record evidence regarding the formal contracting process and whether the language of the contracts was clear, unambiguous, and legally binding.[53]
- Borusan's purchase orders were for massive pipeline projects spanning multiple years. Although they were amended over time, the language of the purchase orders demonstrates that the parties had the expectation at the time of signing that the essential terms of sale were fixed, and, after the date of the final purchase order, there were no changes to the essential terms of sale.[54]
- For one of Borusan's customers, all product was produced and ready to be shipped before the end of 2016; therefore, there was no possibility of any changes at that point, so the date of the final purchase order, reported as the date of sale in Borusan's U.S. sales database, is the date when the final terms of sale were fixed and after which no further changes were made.[55] The per-foot unit price for each item in the purchase order matches the per-foot unit price reported in the U.S. sales database, and all merchandise was delivered in strict compliance with the purchase order. Thus, although it is theoretically possible that the parties could have revised the purchase order, setting a new purchase order date, they did not.[56]
- For Borusan's other U.S. customer, the purchase order was revised multiple times, but the terms of the final revision governed all material terms (*i.e.*, price, quantity, and delivery terms) for these sales.[57] The promise dates listed in the purchase order are not delivery dates. All material delivered in 2017 conformed to this provision because the delivery location did not open until October 2017. While the parties theoretically could have revised the purchase order after this date, that did not happen; the potential for revision does not undermine that the purchase order set the terms of sale from which the parties did not deviate.[58]

Petitioners' Rebuttal Brief

- Commerce should reject Borusan's misinterpretation of clear precedent and continue to find that the invoice date is the proper date of sale.[59]

[51] *Id.* at 2, 6-7 (citing *Preamble*, 62 FR at 27349).
[52] *Id.* at 7-8 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219 (September 25, 2002) (*Sulfanilic Acid from Portugal*), and accompanying IDM at Comment 1).
[53] *Id.* at 8-9 (citing *Nucor Corp.*, 612 F. Supp. 2d at 1306, 1309-11, 1316).
[54] *Id.* at 9.
[55] *Id.* at 4-5.
[56] *Id.* at 10-13 (citing *Nucor Corp.*, 612 F. Supp. 2d at 1306).
[57] *Id.* at 13-14.
[58] *Id.* at 14-16.
[59] *See* Petitioners' Rebuttal Brief at 9.

- Contrary to Borusan's claim, a "meeting of the minds" alone is insufficient to determine the proper date of sale; rather, it merely demonstrates that an enforceable contract exists.[60]
- Commerce has consistently emphasized the importance of establishing when the material terms are finalized and generally no longer changeable to determine the date of sale. Commerce has a presumption in favor of the date of invoice as the date of sale for all sales, even those made pursuant to long term contracts.[61]
- Where a contract exists, Commerce will look beyond the contract to the actual practices of the parties involved in establishing the material terms of sale.[62]
- Commerce will set aside its preference for invoice date if it finds that another date better reflects the date on which the material terms were established and no longer subject to change.[63]
- Borusan's purchase orders were subject to change; as Borusan stated, they issued a new purchase order to reflect the terms of the prior purchase order, as well as any changes to the product, delivery schedules, quantities, etc. Furthermore, at verification, Commerce saw that Borusan's purchase orders did in fact change from the initial purchase order date.[64]
- In similar cases, Commerce has declined to use the purchase order date as the date of sale where the purchase orders were subject to amendments that changed the materials terms of sale.[65]

Commerce's Position:

For this final determination, we continue to use the earlier of factory shipment date or invoice date as the date of sale for Borusan's U.S. sales because we find that this is the date on which the material terms of Borusan's sales are finalized. Commerce's regulations at 19 CFR 351.401(i) direct us to define the date of sale as the date on which the material terms of sale are established, stating:

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[60] *Id.* at 9-10.
[61] *Id.* at 10 (citing 19 CFR 351.401(i); and *Preamble*, 62 FR at 27348-49).
[62] *Id.* at 10 (citing *Certain Steel Nails from the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845, 53850-51 (September 4, 2012); *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Administrative Review*, 77 FR 50465, 50466 (August 21, 2012); *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 46687, 46688 (August 6, 2012); *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 46058, 46063 (August 2, 2012) (*Wind Towers from Vietnam*); and *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24335 (May 6, 1999) (*Steel Products from Japan*)).
[63] *Id.* at 11 (citing *Wind Towers from Vietnam*, 77 FR at 46064; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31319 (May 25, 2012); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal from the Russian Federation*, 69 FR 59197, 59199 (October 4, 2004) (*Magnesium Metal from Russia*); and *Steel Products from Japan*, 64 FR at 24334).
[64] *Id.* at 12-17.
[65] *Id.* at 15 (citing *Magnesium Metal from Russia*, 69 FR at 59199; and *Steel Products from Japan*, 64 FR at 24334).

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

Commerce's regulation "squarely plac{es} the burden on interested parties challenging the presumptive invoice date to remove any doubt about when material terms are firmly and finally set, so that a reasonable mind has one, and only one, date of sale choice."[66] The U.S. Court of International Trade (CIT) has held that the material terms of sale normally include the price, quantity, delivery terms, and payment terms.[67] Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[68]

Borusan initially reported the date of the "final contract date" as the date of sale.[69] Borusan later stated that its contracts are actually identified as "purchase orders," which can be revised over time and reissued as new purchase orders.[70] However, when asked to "{e}xplain at what point a purchase order becomes a final purchase order," Borusan was unable to provide a definitive time when this occurs.[71] Specifically, at verification, we noted the following:

> We discussed with company officials how Borusan knows when it has received the final modification to a purchase order. Company officials claimed that there is a timeline set out in the terms and conditions after which there will be penalties for changes and that its customers know that if they make modifications too close to the date of delivery, Borusan may not be able to ship the merchandise its customers need to complete their projects. Company officials noted that its customers must notify Borusan of any changes to the purchase order; however, Borusan does not have to formally agree to these changes. Depending on the project, there may be changes to the purchase order after Borusan has issued invoices related to it (*see, e.g.*, the . . . purchase order which had . . . revisions).[72]

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[66] *See Toscelik Profil ve Sac Endustrisi A.S. v. United States*, 256 F. Supp. 3d 1260, 1263 (CIT 2017) (*Toscelik Profil*) (citing *Allied Tube & Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 220 (CIT 2000)); *see also ArcelorMittal USA LLC v. United States*, 302 F. Supp. 3d. 1366 (CIT 2018).
[67] *See USEC Inc. v. United States*, 498 F. Supp. 2d 1337, 1343 (CIT 2007).
[68] *See Preliminary Determination* PDM, at 7.
[69] *See* Borusan's April 3, 2018 AQR, at A-19.
[70] *See* Borusan's May 7, 2018 Supplemental A and C Questionnaire Response (SACQR), at 8 n.2 (stating that although Borusan initially referred to each document as a "contract (purchase order)," "purchase order" is a "more accurate and consistent title.").
[71] *See* Borusan's June 18, 2018 Supplemental ABC Questionnaire Response (Borusan's June 18, 2018 SABCQR), at 25-30.
[72] *See* Borusan Sales Verification Report, at 6. The details regarding these changes are business proprietary information (BPI) which cannot be discussed here; therefore, our analysis is provided in a separate BPI memorandum. *See* Memorandum, "Proprietary Information for the Final Determination of the Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey," dated concurrently with this memorandum (Borusan's BPI Analysis Memorandum).

Based on these facts, we find that not only are Borusan's purchase orders subject to change, but their terms did, in fact, change during the POI.

We disagree with Borusan that the final revised purchase order date represents a better date of sale than the earlier of the shipment or invoice date. In analyzing the changes that occurred between the original purchase order date and the shipment/invoice date, we find that the revisions to the purchase orders involved the prices, quantities, and delivery terms, all of which constitute changes to the material terms of the sale.[73] Because Borusan was unable to point to a time at which no more changes to the purchase order were allowed and it became final, we are unable to find that the material terms of the purchase order were fixed and established pursuant to 19 CFR 351.401(i) until Borusan either shipped the product or issued an invoice with the final terms to the customer.

We disagree with Borusan that the cases it cites support the use of Borusan's final amended purchase order date as the date of sale. In *Habas*, there were no revisions to the contracts at issue (other than a billing adjustment that was, in fact, provided for in the contract terms).[74] Here, the material terms of Borusan's purchase orders have been revised multiple times over their existence.[75] Borusan also relies heavily on *Nucor Corp.* to support its argument that the mere possibility that a purchase order can be changed is insufficient to demonstrate that the material terms are not fixed; however, subsequent courts have noted that the full history of that case leaves *Nucor Corp.* with "no persuasive weight."[76] In *Sulfanilic Acid from Portugal*, one long-term contract at issue was not altered at any point after the seller and buyer entered into it, while the other contract was amended twice.[77] Commerce determined that "the evidence in this case supports the terms of sale . . . were set on some date other than the invoice date."[78] The evidence in this case, however, does not support Borusan's claim that the terms of sale were set on a date other than the earlier of the invoice or shipment date. It is well established that Commerce must base its decisions on the individual record of the investigation before it.[79] As the CIT has held, "Commerce is not bound by decisions made in different segments of {the same} proceeding, let alone decisions made in different proceedings."[80] The record here shows

[73] *Id.*
[74] *See Habas*, 625 F. Supp. 2d at 1373.
[75] *See* Borusan's BPI Analysis Memorandum for more details about these changes.
[76] *See Toscelik Profil*, 256 F. Supp. 3d at 1264 n.1; *see also Yieh Phui Enter. Co. v. United States*, 791 F. Supp. 2d 1319, 1324-25 (CIT 2011).
[77] *See Sulfanilic Acid from Portugal*, and accompanying IDM at Comment 1.
[78] *Id.*
[79] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 78 FR 36524 (June 18, 2013), and accompanying IDM at Comment 4 (citing *Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying IDM at Comment 4 ("each administrative review of the order represents a separate administrative proceeding and stands on its own."); and *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005) (*Shandong Huarong*) ("As Commerce points out 'each administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews.'")).
[80] *See Hyundai Steel Company v. United States*, 279 F. Supp. 3d 1349, 1371 (CIT 2017) (*Hyundai Steel*) (citing *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327, 1343 (CIT 2010)); *see also Allegheny Ludlum Corp. v.*

that both of Borusan's purchase orders were subject to change, and they did change during the POI.[81]

Borusan also cites language in the *Preamble* to support its contention that invoice date is not the appropriate date of sale and that the contract (or purchase order, in this case) date is the presumptive date of sale for sales made pursuant to long-term contracts for large, custom-made merchandise.[82] However, the *Preamble* also provides that "in these situations, the terms of sale must be firmly established" and "a preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly 'established' in the minds of the buyer and seller . . . even if, for a particular sale, the terms were not renegotiated."[83] In this case, Borusan's purchase orders were revised multiple times, indicating that the terms were not truly established at the time the initial purchase order was issued.[84] We also note that although Borusan states that this merchandise is "large custom-made pipe for oil and gas pipelines,"[85] its sales to the United States were produced to a widely-used specification maintained by a third-party (*i.e.*, API 5L), and Borusan also sold pipe made to this specification in its home market.[86] Such merchandise cannot be classified as the "custom-made merchandise" contemplated by the *Preamble*.[87]

Furthermore, the existence of a "meeting of the minds" and formation of an enforceable purchase order between the parties is not sufficient to demonstrate that the material terms of sale are fixed. As stated in the *Preamble*, "the existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes" and often "terms remain negotiable until the sale is invoiced."[88] Borusan admits that its purchase orders can be and were, in fact, changed multiple times.[89] Because the purchase orders are subject to change until Borusan ships the merchandise, we find that the material terms of the sale are not fixed when Borusan issues a revised purchase order.

Additionally, the lack of clarity regarding when Borusan's purchase orders are finalized refutes Borusan's claim that the final purchase order date is the appropriate date of sale because each purchase order has multiple potential dates of sale.[90] To successfully rebut Commerce's presumptive selection of the earlier of invoice or shipment date as the date of sale, Borusan must

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United States, 346 F.3d 1368, 1373 (CAFC 2003).

[81] *See* Borusan's BPI Analysis Memorandum.

[82] *See* Borusan's Case Brief at 2, 6-7 (citing *Preamble*, 62 FR at 27349).

[83] *See Preamble*, 62 FR at 27349.

[84] *See* Borusan Sales Verification Report, at 6; Borusan's BPI Analysis Memorandum.

[85] *See* Borusan's Case Brief at 7.

[86] *See* Borusan's April 2, 2018, AQR, at A-30 and Exhibit A-18;

[87] *See Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 63902 (October 14, 2011), and accompanying IDM at Comment 1.

[88] *Id.*, 62 FR at 27348-49; *see also United States v. Eurodif S.A.*, 129 S. Ct. 878, 887-90 (2009) (finding that Commerce is not restricted by contract law in its implementation and enforcement of the Act).

[89] *See* Borusan's Case Brief at 12-16.

[90] *See Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 308 F. Supp. 3d 1297, 1313 (CIT 2018); and *Toscelik Profil*, 256 F. Supp. 3d at 1264.

demonstrate "that a reasonable mind has one, and only one, date of sale choice."[91] Because Borusan's purchase orders are subject to multiple revisions, with no indication of when they will no longer be changed, the same sale made pursuant to the same purchase order may have a different date of sale depending on when the sale is examined and when the purchase order was last revised.[92] As a result, we continue to base the date of sale for Borusan's U.S. sales on the earlier of shipment or invoice date in our calculations for the final determination.

Comment 3: Borusan's Late Delivery Penalty

Borusan's Case Brief

- In the *Preliminary Determination,* Commerce made an adjustment for a penalty fee that Borusan paid to a home market customer (DIRSELH_USD), but it failed to deduct the full amount. Instead, Commerce reallocated the total penalty amount in a manner that only reflected the contract with the customer, not the provisions of the consortium agreement between Borusan and the two other producers.[93]
- Both the contract and the consortium agreement predate the investigation and set out the terms and conditions of Borusan's obligation to pay the penalty based on: 1) the joint and several liability among the consortium members to the customer; and 2) the responsibility for the consortium members to reimburse each another for penalty fees in accordance with the customer's calculations according to each member's degree of fault.[94]
- The late deliveries that incurred the penalty, the amount of the penalty sought by the customer, and extensive negotiations as to the amount owed all commenced prior to the filing of the petition; the final agreements with the customer and among the consortium members, as well as Borusan's payment, occurred in 2018 (after the filing of the petition).[95]
- When the amount of the penalty was finally determined, Borusan and the other parties paid it in accordance with the rules in the contract and the consortium agreement. At verification, Borusan tied the penalty amounts it paid to the amounts reported in the home market sales database. Thus, the proper late delivery penalty deduction in the final determination should be the full amount Borusan paid.[96]
- One of the factors Commerce considers in determining whether a party is entitled to a post-sale price adjustment is whether the terms and conditions were established or known to the customer at the time of sale and whether this can be demonstrated through documentation.[97]
- *TRBs from Korea*, which Commerce cited in the *Preliminary Determination*, is inapposite because in that case there was no evidence on the record that: 1) the parties

[91] *See ArcelorMittal USA LLC v. United States*, 302 F. Supp. 3d 1366, 1370 (CIT 2018) (quoting *Toscelik Profil*, 256 F. Supp. 3d at 1263); and *Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 220 (CIT 2000).
[92] *See* Borusan's BPI Analysis Memorandum.
[93] *See* Borusan's Case Brief at 16 (citing the *Preliminary Determination*, and accompanying PDM at 20).
[94] *See* Borusan's Case Brief at 17-20.
[95] *Id.* at 17, 20-23.
[96] *Id.* at 17-18.
[97] *Id.* at 18 (citing *Modifications of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641, 15644-45 (March 24, 2016) (*Final Modification*)).

were aware of a future price adjustment that would be made to prior sales; or 2) this kind of adjustment was common in the industry. Here, however, the terms and conditions were known to the parties prior to the sale, and the record shows that penalties for late delivery are common in the welded pipe industry, demonstrating that the penalty is a legitimate post-sale price adjustment.[98]

Petitioners' Rebuttal Brief

- Commerce should not grant Borusan's claimed late penalty fee because Borusan prevented Commerce from fully examining this adjustment and did not act to the best of its ability to cooperate by obscuring basic facts.[99] Borusan gave limited explanation of this penalty fee in its first questionnaire response, made unprompted revisions to the amount of the fee, and later revealed that it reported the fee before it was finalized. Borusan then provided a draft settlement letter from the customer and final acceptance and payment information, all of which are dated in 2018.[100]
- A post-sale price adjustment should not be granted after a petition has been filed because such an adjustment may be tainted by the ongoing antidumping duty investigation, could create an artificially low home market price, and may result in an unfair normal value comparison for U.S. sales.[101]
- Borusan has failed to establish a connection between the sales reported in the home market sales database and the penalty. Borusan has not documented that it was under any obligation to pay this claim in the first place.[102]
- A post-POI, third-party agreement cannot determine a direct selling expense for sales to a customer; at most these penalty fees should be considered indirect selling expenses.[103]
- Commerce should apply total adverse facts available (AFA) because Borusan: 1) failed to accurately and timely disclose its joint venture with the other consortium members in its Section A response; and 2) provided multiple incorrect statements and inaccurate answers regarding the penalty. At the very least, Commerce should apply partial AFA either by not allowing this price adjustment or by treating the penalty as an indirect selling expense.[104]
- In the *Preliminary Determination*, Commerce reasonably limited the penalty to Borusan's legal obligation to its customer; however, Commerce should also account for the fact that some of the penalty applied to pipe that was invoiced before the POI.[105]

Commerce's Position:

Section 351.401(c) of Commerce's regulations direct us to "use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product…." Under 19 CFR 351.102(b), the term "price

[98] *See* Borusan's Case Brief at 23-26 (citing *TRBs from Korea*, and accompanying IDM at Comment 5).
[99] *See* Petitioners' Rebuttal Brief at 17.
[100] *Id.* at 19.
[101] *Id.* at 20.
[102] *Id.* at 20-23.
[103] *Id.* at 22.
[104] *Id.* at 18, 23-25.
[105] *Id.* at 25-27.

adjustment" includes, "under certain circumstances, a change that is made after the time of sale... that is reflected in the purchaser's net outlay."

The *Final Modification* and accompanying regulatory changes clarified Commerce's practice concerning post-sale price adjustments. Specifically, section 351.401(c) of Commerce's regulations now provide that Commerce "will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment." In the *Final Modification,* we state that, in determining whether a party has demonstrated its entitlement to a post-sales adjustment, Commerce may consider a number of factors including:

> (1) Whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.[106]

The *Final Modification* notes that the intent of the modification was "to clarify that {Commerce} generally will not consider a price adjustment that reduces or eliminates dumping margins unless the party claiming such price adjustment demonstrates that the terms and conditions of the adjustment were established and known to the customer at the time of sale."[107] Moreover, "{Commerce} has a longstanding practice of denying certain post-sale price adjustments where there exists a potential for manipulation of the dumping margins."[108]

Commerce outlined its current practice regarding post-sale price adjustments in *TRBs from Korea*.[109] Pursuant to this practice, Commerce may consider various factors to determine if a party has demonstrated its eligibility for a post-sale price adjustment, and if such a showing is not made, we will not allow the adjustment.[110] We agree that Borusan incurred a late penalty fee for sales to the customer at issue and this penalty was part of its contract with the customer. However, we continue to find that the variable amount of the adjustment and the timing of when the parties finalized the adjustment do not support Borusan's entitlement to the price adjustment as allocated in its fourth home market sales database. Accordingly, for the final determination, we continue to reallocate Borusan's late penalty fee to reflect the allocation stated in an agreement with the customer that predates the investigation.

As Borusan acknowledges, one factor we consider for post-sale price adjustments is whether the terms and conditions were established or known to the customer at the time of sale and whether this can be demonstrated through documentation.[111] We disagree with Borusan's contention that

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[106] *See Final Modification*, 81 FR at 15644-45.
[107] *Id.*, 81 FR at 15642; *see also Preamble*, 62 FR at 27344.
[108] *See Final Modification*, 81 FR at 15643.
[109] *See TRBs from Korea*, and accompanying IDM at Comment 5.
[110] *See* 19 CFR 351.401(c); and *Final Modification*, 81 FR at 15642-45.
[111] *Id.*, 81 FR at 15644-45.

the method the parties would use to divide the late penalty among themselves was established or known to the customer at the time of sale because the parties negotiated their shares of the fee after the fee was imposed. In particular, throughout this proceeding, Borusan changed the amount of this adjustment, at times significantly, in its home market sales database, with little or no explanation until it filed its June 15, 2018 SABCQR.[112] Borusan provided no exhibits, supporting documentation, or calculation worksheets for this expense prior to this submission, only vague statements that the expense was for a late delivery penalty that Borusan had initially reported incorrectly.[113] The changing terms of the late penalty fee after the initiation of the investigation casts significant doubt on the legitimacy of the allocation of this expense among the consortium members.[114]

Borusan also does not discuss other factors that Commerce may consider in deciding whether a respondent is entitled to a post-sale price adjustment. For example, a key factor in this investigation is the timing of the allocation of the penalty among the consortium members.[115] As noted above, the final amount and allocation of the penalty was not determined until after the initiation of the investigation.[116] Although Borusan states that most of the documents related to the calculation of the penalty predate the filing of the petition, it admits that the final agreement regarding the total penalty and the allocation of that penalty among the consortium producers did not happen until June 2018, well after the initiation of this investigation.[117]

At verification, company officials stated that they received letters from the customer regarding the amount of the late penalty owned by the consortium producers in 2017; after the consortium responded to these letters, they did not get an official response from the customer until 2018.[118] Subsequently, company officials stated that the customer and the consortium negotiated and agreed on the final amount of the penalty in June 2018.[119] According to company officials, only after the final amount of the penalty was determined did the consortium members apportion among themselves the penalties for which each consortium member was responsible.[120] While company officials claimed that the amount each member of the consortium owed the others was based on the same documentation used by the customer to calculate the total penalty,[121] this does not change the fact that they decided these amounts among themselves well after the filing of the petition in this investigation, *i.e.*, January 17, 2018. Indeed, Borusan did not file the final settlement agreement until July 6, 2018, which was little over a month before the *Preliminary*

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[112] Some of our discussion related to Borusan's late delivery penalty is BPI. For further discussion, *see* Borusan's BPI Analysis Memorandum.
[113] *See* Borusan's April 23, 2018 Sections BCD Questionnaire Response (Borusan's April 23, 2018 BCDQR), at B-48; Borusan's May 7, 2018 SACQR, at 8; and Borusan's June 15, 2018 SABCQR, at 17-20 and Exhibits B-28 and B-29.
[114] *See* Borusan's BPI Analysis Memorandum.
[115] *See Final Modification*, 81 FR at 15644-45.
[116] *See* Borusan's Letter, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833: Submission of Field Number 38.0 (Direct Selling Expenses) Documentation from BMB's Second Supplemental Sections A-C Questionnaire," dated July 6, 2018 (Borusan's Late Delivery Penalty Letter), at 2-3.
[117] *Id.* at 2-3 and Exhibit B-32.
[118] *See* Borusan Sales Verification Report, at 9 and Verification Exhibit 14.
[119] *Id.*
[120] *Id.*
[121] *Id.*

Determination.[122] The timing of when the parties agreed to the final allocation of the penalty casts additional doubt on whether Borusan is entitled to this post-sale price adjustment as allocated in its home market sales database.

Borusan also claims that its late delivery penalty is a legitimate post-sale price adjustment because such adjustments are common in the welded pipe industry.[123] However, in adopting the *Final Modification*, Commerce explicitly declined to accept post-sale price adjustments merely because a company can demonstrate that the adjustment is part of its standard business practices that existed prior to initiation of the proceeding.[124] Instead, the *Final Modification* directs us to examine such adjustments on a case-by-case basis considering the evidence and argument on the record.[125] After examining how and when Borusan and the other parties involved determined the amount and allocation of this expense, we find that while the penalty itself is legitimate and was paid in full to the customer, the allocation of it among the consortium members is not. Consequently, we continue to find that, while Borusan has demonstrated its eligibility for some sort of price adjustment related to this late delivery penalty, it has failed to demonstrate that it is eligible for the amount of penalty reported in its most recent home market sales database. Accordingly, for purposes of the final determination, we continued to base the adjustment on the allocation among the consortium members as stated in the agreement that was disclosed to the customer prior to the investigation.[126]

Finally, we disagree with the petitioners regarding their proposed alternative methods of treating these late delivery penalty fees in our calculations for the final determination. As an initial matter, we disagree that the application of total or partial AFA is appropriate for these fees because: 1) Borusan responded to our requests for information regarding these fees and placed such information on the record;[127] and 2) this information was subsequently verified by Commerce.[128] In other words, the information on the record not only demonstrates the total amount of these fees, but also shows that these fees were paid. Even so, we find that the record does not demonstrate that Borusan is entitled to the total portion of the penalty which it claimed.

We also do not find it appropriate to treat these expenses as indirect selling expenses. Section 351.410(c) of Commerce's regulations provides that "'{d}irect selling expenses' are expenses… that result from, and bear a direct relationship to, the particular sale in question." The late delivery penalty fees have a direct relationship to Borusan's particular sales to this customer.[129] Furthermore, we disagree that we should make an adjustment for pipe invoiced before the POI. The petitioners claim that the calculations from the consortium conflict with the penalty clause in the contract with the customer; however, the amount owed the customer was subject to

[122] *See* Borusan's Late Delivery Penalty Letter.
[123] *See* Borusan's Case Brief at 23-26
[124] *See Final Modification*, 81 FR at 15645.
[125] *Id.*, 81 FR at 15645.
[126] *See* Borusan Preliminary Sales Calculation Memorandum.
[127] *See* Borusan's April 24, 2018 BCDQR, at B-48; Borusan's June 15, 2018 SABCQR, at 2-4 and Exhibits A-41 and B-15; Borusan's Late Delivery Penalty Letter; and Borusan's August 6, 2018 Second Supplemental ABC Questionnaire Response (Borusan's August 6, 2018 SSABCQR), at 1-2.
[128] *See* Borusan's Verification Report, at 9 and Verification Exhibit 14.
[129] *See* Borusan's Late Delivery Penalty Letter.

negotiation.[130] Moreover, we verified the total amount of penalties associated with sales to the customer during the POI and noted no discrepancies.[131] As discussed above, our concern regarding these fees is the potential for manipulation of the dumping margin because the terms of the amount and allocation were not fixed at the time of sale and the consortium did not determine the final apportionment until after the initiation of the investigation. As a result, we find that limiting Borusan's share of the late delivery penalty fee to Borusan's portion, as set forth in the contract with the customer (which predates the filing of the petition), is a reasonable way to address these concerns.

Comment 4: Borusan's Affiliated Freight Expenses

Borusan's Case Brief

- Commerce has consistently found that Borusan's transactions with its logistics provider, Borusan Lojistik, were at arm's length because the price Borusan Lojistik charged to Borusan was higher than the price it charged to an unaffiliated company. Commerce should follow its past determinations and find these transactions are at arm's length here as well.[132]
- To determine whether transactions are made on an arm's-length basis, Commerce's practice is to compare the affiliated party transactions to transactions of unaffiliated

[130] *Id.*

[131] *See* Borusan's Verification Report, at 9 and Verification Exhibit 14.

[132] *See* Borusan's Case Brief at 34-35 (citing *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Pipe and Tube from Turkey 2017*); *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 92785 (December 20, 2016); *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674 (December 10, 2015); *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); *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014); *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013); *Circular Welded Carbon Steel Pipes and Tubes from Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012); *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011); *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Antidumping Duty Administrative Review*, 75 FR 64250 (October 19, 2010); *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 74 FR 22883 (May 15, 2009); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 70 FR 73447 (December 12, 2005); *Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 69 FR 48843 (August 11, 2004); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Turkey*, 67 FR 62126 (October 3, 2002); *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 65 FR 37116 (June 13, 2000); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 63 FR 35190 (June 29, 1998); and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 61 FR 69067 (December 31, 1996)).

parties or the actual costs incurred by the affiliated party in the absence of unaffiliated party transactions.[133] Commerce departed from this practice by applying the "98 to 102 percent" test typically used to test the arm's length nature of sales of subject merchandise to affiliates in the ordinary course of trade.[134]

- Borusan demonstrated that Borusan Lojistik's prices were at arm's length by: 1) comparing Borusan Lojistik's prices to prices charged to Borusan by unaffiliated parties for the same service; 2) comparing the price Borusan paid to Borusan Lojistik to the price an unaffiliated party paid to Borusan Lojistik for the same service; or 3) demonstrating that the costs incurred by Borusan Lojistik show that it earned a profit on its sales of services to Borusan.[135] Specifically:
    - For domestic handling expenses (DBROK3U_USD), Borusan submitted invoices demonstrating that the per-unit amount it paid to Borusan Lojistik was higher than that paid by an unaffiliated party; Commerce failed to use the correct amount paid by Borusan to the unaffiliated party in its analysis;[136]
    - For loading and lashing expenses (DBROK1U_USD), Commerce does not mention what it did for this expense in the *Preliminary Determination*. However, Borusan submitted several invoices demonstrating that the price Borusan paid to Borusan Lojistik was either the same or higher than the price paid by an unaffiliated party;[137]
    - For other international freight charges (DOTHFRU) and domestic brokerage expenses (DBROK2U), Borusan submitted invoices demonstrating that this service was only provided by unaffiliated parties, not Borusan Lojistik;[138] and
    - For home market inland freight expenses (INLFTCH), Borusan submitted invoices for eight destination points. For five of these destinations, Borusan submitted invoices from both an unaffiliated provider and Borusan Lojistik; for one destination, only an unaffiliated party provided the service; and for two destinations, only Borusan Lojistik supplied the service. Commerce only applied its "98 to 102" percent test to two destinations and incorrectly applied the per-unit charges for one of them. If Commerce compares invoices from the unaffiliated

[133] *See* Borusan's Case Brief at 35 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50892 (October 10, 2018), and accompanying PDM at 9; *TRBs from Korea*, and accompanying IDM at Comment 15; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) (*OJ from Brazil 2009*), and accompanying IDM at Comment 10; *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 65082 (November 7, 2006) (*Rebar from Turkey*), and accompanying IDM at Comment 8; *Final Determination of Sales at Not Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Taiwan*, 70 FR 13454 (March 21, 2005) (*PET from Taiwan*), and accompanying IDM at Comment 4; and *Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative Review*, 69 FR 2952 (January 20, 1998) (*CTL Plate from Finland*), and accompanying IDM at Comment 5).

[134] *See* Borusan's Case Brief at 34 (citing *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

[135] *See* Borusan's Case Brief at 36.

[136] *Id.* at 37.

[137] *Id.*

[138] *Id.* at 37-38.

freight provider to those from Borusan Lojistik, it will see that the prices from Borusan are almost always higher, demonstrating that they are at arm's length.[139]

- For services that only Borusan Lojistik provided to Borusan (*i.e.*, international freight expenses (INTNFRU), U.S. warehousing expenses (USWAREHU), inland freight expenses in the United States (INLFWCU), and other U.S. expenses (USOTHTRU and USOTHTR1U)), Borusan demonstrated that Borusan Lojistik earned a profit providing these services to Borusan; thus, these services were provided at arm's length.[140]
- In the *Preliminary Determination*, Commerce only considered these services to be at arm's length if the profit margin was between 98 to 102 percent of Borusan Lojistik's overall 2017 profit margin, which does not reflect commercial reality. Companies do not set their per-unit prices to earn the same profit margin on every sale of services.[141]
- In any event, Commerce erroneously calculated Borusan Lojistik's profit margin by dividing its net income by its net sales. However, these net amounts apply to all of Borusan Lojistik's business segments, not just those related to welded pipe services.[142]

The Petitioners' Rebuttal Brief

- The petitioners agree that Commerce should not adjust DBROK3U_USD because Borusan Lojistik charged Borusan more than it charged unaffiliated parties; accordingly, no benefit was passed to Borusan.[143]

Commerce's Position:

In determining whether to use transactions between affiliated parties, our practice is to compare the transfer price either to prices charged to other unaffiliated parties who contract for the same service or prices for the same service paid by the respondent to unaffiliated parties.[144] For our final determination, we continue to find that Borusan failed to demonstrate that its freight services from Borusan Lojistik were provided at arm's length.

Borusan argues that its transactions with Borusan Lojistik reported in DBROK3U_USD and INLFTCH are at arm's length because the prices between Borusan and Borusan Lojistik are higher than those with unaffiliated parties. However, the mere fact that prices between affiliated parties are higher than those involving an unaffiliated party does not mean that the transactions are at arm's length.[145] In this case, the prices at issue differ significantly from the prices charged to an unaffiliated company (*i.e.*, they are not within 98 to 102 percent of the price charged for or by an unaffiliated party), which leads us to conclude that these prices are affected by the

[139] *See* Borusan's Case Brief at 38.
[140] *Id.*
[141] *Id.* at 38-39.
[142] *Id.* at 39.
[143] *See* Petitioners' Rebuttal Brief at 29.
[144] *See, e.g.*, *TRBs from Korea*, and accompanying IDM at Comment 15.
[145] *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil 2010*), and accompanying IDM at Comment 11.

relationship between Borusan and Borusan Lojistik.[146] Accordingly, we continue to adjust Borusan's freight expenses that involve its affiliated freight provider, Borusan Lojistik, to state them on an arm's-length basis.[147]

Regarding our adjustment for INLFTCH, we revised our arm's-length adjustment from that in the *Preliminary Determination*.[148] During the POI, Borusan used a variety of affiliated and unaffiliated freight providers to ship to various destinations in its home market, but there was one destination to which Borusan only used an unaffiliated transportation company.[149] We find that this unaffiliated inland freight expense represents the best evidence of the expense that Borusan incurs when it transacts on an arm's-length basis.[150] Moreover, because this price differs markedly from the prices that the affiliate charged Borusan for the same service, we cannot rely on the affiliated party prices in this instance.[151] Thus, for the final determination, we assigned this unaffiliated home market inland freight rate to all sales for which Borusan incurred this expense to restate the expense on an arm's-length basis.[152]

Regarding Borusan's other arguments about specific expenses, we agree that the amounts reported in field DOTHFRU and DBROK2U were unaffiliated party transactions, [153] and we did not adjust this expense for the final determination. Regarding Borusan's arguments concerning field DBROK1U_USD, we assume Borusan is referring to field DBROK1U_TL because Borusan did not report field DBROK1U_USD in its most recent U.S. sales database. In any event, we did not make any arm's-length adjustments to the amounts reported in field DBROK1U_TL for the *Preliminary Determination*. We note that these services were only provided to Borusan by Borusan Lojistik during the POI.[154] However, Borusan provided invoices demonstrating that the prices Borusan Lojistik charged to Borusan did not differ significantly from the prices Borusan Lojistik charged to its unaffiliated customer during the same period.[155] Accordingly, for our final determination, we find that these transactions between Borusan Lojistik and Borusan were at arm's length, and we accept these expenses as reported by Borusan without any adjustment.

For services that only Borusan Lojistik provided to Borusan (*i.e.*, INTNFRU, USWAREHU, INLFWCU, USOTHTRU, and USOTHTR1U), we revised the arm's-length adjustment made in the *Preliminary Determination*. When an affiliate does not provide the same services to an

[146] The exact differences are business proprietary information. For further discussion, *see* Borusan Final Sales Calculation Memorandum.
[147] Nevertheless, we agree with Borusan that we used the wrong amount paid to the unaffiliated party to calculate our adjustment for DBROK3U_TL and we have revised our calculation for the final determination. *See* Borusan's June 15, 2018 SABCQR, at Exhibit C-34; *see also* Borusan Final Sales Calculation Memorandum.
[148] *See* Borusan Final Sales Calculation Memorandum.
[149] *See* Borusan's June 15, 2018 SABCQR, at Exhibit B-23; and Borusan Sales Verification Report at Verification Exhibit 20.
[150] *See OJ from Brazil 2009*, and accompanying IDM at Comment 10.
[151] *See* Borusan Final Sales Calculation Memorandum for further discussion.
[152] *See OJ from Brazil 2010*, and accompanying IDM at Comment 11.
[153] *See* Borusan's April 23, 2018 BCDQR, at Exhibits C-8 and C-9; *see also* Borusan's Sales Verification Report, at Verification Exhibits 7-11 and 17.
[154] *See* Borusan's June 15, 2018 SABCQR, at 34.
[155] *Id.* at Exhibit C-31.

unaffiliated party, and the respondent does not use an unaffiliated company for the same services, we are unable to test the arm's-length nature of the expenses paid to the affiliate by the respondent.[156] In such cases, pursuant to our practice, we base these expenses on the affiliate's costs, which we calculate by deducting the affiliate's profit rate from the reported movement expenses, which we discuss further in Comment 5, below.[157]

Finally, we also disagree with Borusan's assertion that its transactions with Borusan Lojistik are at arm's length because Commerce has used these transactions as reported in other segments of other proceedings. Commerce has a longstanding practice, as upheld by the courts, that each segment of a proceeding is independent, with separate records and independent determinations.[158] As the CIT has held, "Commerce is not bound by decisions made in different segments of {the same} proceeding, let alone decisions made in different proceedings."[159] Although Commerce may have found Borusan's transactions with Borusan Lojistik to be at arm's length in other proceedings, involving different products, records, and timeframes, these determinations are not binding on our determination in this proceeding.[160] Pursuant to our well-established practice, we have analyzed the record before us and made our final determination based on the facts before us in this investigation.

Comment 5: Borusan's Affiliated Freight Expense Adjustments

The Petitioners' Brief

- In the *Preliminary Determination,* Commerce lowered the cost Borusan paid to Borusan Lojistik for many freight services; however, Commerce should use the highest of transfer price, actual cost, or market price for Borusan's affiliated party expenses.[161]
- Although it would be proper to lower the affiliated party expenses for home market sales, Commerce has never found that a respondent paid its affiliate too much for the services related to U.S. sales or costs because the purpose of the arm's-length adjustment is to determine whether the respondent is unfairly using its affiliate to lower its dumping

[156] *See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 11.
[157] *Id.*
[158] "Commerce's longstanding practice, upheld by this court, is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records and which lead to independent determinations." *See Clearon Corp. v. United States,* No. 13-73, Slip. Op. 2014-88 *52 (CIT 2014) (quoting *Gourmet Equip. Taiwan Corp. v. United States*, 24 CIT 572, 577-78 (2000)); *see also Shandong Huarong*, 29 CIT at 491 ("As Commerce points out 'each administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews."').
[159] *See Hyundai Steel*, 279 F. Supp. 3d at 1371; *see also Allegheny Ludlum*, 346 F.3d at 1373 (CAFC 2003).
[160] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying IDM at Comment 1 ("{E}ach segment of a proceeding is independent, with separate records and independent determinations. This principle applies even more so to completely separate proceedings, involving different products and . . . different programs.") (internal citations omitted).
[161] *See* Petitioners' Case Brief at 25.

margin. There is no statutory or regulatory basis to adjust these transactions in ways that would result in lowering the costs that Borusan paid its affiliate.[162]

- For the final determination, Commerce should only adjust Borusan's U.S. freight expenses if the markup that Borusan Lojistik charged Borusan for these expenses is less than sum of Borusan Lojistik's profit, selling, general, and administrative (SG&A) expenses, and interest expenses because Borusan Lojistik incurred SG&A and interest expenses to provide freight services for Borusan.[163]
- For other international freight charges (OTHINTFRU_USD), Borusan failed to act to the best of its ability by not providing the amount of the markup in its U.S. sales database; thus, Commerce should assign the highest reported amount in this field to all U.S. sales.[164]

Borusan's Rebuttal Brief

- The petitioners' suggested approach of using Borusan Lojistik's company-wide SG&A, interest, and profit ratios to test whether these expenses are at arm's length conflicts with 19 CFR 351.402(e).[165]
- Borusan reported the actual cost to Borusan Lojistik in its sales databases and Commerce verified this information; thus, pursuant to 19 CFR 351.402(e), Commerce must use these costs as reported.[166]
- Commerce has no legal basis to depart from its rule that the adjustment must be the actual cost of the affiliated supplier when that cost has been provided to and verified by Commerce.[167]
- Although Borusan thought it was unnecessary to add another field to its U.S. sales database to report the markup for other international freight expenses, Borusan provided information on the record for Commerce to calculate this markup if it desired. Thus, there is no reason to assign the highest reported amount in this field to all U.S. sales, as the petitioner suggests.[168]

Commerce's Position:

As noted in Comment 4, above, we continue to find that Borusan failed to demonstrate that its freight services from Borusan Lojistik were provided at arm's length. As a result, for the final determination we continue to adjust Borusan's reported affiliated freight expenses by deducting Borusan Lojistik's profit rate from them in instances where we were unable to test whether these expenses were made at arm's length.[169]

[162] *See* Petitioners' Case Brief at 25.
[163] *Id.* at 23-26; and Petitioners' Rebuttal Brief at 27-28.
[164] *See* Petitioners' Case Brief at 26-27; and Petitioner's Rebuttal Brief at 29-30.
[165] *See* Borusan's Rebuttal Brief at 17 (citing 19 CFR 351.402(e)).
[166] *Id.* at 17-18 (citing section 773(f)(2) and 19 CFR 351.402(e)).
[167] *Id.* at 18.
[168] *Id.* at 19.
[169] *See* Borusan's Final Sales Calculation Memorandum.

We disagree with the petitioners that Commerce can only lower expenses in the home market and raise them in the United States when making arm's-length adjustments. The petitioners point to the major input rule defined in section 773(f)(3) of the Act to support their position. However, as Commerce previously explained, this test relates to the production of subject merchandise and does not apply to movement charges.[170] Instead, where costs for movement expenses are based on affiliated party transactions, it is Commerce's practice to evaluate them pursuant to section 773(f)(2) of the Act, which provides the following:

> A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.[171]

The plain language of the Act provides no basis for Commerce to consider the market of the adjustment when determining whether to make an upwards or downward adjustment to a respondent's reported expenses. Contrary to the petitioners' contention, the purpose of the arm's-length test for movement expenses is to determine whether the prices charged by Borusan Lojistik are affected by affiliation. In this case, it is clear that the prices Borusan Lojistik charges unaffiliated parties differ significantly from the prices it charges Borusan in both the home market and in the United States and, thus, it is reasonable to conclude that these prices are affected by affiliation.

We also disagree with the petitioners that we should include Borusan Lojistik's SG&A and interest expenses in our analysis of whether Borusan Lojistik's markup was sufficient to show that certain transactions were at arm's length. Our longstanding practice estimates the costs to the affiliate by subtracting the affiliate's profit margin from the reported expense,[172] and we have continued to follow this methodology in the final determination. The petitioners cited no case precedent to support their proposed methodology or discussed why this case requires a departure from our normal practice.

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[170] *See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 69 FR 64731 (November 8, 2004), and accompanying IDM at Comment 3, *corrected by Certain Steel Concrete Reinforcing Bars from Turkey; Corrected Final Results of Antidumping Duty Administrative Review*, 69 FR 68883 (November 26, 2004).

[171] *See, e.g.*, *OJ from Brazil 2009*, and accompanying IDM at Comment 10; *Rebar from Turkey*, and accompanying IDM at Comment 8; *PET from Taiwan*, and accompanying IDM at Comment 4; and *CTL Plate from Finland*, and accompanying IDM at Comment 5.

[172] *See, e.g.*, *Washers from Korea*, and accompanying IDM at Comment 11; and *Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 73028 (December 9, 2014), and accompanying PDM at 17, *unchanged in Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015).

Further, we disagree with Borusan that, pursuant to 19 CFR 351.402(e), we must use its reported affiliated freight costs. The regulation cited by Borusan is specific to constructed export price transactions. Because all of Borusan's reported U.S. sales during the POI were export price transactions, this regulation does not apply here.[173]

Finally, regarding the markup for OTHINTFRU_USD, we note that Borusan provided the documentation necessary to calculate this figure.[174] However, because charges directly from Borusan Lojistik account for the vast majority of these expenses,[175] we find that the markup applies to too few of these charges to provide a meaningful arm's-length comparison, and thus, we are unable to test the arm's-length nature of the expenses paid to the affiliate by the respondent.[176] Accordingly, we continue to estimate Borusan Lojistik's costs by deducting its profit margin from these reported expenses.

Comment 6: Borusan's Domestic Warehousing Revenue

Petitioners' Case Brief

- Borusan overestimated the domestic warehousing revenue reported for one shipment of U.S. sales, and this amount does not match the billing documentation sent to the customer. Commerce should limit the warehousing revenue adjustment to the per-metric ton amount Borusan Lojistik charged Borusan for warehousing expenses.[177]

Borusan's Rebuttal Brief

- As Commerce verified, Borusan properly reported the amount of warehousing revenue it received from the customer, as instructed by Commerce's questionnaire.[178] Thus, no adjustment is necessary.

Commerce's Position:

In Commerce's AD questionnaire, we instruct respondents to report warehousing expenses as follows:

> Report the unit cost of warehousing expenses incurred in the country of manufacture on sales to the United States. The cost of warehousing reported in this field should include only expenses incurred at a distribution warehouse not located at the factory that produced the merchandise, less any reimbursement received from the customer.[179]

[173] *See* Borusan's April 3, 2018 AQR, at A-16.
[174] *See* Borusan's August 3, 2018 SSABCQR, at 13-14 and Exhibit C-46.
[175] *Id.*; *see also* Borusan Final Sales Calculation Memorandum.
[176] *See Washers from Korea*, and accompanying IDM at Comment 11; *see also* Comment 4: Borusan's Affiliated Freight Expenses, *supra*.
[177] *See* Petitioners' Case Brief at 22-23.
[178] *See* Borusan's Rebuttal Brief at 16-17 (citing Borusan Sales Verification Report at Exhibit 10).
[179] *See* Commerce Letter re: Antidumping Duty Questionnaire, dated March 7, 2018 (Commerce's AD Questionnaire), at C-18 to C-19 (emphasis added).

In its supplemental questionnaire response, Borusan stated that it incurred additional storage charges in Turkey, which it billed to its customer, when a vessel arranged by its customer was late to arrive.[180] Borusan provided Commerce with the invoice it sent to the customer for these storage charges,[181] and we verified that Borusan correctly reported the revenue it received from its customer.[182] Moreover, in our calculations for the *Preliminary Determination*, we capped Borusan's reported warehousing revenue by the corresponding warehousing expenses reported on these sales, in accordance with our practice.[183] Accordingly, we find no basis to revise Borusan's reported warehousing revenue in the manner proposed by the petitioners.

Comment 7: Borusan's Fees for Vehicle Purchases

Borusan's Case Brief

- In the *Preliminary Determination*, Commerce reclassified vehicle expenses as indirect selling expenses; however, for the final determination, these fees should be deducted as direct selling expenses because they were directly related to specific sales reported in Borusan's home market sales database.[184]
- Borusan's sales contract with this customer provided for the purchase of vehicles to transport personnel between stockyards for inspection and other work related to the pipeline project.[185]
- The cost of these vehicles was an essential element of the sales transaction, part of the total contract price for the sales, and invoiced to Borusan from the customer.[186]

Petitioners' Rebuttal Brief

- Commerce must evaluate the nature of these expenses, not whether they were included in the contract.[187]
- Borusan failed to explain why something that is generally classified as a G&A or indirect selling expense should be considered a direct selling expense simply because it is in the sales contract.[188]
- Treating this item as a direct selling expense would allow respondents to contract away almost all indirect selling expenses; therefore, Commerce should continue to reclassify these expenses as either G&A or indirect selling expenses in the final determination.[189]

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[180] *See* Borusan's June 15, 2018 SABCQR, at 31.
[181] *See* Borusan's April 2, 2018 AQR, at Exhibit A-9 and Borusan's June 15, 2018 SABCQR, at Exhibit C-26.
[182] *See* Borusan's Verification Report, at Exhibit 10.
[183] *See Preliminary Determination*, and accompanying PDM at 9; *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2018) (*CTL Plate from Germany*), and accompanying IDM at Comment 6; *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014), and accompanying IDM at Comment 4; *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 39; and *OJ from Brazil 2010*, and accompanying IDM at Comment 2.
[184] *See* Borusan's Case Brief at 32-34.
[185] *Id.*
[186] *Id.*
[187] *See* Petitioners' Rebuttal Brief at 27.
[188] *Id.*
[189] *Id.*

Commerce's Position:

For the final determination, we find that the fees for these vehicles should be deducted as direct selling expenses. Section 351.410(c) of Commerce's regulations provides that "'{d}irect selling expenses' are expenses … that result from, and bear a direct relationship to, the particular sale in question." Furthermore, Commerce has held that "in the calculation of normal value, it is {Commerce's} practice to treat specific selling expenses as indirect expenses unless an interested party establishes that the expense is direct in nature and can demonstrate that those expenses were directly related to sales of the subject merchandise and were variable in nature."[190] Borusan's sales contract with its customer required that Borusan purchase these vehicles;[191] thus, these expenses: 1) are directly related to certain of Borusan's sales of foreign like product; 2) would not have been incurred but for Borusan's sales to this customer; and 3) were variable, not fixed, expenses. Therefore, because we find that these are direct selling expenses, pursuant to 19 CFR 351.401(c), we are treating them as such in our calculations for the final determination.[192]

Comment 8: Errors in Borusan's Margin Calculations

Borusan's Case Brief

- Commerce made two ministerial errors in the *Preliminary Determination*: 1) Commerce failed to deduct monthly weighted-average packing costs in the calculation of net home market price in the margin program; and 2) Commerce reclassified an expense from a direct selling expense to a billing adjustment but failed to change the sign of the expense.[193]

The petitioners did not comment on this issue.

Commerce's Position:

We agree with Borusan that we made the two ministerial errors described above and corrected them in our calculations for the final determination.[194]

Comment 9: Borusan's Cost Reporting

Petitioners' Case Brief

- For direct materials, the grade-specific data shows no significant distortions in the per-unit cost data as recorded in Borusan's normal books and records.
- For conversion costs, Borusan used the same exact allocation factor used in the normal books and records for coating and other conversion costs, which were then applied to revised

[190] *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 76 FR 29192 (May 20, 2011), and accompanying IDM at Comment 1.
[191] *See* Borusan's Letter, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833: Submission of Field Number 38.0 (Direct Selling Expenses) Documentation from BMB's Second Supplemental Sections A-C Questionnaire," dated July 6, 2018, at Exhibit B-32.
[192] *See* Borusan Final Sales Calculation Memorandum.
[193] *See* Borusan's Case Brief at 48-49.
[194] *See* Borusan Final Sales Calculation Memorandum.

(revalued) direct materials. It follows then that if the direct materials should not be revalued, neither should the conversion costs.

- As a result, Commerce should use Borusan's control number (CONNUM)-specific costs as recorded in its books and records without revaluation of Borusan's direct materials, direct labor, fixed overhead, and variable overhead.

Borusan's Rebuttal Brief

- Commerce should use Borusan's submitted cost database that weight averages its costs.

Commerce's Position:

We disagree with the petitioners. For the final determination, we used Borusan's database in which Borusan reported average per-unit costs, rather than relying on aberrant run specific per-unit costs. On April 9, 2018, Borusan submitted a letter to Commerce that it would be submitting an alternative cost database to correct certain "anomalies" found in its normal cost accounting system.[195] Per Commerce's request, before the *Preliminary Determination*, Borusan submitted both an alternative (or smoothed) cost database and a cost database using costs of production under the company's normal accounting system.[196] Borusan's accounting system records the cost to produce welded pipe on a run-by-run basis, with each run representing a unique product processed in a cost center on a particular day.[197] Because of accounting system limitations and timing differences, a run-specific cost accounting system can generate fluctuating costs over a short period, resulting in significantly different per-unit costs for identical products and between similar CONNUMs. Such cost differences do not relate to the physical characteristics of the products. At verification, we thoroughly analyzed Borusan's costs under its normal cost accounting system, as well as the smoothed cost database.[198] We confirmed there were significant variations in material and conversion costs under its normal accounting system due to factors other than the physical characteristics of the products and CONNUMs, as we noted in the *Preliminary Determination*.[199] Consequently, we determined that Borusan's smoothing methodology is warranted, and we relied on the smoothed cost database for purposes of the final determination.[200]

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[195] *See* Borusan's Letter, "Large Diameter Welded Pipe from Turkey, Case No. A-489-833: Notification Regarding Departure from Normal Cost Accounting System," dated April 9, 2018 (Borusan Notification Letter).

[196] *Id.*; Borusan Cost Verification Report; Borusan's June 29, 2018 First Supplemental Section D Questionnaire Response (Borusan's June 29, 2018 SDQR), at Exhibit D-42; and Borusan's August 9, 2018 Second Supplemental Section D Questionnaire Response (Borusan's August 9, 2018 SSDQR), at 7-13.

[197] *See* Borusan Notification Letter; Borusan's June 29, 2018 SDQR, at Exhibit D-42; and Borusan's August 9, 2018 SSDQR, at 7-13.

[198] *See* Borusan Cost Verification Report.

[199] *See* Borusan Preliminary Cost Calculation Memorandum.

[200] *See Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2015-2016*, 82 FR 26053 (June 6, 2017), and accompanying PDM at 13 ("Borusan's reported material cost varies significantly among CONNUMs with the same grade and similar other characteristics. The record shows that these differences are due to reasons not related to product characteristics, such as timing of production. Therefore, we reallocated material costs among products with common grade characteristics to mitigate differences in hot-rolled coil costs unrelated to physical characteristics of the products."), *unchanged in relevant part*, *Pipe and Tube from Turkey 2017*.

Comment 10: Borusan's Surrogate COPs

Borusan's Case Brief

- In the *Preliminary Determination*, Commerce allowed the comparison market program to select a surrogate COP for products that were sold but not produced during the POI.
- While Borusan and Commerce's comparison market program selected the same surrogate CONNUMs, Commerce failed to account for differences between the coating costs for surrogate products and the CONNUMs that were sold in the United States, but not produced during the POI. Borusan's submitted surrogate costs took these cost differences into consideration.
- Under Commerce's CONNUM construction, polyethylene (PE) coated products and fusion bonded epoxy (FBE) coated products are included in the same CONNUM, even though the cost for these two coatings is very different, with the PE costs being much higher than FBE costs.
- In assigning the cost of PE coating to FBE coated products, without an adjustment to reflect the physical characteristics, Commerce overstated the cost of manufacturing for the U.S. products, which in turn skews the difference-in-merchandise adjustment.

Petitioners' Rebuttal Brief

- Commerce should not use Borusan's reported surrogate production costs.
- Commerce should continue to: 1) assign costs based on the CONNUM most similar to the one sold but not produced during the POI; and 2) not allow additional adjustments based on product characteristics that are not part of the matching characteristics.

Commerce's Position:

We agree with Borusan, in part, regarding which surrogate CONNUMs Commerce should use for Borusan's products which were sold but not produced during the POI. In the *Preliminary Determination*, Commerce let the SAS program assign a surrogate cost to the four CONNUMs which were sold but not produced during the POI.[201] The SAS program selects the cost of the most similar product that was produced during the POI based on the reported physical characteristics. It is Commerce's practice to rely on the reported costs of a similar product in instances where a respondent did not manufacture a product during the reporting period.[202] Although using the costs of the most similar product is our preference, in each instance, we will consider whether the cost of the most similar surrogate CONNUM reasonably reflects the cost of the product not produced during the POI.

When setting the product characteristics, Commerce did not differentiate between these coating types (*i.e.*, FBE or PE) because we determined that the difference between these types of

[201] *See* Borusan Preliminary Sales Calculation Memorandum.

[202] *See 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 Comment 5 ("We verified that Dongbu used {Commerce's} hierarchy to choose the most similar product produced during the POR as a surrogate and found no evidence of distortion in this methodology.").

coatings products was a not significant driver of price in the market.[203] For three out of four CONNUMs Borusan sold but did not produce, in the *Preliminary Determination* we used a coated product as a surrogate to determine the cost for another coated product.[204] For these CONNUMs, we continue to use the model matching hierarchy to choose the most similar product produced during the POI to determine the surrogate cost.[205]

However, upon further review, we find that the fourth CONNUM, which is an uncoated product, had no coating costs; thus, the surrogate CONNUM selected by the SAS program in the *Preliminary Determination*, a coated product, was not a reasonable surrogate for this product.[206] We note that in the product characteristics for this investigation, we differentiated between coated and uncoated products and gave them different CONNUMs.[207] Because of the significant cost associated with coating, and our recognition of the price differences between coated and uncoated products in setting the product characteristics,[208] we find that it is unreasonable to use a coated product as a surrogate for a bare pipe. Therefore, for the final determination, we assigned Borusan's reported costs for this CONNUM as the surrogate CONNUM to account for the fact that the product is uncoated.[209]

Comment 11: Treatment of HDM Celik's Additional Revenues

Petitioners' Case Brief

- Contrary to Commerce's longstanding practice, Commerce failed to cap the additional revenues attributable to welding, coating, twisting, and banding, up to the amount of the expense or cost for each of the extra charges. Additionally, Commerce has consistently stated that the statute and its regulations do not permit the agency to raise U.S. prices for revenues in excess of the expense borne as reflected in the purchaser's net outlay for the subject product.[210]

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[203] *See* Commerce's Letter re: Product Characteristics for the Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey (Turkey), dated March 19, 2018 (Product Characteristics Letter).
[204] *See* Borusan Preliminary Sales Calculation Memorandum.
[205] *See* Borusan Final Sales Calculation Memorandum.
[206] *See* Borusan Preliminary Sales Calculation Memorandum.
[207] *See* Product Characteristics Letter
[208] *See, e.g.*, Petitioners' Letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Comments on Model Match Criteria," dated March 1, 2018, at 6-7 and Attachment 1; Petitioners' Letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Rebuttal Comments on Model Match Criteria," dated March 12, 2018, at 4-5; *see also* Borusan's Letter, "Certain Large Diameter Welded Pipe from Canada, Greece, India, China, Korea, and Turkey, Case Nos. A-122-863, A-484-803, A-533-881, A-570-077, A-580-897, and A-489-833: Comments on Product Characteristics and Model Matching Hierarchy," dated March 1, 2018, at 2 and Attachment 1 (suggesting to combine "FBE/PE" in the outer coating product characteristic for our model match methodology).
[209] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015) and accompanying IDM at Comment 2.
[210] *See* Petitioners' Case Brief at 27 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), and accompanying IDM at Comment 3; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) (*OJ from Brazil 2012*), and accompanying IDM at Comment 6; *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of*

- HDM Celik failed to provide a detailed and clear response to Commerce's request to demonstrate where the associated costs for TWISTREVU, BANDREVU, and COATREVU are included in the reported costs of the CONNUM in its cost database. Moreover, record evidence shows that HDM Celik failed to provide the total actual cost including materials, labor, and variable and factory overhead costs incurred for each of the extra services it charged it U.S. customers.[211]
- HDM Celik prevented Commerce from properly capping the revenue at the corresponding amount of the expenses or costs for each of the extra charges reported because of its failure to properly identify and segregate the manufacturing cost of these charges. Based on Commerce's findings at the cost verification, HDM Celik had the necessary documentation in its cost accounting system to identify the labor costs attributable to the coating process for the extra charge reported in the COATREVU field.[212]
- Because HDM Celik failed to cooperate to the best of its ability in providing this information to Commerce, Commerce should apply AFA and disallow the additional revenues reported in fields WELDREVU, COATREVU, TWISTREVU, and BANDREVU in its calculations for the final determination.
- Alternatively, Commerce should cap the additional revenues reported in fields COATREVU and WELDREVU in the U.S. sales database up to the amount of the material costs of these extra charges reported in fields DIRMATPAINT and DIRMATWELD, respectively. However, for the fields TWISTREVU and BANDREVU, where HDM Celik failed to provide a breakdown of the material, labor, and overhead costs, Commerce should disallow these additional revenues in its calculations for the final determination.[213]

HDM Celik's Rebuttal Brief

- The cases which the petitioners cite to support their capping argument are attributable to expenses, but not manufacturing-related costs.[214]
- Commerce does not generally treat freight revenue as a price adjustment because these fees do not represent changes in the price for subject merchandise.[215]
- HDM Celik's reported extra revenues represent changes in the price of the subject merchandise, and are not related to sales or movement expenses, but the cost of the subject merchandise.[216]

Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009), and accompanying IDM at Comment 6; *Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634, 21637 (May 1, 2002); *Purified Carboxymethylcellulose From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010)); and *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 14087 (March 16, 2016) (*LPTs from Korea*), and accompanying IDM at Comment 3).

[211] *Id*. at 28.

[212] *Id*. at 30.

[213] *Id*. at 31.

[214] *See* HDM Celik's Rebuttal Brief at 1-2.

[215] *Id*. at 2-3 (citing *OJ from Brazil 2012* IDM at Comment 6 and *LPTs from Korea* IDM at Comment 3).

[216] *Id*. at 3.

- The extra revenues are related to the COM such as raw materials costs, welding costs, coating costs, and labor costs; however, HDM Celik cannot differentiate the specific cost of each revenue.[217]
- AFA is not warranted because HDM Celik has been cooperative and has provided all the information Commerce requested regarding these revenue items.[218]

Commerce's Position:

In the *Preliminary Determination*, we did not cap HDM Celik's reported revenues for welding, coating, twisting, and banding in our calculations.[219] Commerce has an established practice of capping movement-related revenues. Specifically, in *CTL Plate from Germany*, we stated:

> In past cases, {Commerce} has declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b). Rather, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise. Moreover, we find that it would be inappropriate to increase the gross unit price for subject merchandise because of profits earned on the provision or sale of freight; such profits should be attributable to the sale of the freight service, not to the subject merchandise. Therefore, we have continued to treat these revenues as an offset to the underlying expenses.[220]

The revenues at issue here relate directly to both the price and the production of the subject merchandise.[221] In *Woven Ribbons*, we declined to cap revenues that a respondent "charge{d} its customers for the expenses incurred in meeting the customer's special requirements in product design or color, such as dyeing fee, printing fee, molding fee, etc." where the "additional processing charges {were} associated directly with the production of merchandise under consideration."[222] Additionally, in *CTL Plate from Germany*, we declined to cap revenues that a respondent reported "for internal lining, external coating, and girthwelding."[223] We find HDM Celik's revenues from welding, coating, twisting, and banding to be analogous to the revenues discussed above in *CTL Plate from Germany*, because these revenues also relate to the customers' special requirements and are directly associated with the price and production of subject merchandise.[224]

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[217] *Id*. at 4-5.
[218] *Id*. at 5.
[219] *See* Memorandum, "Preliminary Determination Calculations for HDM Celik Boru Sanayi ve Ticaret A.S.," dated August 20, 2018.
[220] *See CTL Plate from Germany* IDM at Comment 6 (internal citations omitted).
[221] *See* HDM Celik's June 13, 2018 Section B-C Supplemental Questionnaire Response (HDM Celik SQRBC) at 12.
[222] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) (*Woven Ribbons*), and accompanying IDM at Comment 3.
[223] *See CTL Plate from Germany* IDM at Comment 7.
[224] *See* HDM Celik SQRBC at 12.

Finally, we note that the petitioners failed to cite to any case where Commerce capped production-related revenues.[225] Accordingly, we continue to find it inappropriate to cap HDM Celik's reported welding, coating, twisting, and banding revenues by its related costs in our calculations for the final determination.

Comment 12: HDM Celik's Depreciation and Unused Vacation Expenses

Petitioners' Case Brief

- HDM Celik's treatment of unused vacation and certain depreciation expenses under Turkish generally accepted accounting principles (GAAP) is unreasonable. Therefore, Commerce should rely on the treatment of these expenses as reflected in HDM Celik's financial statements prepared in accordance with International Financial Reporting Standards (IFRS).
- Under Turkish GAAP, HDM Celik expenses vacation only when it is taken, whereas IFRS requires that vacation be expensed when earned. At verification, Commerce noted that when an employee resigns from the company, HDM Celik will pay the employee for unused vacation time. As such, it appears that the unused vacation expenses reflect HDM Celik's actual cost for these expenses.
- The asset associated with the depreciation expenses in question is related to the general operations of the company. Therefore, consistent with the IFRS reporting requirements, the depreciation expenses should be added to HDM Celik's G&A expenses.[226]

HDM Celik's Rebuttal Brief

- HDM Celik relied on Turkish GAAP for its reported costs as required by section 773(f)(1)(A) of the Act.
- HDM Celik is not obligated to follow IFRS for financial reporting purposes.
- The petitioners failed to support their argument that Commerce should depart from its established practice of relying on Turkish GAAP and instead rely on IFRS. Commerce's practice is to reject such claims.[227]
- Contrary to the petitioners' assertion, the treatment of the unused vacation expenses is not unreasonable under Turkish GAAP because the expenses are insignificant in value.
- In addition, the treatment of depreciation expenses is not unreasonable under Turkish GAAP because the expenses are not related to HDM Celik's manufacturing, selling, or general operations.[228]

Commerce's Position:

We agree with the petitioners that HDM Celik's treatment of unused vacation expenses under Turkish GAAP does not reasonably reflect the COP of welded pipe. The issue here is not

[225] In *LPTs from Korea*, Commerce applied a cap to installation revenue, but not to any production operations. *See LPTs from Korea* IDM at Comment 3.
[226] *See* Petitioners' Case Brief at 32-34.
[227] *See* HDM Celik's Rebuttal Brief at 5-8 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying Issues and Decision Memorandum at Comment 6).
[228] *See* HDM Celik's Rebuttal Brief at 5-8.

whether Commerce should rely on Turkish GAAP or IFRS, but rather whether HDM Celik's costs, which were kept in accordance with Turkish GAAP, are reasonable. Section 773(f)(1)(A) of the Act mandates that COP be calculated:

> . . . based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

HDM Celik relied on its normal books and records, kept in accordance with Turkish GAAP, to calculate its reported COP.[229] HDM Celik excluded unused vacation expenses from COP because it argues that Turkish GAAP permits the cost of vacation to be expensed when an employee takes vacation.[230] However, for purposes of preparing the company's financial statements in accordance with IFRS, a provision is recorded for vacation as it is earned.[231] At verification, HDM Celik officials confirmed that, when someone resigns from the company, HDM Celik will pay the employee for the unused vacation.[232]

Because the unused vacation is earned by HDM Celik employees as the employees' work is completed,[233] recording the unused vacation expenses when the vacation is taken is inconsistent with the basic principle of accounting theory that expenses should be matched with the benefits derived from them (*i.e.*, the matching principle).[234] Accordingly, the production costs of welded pipe should be recorded in the same period as the revenues received from the sale of welded pipe. We find that the unused vacation is earned as HDM Celik employees perform work and, as such, it is a cost of the labor performed to produce welded pipe. Under Turkish GAAP, the unused vacation is expensed when the employee takes the vacation.[235] If the employee takes the vacation in a different period than the production and sale of the welded pipe, the expense of the unused vacation under Turkish GAAP will not be appropriately matched to the revenues received from the sale of the welded pipe, thereby violating the matching principle. We disagree with HDM Celik that the insignificance in the value of the unused vacation expenses shows that the treatment of the expenses is reasonable under Turkish GAAP. The treatment of the expenses under Turkish GAAP violates the matching principle, regardless of the significance in value. Therefore, we find that including unused vacation expenses in COP as the vacation is earned to be a more reasonable approach because it is consistent with the matching principle and, as such, provides a better reflection of the cost of producing welded pipe. Accordingly, we included the

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[229] *See* HDM Celik's April 30, 2018 Section D Questionnaire Response (HDM Celik SDQR), at Exhibit D-2 and D-6.
[229] *See* HDM Celik's June 30, 2018 Second Supplemental Section D Questionnaire Response, at 2
[230] *Id*.
[231] *Id*.
[232] *See* HDM Celik's Cost Verification Report, at 6.
[233] *See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005), and accompanying IDM at Comment 3.
[234] *See, e.g., AK Steel Corp. v. United States*, 21 CIT 1204, 1212 (1997) (citing Donald E. Kieso & Jerry J. Weygandt, *Intermediate Accounting* 46 (8th ed. 1995)).
[235] *See* HDM Celik SDQR, at 4 and Exhibit D-7.

unused vacation expenses in the calculation of HDM Celik's COP for purposes of the final determination.[236]

We agree with HDM Celik that the asset associated with the depreciation expenses in question is not related to the general operations of HDM Celik.[237] When determining if an activity is related to the general operations of the company, Commerce considers the nature, the significance, and the relationship of that activity to the general operations of the company.[238] Commerce defines assets related to general operations as those assets that relate to activities that support on-going production operations.[239] This approach has been upheld by the CIT.[240] Here, the asset in question does not relate to any activities that support on-going production operations.[241] As such, we find that the treatment of the asset under Turkish GAAP is reasonable and consistent with Commerce's practice and warrants no adjustment to HDM Celik's reported COP.

VII. Recommendation

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

☒ Agree ☐ Disagree

2/19/2019

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

[236] *See* HDM Celik Final Cost Calculation Memorandum, at 2.
[237] The asset in question is BPI. *See* HDM's Cost Verification Report, at 6 for description of the asset.
[238] *See, e.g.*, *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and accompanying IDM at Comment 13.
[239] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying IDM at Comment 19.
[240] *See Globe Metallurgical, Inc. v. United States*, 865 F. Supp. 2d 1269, 1272 (CIT 2012).
[241] *See* HDM's Cost Verification Report, at 6.