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

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Investigation
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March 1, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
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 Common Alloy Aluminum Sheet from Turkey, and Final Negative Determination of Critical Circumstances

I. SUMMARY

The Department of Commerce (Commerce) finds that common alloy aluminum sheet (aluminum sheet) from 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, 2019, through December 31, 2019.

After analyzing the comments submitted by interested parties, 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 a complete list of the issues for which we have received comments from the interested parties:

Comment 1: Assan's Eligibility and Calculation of Duty Drawback
Comment 2: Treatment of Section 232 Duties
Comment 3: Assan's Cost Database
Comment 4: Use of Assan's Reported Foreign Inland Freight to Port Charges
Comment 5: Commerce's Price Adjustments for Assan's Marine Insurance and Late Payments
Comment 6: Use of Assan's Reported Home Market Rebate Adjustment
Comment 7: Use of Assan's Reported Billing Adjustments for BILLADJ1U and BILLADJ2U
Comment 8: Whether Teknik's Freight Expenses Should Have Been Reported on a Transaction-Specific Basis
Comment 9: Teknik's Reported Constructed Export Price (CEP) Inventory Carrying Costs
Comment 10: Teknik's Gains on Debt Restructuring

[1] *See Common Alloy Aluminum Sheet from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65346 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 11: Teknik's General and Administrative (G&A) Expense Ratio
Comment 12: Ministerial and Mathematical Errors in Assan's Margin Program
Comment 13: Ministerial Errors in Teknik's Margin Program
Comment 14: Capping Teknik's Freight Revenue
Comment 15: Reconciliation of Teknik's U.S. Sales
Comment 16: Calculation of Teknik's CEP Indirect Selling Expense Ratio

II. BACKGROUND

On October 15, 2020, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of aluminum sheet from Turkey.

On December 1, 2020, Commerce issued a supplemental questionnaire to Teknik Aluminyum Sanayi A.S. (Teknik) in lieu of performing an on-site verification required under section 782(i) of the Act to which Teknik timely responded.[2] On December 10, 2020, Commerce issued a supplemental questionnaire to Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Americas, Inc., and Kibar Dis Ticaret A.S. (collectively, Assan) in lieu of performing an on-site verification to which Assan timely responded.[3]

On December 21, 2020, we invited parties to comment on the *Preliminary Determination.*[4] On January 6 and 7, 2021, we received case briefs from Assan, Teknik, and the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners).[5] On January 19, 2021, we received rebuttal briefs from the petitioners, Assan, and Teknik.[6]

III. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, Commerce found that critical circumstances do not exist with respect to imports of aluminum sheet shipped by Assan and Teknik because their preliminary antidumping duty margins were below 15 percent. For all other producers and/or exporters, we found that critical circumstances do not exist because the preliminary antidumping duty margin was below 15 percent and there was no evidence of a massive surge in imports after the petition was filed.[7]

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[2] *See* Commerce's Letter, "In Lieu of Verification Supplemental," dated December 1, 2020; *see also* Teknik's Letter, "Teknik Aluminyum Sanayi A.S.'s Response to the Questionnaire in Lieu of Verification," dated December 9, 2020.
[3] *See* Commerce's Letter, "In Lieu of Verification Supplemental," dated December 10, 2020; *see also* Assan's Letter, "Response to Request for Documents in Lieu of Verification," dated December 18, 2020 (Assan VQR).
[4] *See* Memorandum, "Briefing Schedule," dated December 21, 2020.
[5] *See* Assan's Letter, "Case Brief," dated January 7, 2021 (Assan's Case Brief); *see also* Teknik's Letter, "Teknik Aluminyum Sanayi A.S.'s Case Brief," dated January 6, 2021; Petitioners' Letter, "Petitioners' Case Brief," dated January 7, 2021 (Petitioners' Assan Case Brief) and Petitioners' Letter, "Petitioners' Case Brief Concerning Teknik," dated January 7, 2021 (Petitioners' Teknik Case Brief).
[6] *See* Petitioner's Letters, "Petitioners' Rebuttal Brief," and "Petitioners' Rebuttal Brief Concerning Teknik," both dated January 19, 2021 (collectively, Petitioners' Rebuttal Brief); *see also* Assan's Letter, "Rebuttal Brief," dated January 19, 2021 (Assan's Rebuttal Brief); and Teknik's Letter, "Teknik Aluminyum Sanayi A.S.'s Rebuttal Case Brief, dated January 19, 2021 (Teknik's Rebuttal Brief).
[7] *See Preliminary Determination* PDM at 19.

Specifically, we preliminarily found that the criteria under section 733(e)(1)(A)(i) of the Act – that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports of common alloy aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey" - were met, and therefore was sufficient to impute knowledge of the likelihood of material injury.[8]

In addition, we preliminarily found that the volume of U.S. imports increased by at least 15 percent from the base to the comparison period for Assan and Teknik but did not increase by this amount for all other companies. Therefore, we preliminarily found imports by Assan and Teknik to be massive under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).[9]

Since the *Preliminary Determination*, we have updated our analysis of Assan's and Teknik's updated monthly import information,[10] and now find that the volume of both their U.S. imports increased by less than 15 percent from the base to the comparison period. The increase in the volume of imports by all other companies remained less than 15 percent from the base to the comparison period. Therefore, we no longer find Assan's and Teknik's imports to be massive pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h). As a result, for the final determination, we determine that critical circumstances do not exist because the antidumping duty margin is below 15 percent and there is no evidence of a massive surge in imports after the petition was filed for respondents Assan and Teknik, and all other companies.

IV. CHANGES FROM THE PRELIMINARY DETERMINATION[11]

- Updated home market and U.S. sales database submitted by Assan in its response to our supplemental questionnaire in lieu of verification.[12]
- Use of Assan's cost database "assancop04_2b" which reflects separate production costs for the self-produced versus purchased products. Because we are using the cost database "asancop04_2b" and excluding the imported purchased products from the margin calculation, we recalculated the weighted-average raw material premium cost based only on Assan's self-produced products for the final margin calculation.[13]
- Teknik included an income offset related to a provision for severance pay in the G&A expense ratio calculation. Because this item was associated with prior year expenses, we excluded this item from the numerator of the G&A expense ratio calculation.

[8] *Id.* at 18.
[9] *Id.* at 19.
[10] *See* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Quantity & Value Shipment Data," dated November 16, 2020 at Exhibit 1; *see also* Teknik's Letter, "Common Alloy Aluminum Sheet from Turkey: Teknik Aluminyum Sanayi A.S.'s Response to the Department's Request for Monthly Quantity and Value Shipment Data – October 2020," dated November 13, 2020 at Exhibit 1.
[11] For a complete description of all the changes made to the calculations of Assan's and Teknik's margin, *see* Memorandum, "Final Determination Margin Calculation for Assan Aluminyum Sanayi ve Ticaret A.S.," dated March 1, 2020; *see also* Memorandum "Final Determination of Margin Calculation for Teknik Aluminyum Sanayi A.S.," dated March 1, 2020.
[12] *See* Assan VQR at Exhibit V-28 (ASSANHM03) and Exhibit V-29 (ASSANUS05).
[13] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Assan Aluminyum Sanayi ve Ticaret A.S." dated March 1, 2020.

- Use of Assan's reported information for the price adjustment for LATEPAYH and MARNINU. For MARNINU, we are also correcting a per unit expense error for marine insurance that affects one U.S. sales invoice which ties to the supporting documentation but was not updated in Assan's U.S. sales database.[14]
- Use of Assan's reported information for the price adjustment for BILLADJ2U.
- Added freight and other movement expenses associated with transporting subject merchandise from Teknik's factory to AA Metals' (AAM's) warehouse, including packing expenses, to the total cost of manufacturing (TCOM), for purposes of calculating the CEP inventory carrying costs.
- Corrected the variable name error for one of Assan's U.S. market adjustments.[15] For the similar variable in the home market, we corrected the exchange rate conversion to convert from Turkish Lira (TL) to U.S. dollars.[16]
- Recalculated Assan's CONNUM specific average gross unit price to include parentheses around the added values before dividing by the number of non-zero values.[17] In addition, we corrected the calculation of the CEP profit calculation which incorrectly calculated the U.S. revenue and expenses by converting these to TL.[18]
- Correctly set the "BEGINDAY" to capture all of Assan's home market sales during the POI.[19]
- Correctly set the "BEGINDAY" in Teknik's margin program to capture all U.S. sales made during the POI.[20]
- Capped Teknik's freight revenue so that it does not exceed the reported freight expense amount for each reported U.S. sale.[21]
- Adjusted the reported U.S. gross quantity by subtracting returned sales in order to calculate the correct net quantity.

V. DISCUSSION OF THE ISSUES

Comment 1: Assan's Eligibility for and Calculation of a Duty Drawback Adjustment

Petitioners' Case Brief

- Assan has not demonstrated that the imported inputs upon which it earns drawback in Turkey are being used in the production of subject merchandise since Assan described its production process for subject merchandise as beginning with melting operations, and Assan confirmed that the imported inputs upon which drawback was claimed, were not used to produce subject merchandise.[22]
- Evidence that Assan exported subject merchandise is irrelevant to the question of whether the input materials imported into Turkey by Assan can be used to produce aluminum sheet because the Turkish drawback system allows for substitution of "equivalent goods,"

[14] *See* Petitioners' Assan Case Brief at 16; *see also* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Supplemental Section C Questionnaire Response," dated September 10, 2020 (Assan SCQR) at Exhibit S4-21.
[15] *See* Petitioners' Assan Case Brief at 12.
[16] *Id.*
[17] *See* Assan's Case Brief at 3.
[18] *Id.* at 4-5.
[19] *Id.* at 6.
[20] *See* Petitioners' Teknik Case Brief at 38-39.
[21] *Id.* at 40-41.
[22] *See* Assan VQR at 14-15.

which by itself does not demonstrate whether they are capable of being used to produce subject merchandise. Therefore, Commerce should deny Assan's request for duty drawback.

- Where the imported input cannot be used to produce the exported merchandise, the U.S. Court of Appeals for the Federal Circuit (CAFC) has sustained Commerce's rejection of a respondent's claim for a drawback adjustment based on a respondent's failure to demonstrate that the imported input in question was used to produce subject merchandise.[23] Specifically, the petitioners cite to *Maverick Tube II* where the Court sustained Commerce's determination and rejected a respondent's claim for a duty drawback adjustment because although the "equivalent goods" standard of the Turkish drawback system was met, the imported goods upon which eligibility for duty drawback was based, were not suitable for use in the production of the subject merchandise.[24]
- Even if some portion of the input materials imported under the closed Inward Processing Certificate (IPC) were suitable for production of subject merchandise, Commerce should nevertheless reject Assan's claim based on its failure to satisfy its burden of demonstrating what specific share of this IPC's input materials are eligible for a drawback adjustment under U.S. law in this investigation. Specifically, the petitioners point to how the share of the numerator that is specific to subject merchandise is unknown and unspecified, resulting in a numerator and a denominator that are completely imbalanced in terms of their relative specificity to subject merchandise.

Assan's Rebuttal Brief

- Commerce should continue to grant Assan a duty drawback adjustment in its final determination because the petitioners' argument rests on the false claim that Assan has provided insufficient evidence to establish that the imported raw materials were used in the production of subject matter merchandise. The petitioners' entire argument rests on the speculative and patently false claim that it is very unlikely that Assan used imported raw materials relevant to the duty drawback claim in this IPC to produce subject merchandise.
- Commerce followed its longstanding practice in Turkish cases of granting duty drawback adjustments when a respondent has provided evidence that it met the requirements under Turkey's Inward Processing Regime (IPR), which Commerce has long found to satisfy the statute and its two-prong test for making such adjustments.[25] Specifically, Commerce found that Assan submitted evidence on the record for the one IPC that closed during the POI and properly documented projected quantities of imports, and projected quantities of exports of aluminum sheet based on a production yield/loss ratio that was approved by the Government of Turkey.[26]
- Assan provided screenshots showing the quantities of raw materials purchased and the quantities of finished goods exported, along with the yield/loss ratios.[27]
- The petitioners' interpretation of *Maverick Tube II* is not on point because it erroneously relies on the speculative statement that it is "very unlikely" that Assan used the relevant

[23] *See Maverick Tube Corp. v. Toscelik Profil ve Sac Endustrisi A.S.*, 861 F.3d 1269, 1272 (Fed. Cir. 2017) (*Maverick Tube II*).
[24] *Id.*
[25] *See Preliminary Determination* PDM at 10.
[26] *Id.*
[27] *See* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Section C Questionnaire Response Section," dated June 29, 2020 (Assan CQR) at 44 and Exhibit C-10.

input related to the duty drawback claim to produce subject merchandise. In *Maverick Tube II*, Commerce found that none of the raw materials for which respondent received an exemption from import duties, were suitable for the production of subject merchandise that was exported to the United States.[28] In this case, Assan noted in its verification questionnaire response that "imports under this IPR include also inputs suitable for the production of aluminum sheet, *i.e.*, cast coils or paint stock."[29]

- The record evidence establishes that Assan used the imported input in the production of subject merchandise. First, Assan reported the imported input as a significant input used to produce subject merchandise.[30] In addition, Assan states that it identified this imported input as one of the three major inputs used to produce the subject merchandise.[31] Finally, Assan reported that it had substantial purchases of the imported input during the POI[32] and that this input was used in the production of subject merchandise during the POI.[33]
- Assan's methodology for its duty drawback calculation is reasonable and supported by information on the record. Assan states that it divided the total customs duties for imported inputs in the closed IPC by the total exports made under this IPC, which conservatively accounts for the fact that the inputs can be used to produce subject and non-subject merchandise.
- Commerce has not disputed the accuracy of the information nor has it asked for a revision to the reporting methodology.
- In the underlying case that gave rise to *Maverick Tube II*, Commerce accepted and the court upheld one of the respondent's duty drawback adjustment calculations that allocated the total adjustment amount for each CEP company over all sales the CEP company made to the final customer because it was not possible to tie each export from the respondent to each sale made by the CEP companies to the final customer.[34] Assan argues that this is similar to its experience where all of its U.S. sales are reported as CEP sales.

Assan's Case Brief

- Commerce's methodology for calculating the duty drawback is inconsistent with the language of the statute because Commerce allocated the amount of duties rebated or not collected to all production based on the cost of the inputs during the POI, and not to actual export sales where the language of the statute explicitly relates to the act of exporting rather than producing subject merchandise.[35]

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[28] *See* Final Results of Remand Redetermination, *Maverick Tube Corp. et al. v. United States*, No. 14-00244, Slip Op. 15-107 at 25 (CIT September 24, 2015).
[29] *See* Assan VQR at 14.
[30] *See* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Section D Questionnaire Response," dated July 2, 2020 (Assan DQR) at 6-7 and Exhibit D-4.
[31] *Id.* at Exhibit D-5.
[32] *Id.*
[33] *See* Assan's Letter "Common Alloy Aluminum Sheet from Turkey: Supplemental Section D Questionnaire Response" dated August 18, 2020 (Assan SDQR) at 9 and Exhibit S2-15.
[34] *See 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 41964 (July 18, 2014), and accompanying IDM at Comment 1; *see also Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1334-35 (CIT 2015).
[35] *See* section 772(c)(1)(B) of the Act; *see also Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335 (Fed. Cir. 2011) (*Saha Thai*).

- The CIT has consistently rejected this "duty-neutral" methodology utilized by Commerce in the *Preliminary Determination*.[36]
- Commerce should follow its recent remand redeterminations and revise its methodology to rely on total exports, rather than total production, in calculating the duty drawback adjustment.[37]
- Commerce's methodology used in the *Preliminary Determination* is not duty neutral. Commerce's interpretation ignores the purpose of the drawback adjustment, which the CAFC articulated in *Saha Thai* was to correct imbalances between the cost of production (COP), normal value (NV) and the export price (EP) or CEP, "which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback."[38]
- Granting only a fraction of the adjustment that Assan is entitled to receive under the statute is neither equitable nor "duty neutral" because it "lessens the upwards adjustment and conceptually reintroduces an imbalance in the dumping margin calculation."[39]
- Commerce should grant Assan a full duty drawback adjustment based on its exports of subject merchandise, not production because this imputed amount essentially allocated the drawback, in part, to Turkish sales that do not and cannot qualify for drawback under the IPR drawback program.

Petitioners' Rebuttal Brief

- If Commerce determines Assan is eligible for a duty drawback adjustment, it should continue to rely on the methodology used in the *Preliminary Determination*.
- The methodology used by Commerce reasonably implements the statute because it results in a fair comparison between normal value and EP/CEP by correctly increasing U.S. price by an appropriate amount. Commerce capped the upward adjustment to U.S. price by the cost of duties imputed into Assan's COP so that the amount added to both sides of the dumping calculations is equal (*i.e.*, duty neutral), meeting the purpose of the adjustment as affirmed in *Saha Thai*.[40]
- Some of the CIT decisions cited by Assan in support of its analysis are currently on appeal before the CAFC and Commerce has continued to apply the "capping" methodology used in the *Preliminary Determination* in other proceedings.[41]
- Assan's interpretation of the statute is incorrect because it would require Commerce to adjust the U.S. price in only one manner by increasing the price by all import duties that are forgiven or rebated pursuant to the foreign country's drawback regime, regardless of

[36] *See, e.g.*, *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. v. United States*, No. 18-00143, 2020 WL 444298 (CIT 2020); *see also Eregli Demir Çelik Fab. A.Ş. v United States*, No. 16-00218, Slip Op. 19-135 (CIT 2019); *Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. v. United States*, No. 17-00204, Slip Op. 19-130 (CIT 2019); *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, 321 F. Supp. 3d 1270 (CIT 2018) (*Toscelik Profil*).

[37] *See, e.g.*, *Final Results of Redetermination Pursuant to Third Court Remand Order in Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, No. 16-00218 (CIT 2020); *see also Final Results of Redetermination Pursuant to Court Remand Order in Habas Sinai ve Tibbi Gazler Istihsal Endustrisi A.S. v. United States*, No. 17-00204 (CIT 2020).

[38] *See Saha Thai*, 635 F.3d at 1338.

[39] *See Toscelik Profil*, 321 F. Supp. 3d at 1278.

[40] *See Saha Thai*, 635 F.3d at 1344

[41] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No-Shipments; 2018-2019*, 85 FR 74983 (November 24, 2020), and accompanying PDM at 14-15.

the operation of the mechanism of drawback system at issue, and regardless of the case-specific facts.

- The CAFC has indicated equivalency applies in the context of duty drawback, stating: "The entire purpose of increasing EP {for duty drawback pursuant to section 772(c)(1)(B) of the Act} is to account for the fact that the import duty costs are reflected in NV (home market sales prices) but not in EP (sales prices in the United States)."[42]
- The CAFC has also found that the statute "neither endorses nor prohibits Commerce's view that duty drawback adjustments are only available to offset duties on goods that are suitable for use as inputs for the subject merchandise."[43] As a result, the CAFC looked to the statute's context and purpose, which generally seeks to produce a fair comparison between foreign market value and United States price.[44]
- By capping the upward adjustment to U.S. price by the cost of duties borne in the home market, Commerce's methodology results in a duty-neutral dumping comparison and corrects for only the duty costs that are reflected in NV. As explained in *Saha Thai*, the purpose of the duty drawback adjustment is to account for the fact that the import duty costs are reflected in NV but not in the U.S. sales prices.[45]

Commerce's Position: Commerce continues to grant Assan a duty drawback adjustment for this final determination based on the record evidence in this investigation. Pursuant to section 772(c)(1)(B) of the Act, the statue provides that U.S. price should be increased by the import duty exempted by reason of the export of the subject merchandise. Furthermore, our two-prong test requires that: (1) that the exemption is linked to the exportation of the subject merchandise; and (2) there are sufficient imports of the raw material to account for the duty drawback on the export of subject merchandise. In determining whether a respondent is entitled to duty drawback, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to U.S. prices.[46]

Since Assan satisfied the criteria described above, we have granted a duty drawback adjustment to Assan consistent with our practice.[47] Under this methodology, Commerce will make an upward adjustment to EP and CEP based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI. This ensures that the amount added to both sides of the comparison of EP or CEP with NV is equitable, *i.e.*, duty neutral meeting the purpose of the adjustment as affirmed in *Saha Thai*.[48]

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[42] *See Saha Thai*, 635 F.3d at 1335, 1342.
[43] *See Maverick Tube II*, 861 F.3d at 1273.
[44] *Id.* at 1274.
[45] *See Saha Thai*, 635 F.3d 1335 at 1338.
[46] *See Saha Thai*; *see also Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005)
[47] *See e.g.*, *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying IDM at Comment 1.
[48] The CAFC stated in *Saha Thai*, 635 F.3d 1335 at 1344 (citing "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha's actual import duty exemptions under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import

Based on the facts of this investigation, Commerce continues to find Assan's import duty costs, based on the consumption of imported inputs during the POI, including imputed duty costs for imported inputs, properly account for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. Contrary to the petitioners' argument, the duty drawback provision, Commerce's regulations, and Commerce's current practice do not require actual use of the imported input in the production of the exported subject merchandise as a condition to receiving a duty drawback adjustment.[49] The purpose of the duty drawback adjustment to EP or CEP is to ensure that the results of participating in a duty drawback program do not affect the dumping calculation to either create or eliminate dumping margins, *i.e.*, to make the dumping calculations duty drawback neutral. In order to accomplish this, it is unnecessary to trace specific inputs into the production of specific exports, as claimed by the petitioners. As long as Commerce's duty drawback adjustment results in a drawback duty neutral margin calculation, the tracing is unnecessary.

Commerce has previously determined that *Saha Thai* did not address the amount of the duty drawback adjustment. The issues addressed in *Saha Thai* were: (1) whether a duty drawback adjustment was warranted; (2) whether Commerce's addition of imputed import duties is appropriate; and (3) whether Commerce double-counted the respondent's import duty costs.[50] In particular, we noted that the CAFC stated:

> Thus, because COP and CV are used in the NV calculation, COP and CV should be calculated as if there had been no import duty exemption. It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV on a COP and CV that do not reflect those import duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all."[51]

As noted above, the CAFC recognized, as did the CIT in *Carlisle Tire*,[52] that there is a direct link between the amount of import duties and the amount of duty drawback, and that the amount of duty drawback cannot exceed the amount of import duties reflected in NV. Moreover, there has been no finding in the CAFC that Commerce's duty neutral methodology, as applied here, is inconsistent with the statute. Further, Assan's contentions that Commerce's duty drawback adjustment is contrary to the CIT's findings rely on the pending results of litigation.

In this case, Commerce is adding the same amount to the U.S. price that is included in the normal value cost calculations, rendering the margin calculation duty drawback neutral. Tracing is unnecessary for a drawback duty neutral margin calculation. Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period

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duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." *See Saha Thai*, 635 F.3d at 1344).

[49] *See 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 IDM at Comment 1.

[50] *Id.* at Comment 1 at 14.

[51] *See Saha Thai*, 635 F. 3d at 1342-43.

[52] *See Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987) (*Carlisle Tire*).

based on the cost of inputs during the POI.[53] This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.[54]

In accordance with the statute, Commerce strives to ensure a fair comparison of U.S. price with normal value including when a respondent has claimed a duty drawback adjustment. As noted above, the statute requires that Commerce increase U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[55] Both the statute and Commerce's practice begin with the amount of import duties as the basis for any benefit to the producer based on duty drawback, and, consequently, any adjustment to U.S. price. The amount of duty drawback is directly and explicitly linked with the amount of import duties.

Further, the amount of duty drawback cannot exceed the amount of import duties because, as the statute states, the adjustment is for: "… the amount of import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation…"[56] An amount refunded or exempted by the country of exportation in excess of the amount of import duties cannot be defined as duty drawback and consequently cannot be part of an adjustment for duty drawback to U.S. price. Likewise, the second prong of the two-prong test requires that a producer import a sufficient amount of the material input, *i.e.*, incur a sufficient amount of import duties, to account for the amount of duty drawback claimed for the exported merchandise.[57] Clearly, on a company-wide basis, the concept of duty drawback requires that the amount of duty drawback cannot be greater than the amount of import duties.

Congress intended for the duty drawback adjustment to EP and CEP to: (1) counteract unfair import pricing behavior that materially injures U.S. producers of like products; and (2) measure any such unfair import pricing behavior as accurately as possible.[58] In the absence of a duty drawback adjustment, the U.S. price does not reflect the import duty cost which is reflected in NV, including the product's COP, because that import duty cost is recovered as a duty drawback from the government of the exporter.

Section 772(c)(1)(B) of the Act provides for an adjustment to U.S. price for "duty drawback" to "prevent dumping margins." However, the amount of the adjustment for duty drawback to "prevent dumping margins" is limited by the amount of the import duties reflected in NV which may cause the creation of dumping margins. An amount claimed as duty drawback that is in excess of the matching import duties cannot, by definition, be considered duty drawback.[59] Accordingly, Commerce has continued to limit the amount of Assan's duty drawback adjustment for its closed IPC under the Turkish IPR by the amount of import duties reflected in the comparison NV.

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[53] *See Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying PDM at 15.
[54] *See Saha Thai*, 635 F. 3d. at 1344.
[55] *See* section 772(c)(1)(B) of the Act.
[56] *Id.*
[57] *See* section 772(c)(1)(B)(2) of the Act.
[58] *See e.g.*, *Lasko Metal Prods. v. United States*, 43 F. 3d 1442, 1446 (Fed. Cir. 1994).
[59] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 15765 (March 13, 2020), and accompanying IDM at Comment 1.

Finally, we find that the conditions noted by the petitioners in *Maverick Tube II* are not met in this case. Rather, the record evidence does not demonstrate that none of the inputs imported under the closed IPC are suitable for the production of subject merchandise.[60] Moreover, the petitioners' argument that a certain input could not have been used, based on Assan's description of its production process as beginning with melting operations, is contradicted by other statements and evidence on the record showing the input was used in the production process. As noted above, Assan identified this imported input as one of the three major inputs used to produce the subject merchandise.[61] In addition, Assan reported that it had substantial purchases of the imported input during the POI[62] and that this input was used in the production of subject merchandise during the POI.[63] Therefore, we have no basis for denying this duty drawback as evidence suggests that at least one imported input under the closed IPC can be used in the production of subject merchandise. For this final determination, Commerce therefore continues to grant Assan a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act.

Comment 2: Treatment of Section 232 Duties

Teknik's Case Brief

- Commerce should treat section 232 duties as "special duties" that should not be deducted from Teknik's EP. Commerce's deduction of section 232 duties imposed on Teknik's imports of subject merchandise during the POI from U.S. price, contradicts Commerce's long-standing policy of excluding adjustments for "special duties," such as safeguard and antidumping duties, [64] which has been consistently upheld by the reviewing courts. Specifically, the CIT has found that there is a distinction between "special" dumping duties and "ordinary" customs duties on at least five occasions,[65] and the CAFC has affirmed that this interpretation of "United States import duties" as not including "special" duties is reasonable.[66]
- This distinction is found in the Senate report regarding the Antidumping Act of 1921, which consistently refers to antidumping duties as "special dumping duties," while referring to ordinary customs duties as "United States import duties."[67]
- Section 232 duties are undoubtedly "special duties" intended to protect the domestic aluminum industry and national security, and therefore, cannot be considered ordinary customs duties. Therefore, Commerce should not deduct the section 232 duties from its calculation of EP consistent with its past precedent.

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[60] *See* Assan VQR at 14.
[61] *See* Assan DQR at Exhibits D-4 and D-5.
[62] *Id.*
[63] *See* Assan SDQR at 9 and Exhibit S2-15.
[64] *See, e.g.*, *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153, 19159 (April 12, 2004) (*Steel Wire Rod*); *see also Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18421 (April 15, 1997).
[65] *See Hoogovens Staal v. United States*, 4 F. Supp. 2d 1213, 1220 (CIT 1998) (*Hoogovens Staal*); *see also Bethlehem Steel v. United States*, 27 F. Supp. 2d 208 (CIT 1998) (*Bethlehem Steel*); *also U.S. Steel Group v. United States*, 15 F. Supp. 2d 892, 898–900 (CIT 1998) (*U.S. Steel Group*); *AK Steel Corp. v. United States*, 988 F. Supp. 594 (CIT 1997) (*AK Steel Corp.*); *Federal Mogul Corp. v. United States*, 813 F. Supp. 856, 872 (CIT 1993) (*Federal Mogul Corp.*); and, *PQ Corp. v. United States*, 652 F. Supp. 724, 737 (CIT 1987) (*PQ Corp*.).
[66] *See Wheatland Tube Co. v. United States*, 495 F.3d 1355 (Fed. Cir. 2007) (*Wheatland Tube*).
[67] *See* S. Rep. No. 16, 67th Cong., 1st Sess. at 4 (1921).

Assan's Case Brief

- Section 232 duties should be treated as "special duties" and should not be deducted from Assan's reported U.S. sales prices.
- Section 772(c)(2)(A) of the Act states that both EP and CEP are reduced by any additional costs, charges, or expenses, and U.S. import duties, which are incident to bringing the subject merchandise from the exporting country to the United States. This provides for the deduction of regular customs duties but not "special duties."
- The CIT repeatedly has held that there is a distinction between "special" duties and "ordinary" customs duties,[68] while the CAFC has affirmed as reasonable the interpretation of "United State import duties" as not including "special" duties.[69]
- Commerce has consistently treated antidumping duties as special duties that it should not deduct from U.S. prices.[70]
- Section 232 duties are more similar to antidumping duties and section 201 duties than they are to ordinary customs duties because they are remedial and temporary in nature, being implemented under Congress's delegation of authority.
- Commerce and the CAFC have found it significant that section 201 duties, like antidumping duties, are remedial in nature.[71]
- Section 232 duties are imposed by the Executive Branch following specific investigations into and determinations of the existence of particular conditions, such as dumping and subsidization, import surges, and impairment of national security.[72] In contrast, Congress determines and imposes normal customs duties.
- Commerce considered, *inter alia*, many of the same factors that the International Trade Commission considers when determining whether a domestic industry has suffered injury in section 201 and antidumping and countervailing duty cases.
- Presidential statements clearly indicate that imports of aluminum were harming the domestic aluminum industry.[73]
- The President has modified the section 232 duties on aluminum imports multiple times, including by changing the number of countries and types of products covered,[74] demonstrating that they are like other special duties and temporary in nature.

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[68] *See e.g.*, *Hoogovens Staal*, 4 F. Supp. 2d at 1220. *see also Bethlehem Steel*, 27 F. Supp. 2d 208; *US Steel Group*, 15 F. Supp. 2d 892, 898–900; *AK Steel Corp*., 988 F. Supp. 594; *Federal Mogul Corp.*, 813 F. Supp. 856, 872; *PQ Corp*., 652 F. Supp. 724, 737.

[69] *See Wheatland Tube*, 495 F.3d, 1355 at 1361.

[70] *See Steel Wire Rod*, 69 FR 19153, 19159.

[71] *Id.*; *see also Wheatland Tube*, 495 F.3 d at 1362.

[72] *See* section 701 of the Act; *see also* section 2252(b) of the Trade Act of 1974, as amended; and section 232 of the Trade Expansion Act of 1962, as amended.

[73] *See Proclamation 9704 of March 8, 2018: Adjusting Imports of Aluminum into the United States*, 83 FR 11619 (March 15, 2018) at 11621-22; *see also, e.g.*, "Frequently Asked Questions: Section 232 Investigations: The Effect of Aluminum Imports on the National Security," Commerce website https://www.commerce.gov/section-232-investigation-effect-importsaluminum-us-national-security.

[74] *See Proclamation 9710 of March 22, 2018: Adjusting Imports of Aluminum Into the United States*, 83 FR 13355 (March 28, 2018); *see also Proclamation 9758 of May 31, 2018: Adjusting Imports of Aluminum into the United States*, 83 FR 25849 (May 31, 2018); *Proclamation 9776 of August 29, 2018 Adjusting Imports of Aluminum Into the United States*, 83 FR 45019 (August 29, 2018); *Proclamation 9893 of May 19, 2019 Adjusting Imports of Aluminum Into the United States*, 84 FR 23984 (May 19, 2019); *Proclamation 9980 of January 24, 2020 Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 FR 5281 (January 29, 2020); *Proclamation 10106 of October 27, 2020: Adjusting Imports of Aluminum into the United States*, 85 FR 68709 (October 27, 2020).

- Only Congress has the authority to impose duties and the Courts have interpreted this to mean that the "general power to modify" the Harmonized Tariff Schedule of the United States (HTSUS) rests exclusively with Congress.[75] Thus, any authority delegated to the President to impose duties is by definition a "special" duty.
- The first 97 chapters of the HTSUS are used for "ordinary" customs duties, while Chapter 99 of the HTSUS is reserved for special duties, where section 232 duties are imposed.[76]
- The courts have held that the deduction of special duties from U.S. prices in calculation of dumping margins imposes a double remedy.[77] Commerce has also found that where there was no pre-existing dumping margin, the deduction of 201 duties from U.S. prices could also create a margin.[78] This can apply equally to section 232 duties and if Assan is found to have no pre-existing dumping margin.

Petitioners' Rebuttal Brief

- Commerce should continue to deduct section 232 duties from the U.S. price.
- Teknik failed to identify any legal authority supporting its claim that section 232 duties are "special duties," or any factual basis to support its argument. In order to determine whether duties paid on imports of subject merchandise should be deducted from EP and CEP pursuant to section 772(c)(2)(A) of the Act, Commerce must conduct a two-part test that first determines whether the duties at issue are U.S. import duties, and then determines whether any such duties are included in the price.[79]
- Teknik reported that AAM paid section 232 duties on all of its U.S. imports of aluminum sheet during the POI, and Teknik does not argue that the section 232 duties are not included in such price.[80] Therefore, the record establishes that these duties are included in the price and Commerce should continue to deduct section 232 duties from U.S. price in the final results.
- Assan cites to and quotes new factual information on page 21 of its case brief that include various news articles which Commerce should reject as untimely filed and remove it from the record pursuant to section 351.302(d).
- Commerce has consistently rejected similar arguments made in other proceedings that section 232 duties, unlike antidumping, countervailing, and section 201 duties, are akin to normal customs duties that should be deducted from the U.S. price.[81] Specifically, Commerce made the following finding in *LWRPT*:

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[75] *See Forest Labs, Inc. v. United States*, 403 F. Supp. 2d 1348, 1352 (2005).
[76] *See* Harmonized Tariff Schedule of the United States (2020) Revision 28, Chapter 99; *see also Steel Wire Rod* at 19160.
[77] *See Wheatland Tube*, 495 F.3d at 1365.
[78] *Id.* at 1363.
[79] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 44283 (July 22, 2020) (*CTL from Italy*), and accompanying PDM at 12-13; *see also Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 44509 (July 23, 2020) (*CWCSSPT*), and accompanying PDM at 10-12; *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 83886 (December 23, 2020) (*LWRPT*), and accompanying PDM at 12.
[80] *See* Teknik's Letter, "Common Alloy Aluminum Sheet from Turkey: Teknik Aluminyum Sanayi A.S. – Section B and C Response," dated June 30, 2020 (Teknik Section B&C Response) at C-41.
[81] *See LWRPT* PDM at 11-12.

"The Annex to Proclamation 9740 refers to section 232 duties as 'ordinary' customs duties, and it also states that '{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.' Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that antidumping duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent."[82]

- No double remedy is imposed by deducting section 232 duties from U.S. price because they do not serve the same function as antidumping duties and/or section 201 safeguard duties, both of which seek to remedy injury caused by imports to the domestic industry. In contrast, section 232 duties prevent a threat to national security and are not aimed at remedying injury.

Commerce's Position: We agree with the petitioners that section 232 duties should be treated as U.S. import duties for purposes of section 772(c)(2)(A) of the Act. The CAFC has previously found Commerce's analysis that section 201 duties were more akin to antidumping duties than "ordinary customs duties" to be reasonable.[83] In comparing section 201 duties with antidumping duties, the CAFC found that: (1) "{l}ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;" (2) "{n}ormal customs duties, in contrast, have no remedial purpose;" (3) "antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;" and (4) "{section} 201 duties are like antidumping duties . . . because they provide only temporary relief from the injurious effects of imports," whereas normal customs duties "have no termination provision, and are permanent unless modified by Congress."[84] In sustaining Commerce's decision regarding section 201 duties in *Wheatland Tube*, the CAFC also held that "{t}o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice."[85]

Section 232 duties are not akin to antidumping or section 201 duties.[86] Proclamation 9705 states that it "is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security . . . ."[87] The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with "the effects on the national security of

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[82] *Id.*
[83] *See Wheatland Tube*, 495 F. 3d 1355 at 1362.
[84] *Id.* at 1362-63.
[85] *Id.* at 1365.
[86] The CIT recently sustained Commerce's treatment of section 232 duties as "import duties." *See Borusan Mannesman v. United States*, CIT Court No. 20-00015, Slip Op. 12-18 (CIT February 17, 2021).
[87] *See* Proclamation 9705, 83 FR at 11627 (emphasis added); *see also* Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) ("In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security"); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

imports of the article."[88] The particular national security risk identified in Proclamation 9705 is that the "industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people."[89] In other words, section 232 duties are focused on addressing imports that threaten to impair national security, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Furthermore, the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.[90] As correctly noted by the petitioners, the Annex to Proclamation 9740 refers to section 232 duties as "ordinary" customs duties, and it also states that "{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein." Notably, there is no express exception in the HTSUS revision in the Annex. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, then the Presidential Proclamation would have expressed that intent. For the reasons noted, we continue to follow our practice to treat section 232 duties as U.S. import duties for purposes of section 772(c)(2)(A) of the Act, and thereby customs duties which are deducted from U.S. price.[91]

Comment 3: Assan's Cost Database

Assan submitted several versions of its cost database for this proceeding. One of the two versions in question for the final determination segregated, using Assan's yield rates, its self-produced products and purchased imported subject products that Assan further processed (*i.e.,* assancop04_2b). The second version of the cost database in question co-mingled Assan's self-produced products and purchased imported subject merchandise that were further processed by Assan (*i.e.*, assancop03_2b). In the preliminary determination, Commerce relied on the cost file assancop03_2b which co-mingled the costs of self-produced products and purchased imported subject products that were further processed because it appeared the processing yield rates used

[88] *See* section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); *see also* section 232(a) of the Trade Expansion Act of 1962 (explaining that "{n}o action shall be taken... to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security").

[89] *See* Proclamation 9705, 83 FR at 11627.

[90] *See* Proclamation 9705, 83 FR at 11627; *see also* Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

[91] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 11-13, unchanged in *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020), and accompanying IDM at Comment 3; *see also CTL from Italy* PDM at 12-13; *LWRPT* PDM at 11-12; *CWCSSPT* PDM at 12.

to determine the purchased imported products reflected processing yields of the self-produced products instead of using yields that only reflected the further processing.[92]

Petitioners' Case Brief

- Commerce relied on the cost database "assancop03_2b" because it appeared Assan used incorrect processing yield rates in cost database "assancop04_2b" to segregate the purchased imported subject merchandise that was further processed from the self-produced products. However, using this cost database actually resulted in a benefit (*i.e.*, lower dumping margin) to Assan instead of mitigating any issues that may be related to the yield rates used.
- The cost database "assancop04_2b" is more specific to the subject merchandise because it segregates the costs associated with the imported purchased subject products that should be excluded from the reported costs. If Commerce relies on "assancop04_2b" in the final determination, it should also ensure these costs are excluded by eliminating costs specific to the imported merchandise.
- Although Commerce correctly eliminated these purchased products from the home and U.S. sales databases in the preliminary determination, it used the cost database "assancop03_2b" which included the costs of imported purchased products. Therefore, for the final determination, Commerce should use the cost database "assancop04_2b" that segregates the costs associated with the imported purchased subject products from the dumping margin analysis.

Assan's Rebuttal Brief

- The quantity of merchandise manufactured from the purchased imported subject products during the POI was an insignificant amount. In addition, all of Assan's submitted cost databases reflected the correct processing yield rates. The casting stage was the only part of the production process that was not utilized in further processing the purchased imported subject products, and yield rates at the casting stage were not used in segregating the imported subject products from the self-produced products. As such, there were no differences in the yield rates that were dependent on whether products were self-produced or purchased.[93] Thus, Commerce should continue to use the cost database "assancop03_2b" for the final determination.

Commerce's Position: For the final determination, we used Assan's cost database "assancop04_2b" and excluded the segregated purchased imported subject products from the dumping margin analysis.

During the POI, Assan purchased imported subject merchandise from unaffiliated producers, performed additional processing, and sold these products in the home market. Because these products were not goods produced by Assan but were included in the reported cost database, Commerce requested for Assan to resubmit its cost file and segregate the production quantity and costs for the self-produced products versus purchased imported products that went through additional processing. In making this requested change, Assan calculated the costs of purchased products based on its processing yield rates and segregated the costs between the self-produced

[92] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Assan Aluminyum Sanayi ve Ticaret A.S." dated October 6, 2020 (Preliminary Cost Calculation Memorandum).
[93] *See* Assan's Rebuttal Brief at 15-16; *see also* Assan SDQR at Exhibit S2-29.

and purchased products. Thus, the cost database "assancop04_2b" reflected separate production costs for the self-produced versus purchased products.

In the *Preliminary Determination*, Commerce relied on the cost database "Assancop03_2b" that reflected the co-mingled production costs of self-produced and purchased products because it appeared that Assan did not differentiate the yield rates between the self-produced and purchased imported products. However, Assan clarified that there were no differences in the yield rates between these two groups of products because the casting stage was the only production process that was not utilized when the purchased products were consumed.[94] As such, the cost database "assancop04_2b" was based on the correct processing yield rates. Accordingly, we find that it is inappropriate to use the cost database "assancop03_2b" for the final determination, as that database does not segregate the imported purchased products that are non-Turkish origin and allows those products to be included in the dumping margin analysis.[95] Therefore, consistent with the fact that the purchased products were properly eliminated from the home and U.S. sales databases in the preliminary determination, for the final determination, we are using Assan's cost database "assancop04_2b" and excluding the purchased products from the cost database in performing the dumping margin analysis.

Comment 4: Use of Assan's Reported Foreign Inland Freight to Port Charges

Petitioners' Case Brief

- Assan failed to respond to Commerce's request for data related to the average price that the affiliated company charged to unaffiliated customers for transporting subject merchandise to the port for export.
- Assan did not provide enough information to provide a comparison between average prices of affiliated and unaffiliated companies that provide this freight service and as such, Assan failed to cooperate to the best of its ability by providing adequate proof that the freight charges from the affiliated company represent arm's length prices.
- The record evidence shows that the affiliated company used to transport subject merchandise to the port for export, did not make a profit during the POI.
- The unaffiliated customer invoice is not representative because the distance between the customer and the destination is an extremely short distance while in contrast, the distance reflected in the invoice issued to Assan is a much longer distance.
- Application of partial AFA is warranted and Commerce should set the variable DINLFTPU to the highest reported DINLTFPU per-unit price reported in U.S. sales database for all U.S. sales with a reported DINLFTPU expense.

Assan's Rebuttal Brief

- Assan provided all the necessary information on the price charged by the affiliated company to Assan and the unaffiliated customers for transporting merchandise to the port for export.[96]
- Assan compared this price to the average price reported for foreign inland freight to port, as reported in DINLFTPU.[97]

[94] *See* Assan's Rebuttal Brief at 15-16; *see also* Assan SDQR at Exhibit S2-29.
[95] *See* Assan's Letter, "Supplemental Section A Questionnaire Response," dated July 24, 2020 at 5-6.
[96] *See* Assan SCQR at Exhibit S4-15.
[97] *Id.*

- Commerce relied on Assan's reported expense in its preliminary determination and did not further verify this field in its post-preliminary determination questionnaire in lieu of verification.
- Commerce does not apply adverse facts available/adverse inference where "the Department did not request {respondent} to revise that reporting methodology during the course of the segment or otherwise provide {respondent} with advance notice that a revised reporting methodology is warranted."[98]
- The petitioners do not cite to any precedent where a profit requirement is necessary, particularly for a minor service such as this issue. By way of example, for major inputs, Commerce requires that the product specific per-unit COP of the major input should include movement costs incurred by the affiliated supplier for shipping the good to the respondent and a portion of the affiliate's SG&A. It does not state that the affiliated supplier must be profitable.
- Even if Commerce would have subjected the provision of a minor freight service to Assan to the same rigid test applied to major inputs, interest expense would not have been included in the COP of Assan's affiliated freight service provider. Assan argues that without the interest expense, this company's financial statements would show a profit for the POI.[99]
- Petitioners' characterization of the difference in distance from Assan and the unaffiliated customer to the port is speculative and not supported by evidence as both invoices on the record issued by the affiliated freight service provider to Assan and the unaffiliated customer, show that the destination is to the same port and approximately the same distance.[100]

Commerce's Position: We find no indication that the evidence on the record concerning the accuracy and completeness of the freight costs provided by Assan's affiliated freight service provider is insufficient. The petitioners did not identify any deficiencies regarding the information reflected in the supporting documentation on the record or contest the accuracy of the calculation that was used to establish the price charged by the affiliated freight service provider to Assan and its unaffiliated customers. Rather, the petitioners' arguments did not address the accuracy of the information and documents reported by Assan. Assan has fully cooperated and provided all the information and documentation requested by Commerce in order to determine whether the price paid by Assan to the affiliated freight service provider was at arms-length. In addition, Commerce finds no evidence of broader use of the affiliated freight service provider for subject merchandise that would suggest that the information reported by Assan is incomplete. Therefore, we will continue to rely on the information on the record and use Assan's reported per unit cost for DINLFTPU in this final determination.

[98] *See Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 78 FR 73825 (December 9, 2013), and accompanying IDM at Comment 2.
[99] *See* Assan's Letter, "Common Alloy Aluminum Sheet: Section A Questionnaire Response, dated June 3, 2020 at Exhibit A-18.
[100] *See* Assan SCQR at Exhibit S4-15 at 2-3.

Comment 5: Commerce's Price Adjustments for Assan's Marine Insurance and Late Payments

Petitioners' Case and Rebuttal Briefs

- Commerce relied on partial AFA in the *Preliminary Determination* for certain price adjustments because Assan either failed to submit information requested by Commerce or the information submitted by Assan contradicted other record evidence.
- The marine insurance expense that Assan actually incurred for one of the reported sales observations is several times greater than the amount reported in the U.S. sales database. Because one of these two sample sales have a clear discrepancy between the sales database and Assan's accounting records, Commerce cannot rely on the MARNINU per-unit values reported by Assan in the U.S. sales database.
- Assan failed to meet its obligation to submit accurate information to the record and correct any errors in its reporting that it discovers in response to Commerce's questions.
- Commerce's methodology of using the lowest value reported for MARNINU actually benefited Assan because this expense is deducted from the U.S. gross unit price.
- Commerce should not consider this to be a minor error and should not allow Assan the opportunity to correct this mistake. Verification is not an opportunity for remedying deficient data, but rather it is a process during which Commerce verifies the accuracy of submitted data and information that are already on the record. Commerce does not seek to verify information that is known to be deficient.
- To correct this error, Commerce should multiply the per unit amount reported in the database for MARNINU by the correct multiple that results in the per unit amount reported in Assan's exhibit.[101]
- Similarly, the petitioners argue that a home market variable reported by Assan for late payment fees (LATEPAYH) was also found deficient by Commerce but incorrectly adjusted since this variable should be added to home market gross unit price.
- Commerce should correct the error which benefits Assan and use the highest reported per-unit amount for this variable so that Assan does not benefit from its lack of cooperation.[102]

Assan's Case and Rebuttal Briefs

- Commerce set marine insurance expense incurred on U.S. sales to zero because a discrepancy existed between the expense reported in the database for one sequence number and the expense reported in Assan's marine insurance exhibit. The correct amount is reflected in Assan's exhibit and Commerce should rely on that amount in its final determination.
- The discrepancy was caused because Assan inadvertently forgot to revise its U.S. sales listing for that invoice during preparation of its response.
- Commerce's *Preliminary Determination* fails to even reference "facts available" or provide an explanation that adverse facts available are warranted. Such a finding would be inappropriate since Assan has submitted complete and comprehensive questionnaire responses.

[101] *See* Assan SCQR at Exhibit S4-21; *see also* Assan VQR at Exhibit V-5.
[102] *See* Petitioners' Assan Case Brief at 17; *see also* Assan VQR at Exhibit V-4.

- Commerce's verification of Assan's data did not identify any errors in its submissions. Therefore, there is no basis to conclude that Assan failed to cooperate with Commerce in this investigation.
- The antidumping statute requires several steps be taken before Commerce rely on adverse facts available. Only after determining that a deficiency fails to satisfy section 782(e) of the Act may Commerce consider using "facts available" under section 776(a) of the Act.
- If the use of facts available is warranted, Commerce may only rely on an adverse inference under section 776(b) of the Act if it finds that respondent failed to cooperate to the best of its ability, "not its failure to provide requested information. . . ."[103]
- The record evidence demonstrates that Assan responded to every question posed by Commerce and it never indicated that Assan's information related to LATEPAYH, MARNINU was deficient. The petitioners have provided no explanation of how Assan failed to cooperate.
- Assan reported that a small number of customers were charged a late payment fee, but one accounted for the vast majority of the total late payment fees charged during the POI and included a screenshot from its accounting system that reflect these fees.[104]
- There is nothing on the record to suggest that Assan's response was lacking, and no other questions were asked of Assan in relation to home market late payment fees either before the *Preliminary Determination* or in questions issued in lieu of verification.
- If Commerce applies a non-zero value to LATEPAYH, it should either rely on the data submitted by Assan or alternatively, use the per-unit value for the one customer that accounted for the vast majority of the reported late payment fees, and apply this value to all the customers that were charged late fees during the POI.
- Similarly, Assan should not be punished for lack of cooperation in relation to MARNINU because the discrepancy between the supporting documentation and reported per unit price in the U.S. sales database for one SEQU would normally be corrected as a minor error at verification.
- The questionnaire in lieu of verification did not include an opportunity to correct minor errors. This discrepancy was caused because Assan inadvertently forgot to revise its U.S. sales listing to reflect the exhibit during preparation of its supplemental questionnaire response, and all of the information necessary to support the correct value was submitted on the record.

Commerce's Position: We disagree with the petitioners that Commerce applied facts available with an adverse inference (AFA) under section 776(b) of the Act in the *Preliminary Determination*, or that it is warranted for this final determination. We find that, throughout the course of this investigation, Assan has cooperated with Commerce's requests for this information, and it has answered each request for this information to the best of its ability. Therefore, we find no basis to apply AFA in this case.

However, in the *Preliminary Determination*, we did identify the deficiencies in the reporting of LATEPAYH and MARNINU by stating that "no sample supporting documentation was provided or the sample supporting documentation could not be tied to the respective per unit

[103] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 33 C.I.T. 1906, 1923-24 (2009).
[104] *See* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Supplemental Section B Questionnaire Response" dated September 4, 2020 (Assan SBQR) at 15 and Exhibit S3-29.

amounts reported" in either the home market or U.S. database.[105] Specifically, as detailed in the *Preliminary Determination*, in accordance with our boilerplate questionnaire, Commerce requested that Assan provide internal memos or policies associated with the customers that incurred late payment charges during the POI, but only one internal memo from one customer was reported in Assan's response.[106] With regard to the reporting of MARNINU, only one of the two sample calculations with supporting documentation tied to the per-unit amounts reported in the U.S. sales database.[107] Therefore, we set the per-unit adjustments for LATEPAYH and MARNINU to zero.

We agree, however, with the petitioners that our intent to not allow Assan to benefit from the deficiencies noted above is not achieved by setting the per-unit adjustments for LATEPAYH and MARNINU to zero as was done in the *Preliminary Determination*. Specifically, setting these two variables to zero results in a higher U.S. price and a lower normal value, essentially allowing Assan to benefit from its failure to adequately document its entitlement to the two adjustments. We find that necessary information in the form of supporting documentation for both of these adjustments is missing from the record, within the meaning of section 776(a)(1) of the Act. Therefore, as facts available, for MARINU, we will use the reported information in Assan's database for this expense, correcting for the error noted above by Assan that the per-unit expense correctly reflected in one of the sample invoices was not updated in its U.S. sales database.[108] Similarly, we will use the home market late payment charges reported in LATEPAYH for all customers who incurred this charge. Because we found no inaccuracies in the limited supporting documentation that is on the record for this adjustment, we will use the reported per-unit amount in LATEPAYH for those customers that incurred these charges during the POI without any corrections or adjustments.[109]

Comment 6: Use of Assan's Reported Home Market Rebate Adjustment

Assan's Case Brief

- Assan tied the proof of payment for the selected customers to the rebate invoice and reported rebate amount in the home market database. The proof of payment, which identifies the rebate amount inclusive of VAT paid by Assan to its customers, ties to the rebate amount inclusive of VAT reflected on the rebate invoices. The rebate amount exclusive of VAT, which also appears on the rebate invoices, ties to the reported home market database.[110]
- Commerce should adjust the home market price based on the reported rebates for the final determination.

Petitioners' Rebuttal Brief

- The information submitted by Assan was inconsistent and failed to demonstrate that Assan's reporting of the rebates is accurate. Specifically, the supporting documentation

[105] *See* Memorandum, "Final Determination Margin Calculation for Assan Aluminyum Sanayi ve Ticaret A.S.," dated March 1, 2021 (Assan Prelim Analysis Memorandum) at 3 and 5-6.
[106] *See* Assan SBQR at Exhibit S3-29.
[107] *See* Assan Prelim Analysis Memorandum at 5-6; *see also* Assan SCQR at Exhibit S4-21.
[108] *See* Assan SCQR at Exhibit S4-21.
[109] *See* Assan SBQR at Exhibit S3-29.
[110] *See* Assan's Case Brief at 12; *see also* Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Section B Questionnaire Response" dated June 29, 2020 at 31-32 and Exhibit B-10.1; Assan SBQR at Exhibit S3-19.

submitted by Assan does not support: (1) the granting of a rebate to a customer based on the annual sales volume target established in the contract, and (2) the full payment of the reported rebate to another customer.

- The worksheet showing its calculation of per unit rebate amounts for each customer did not include any documentation demonstrating how the rebate was tied to a volume target.
- Under the terms of the rebate agreement for one of the two customers where supporting documentation was submitted, the customer did not qualify for the rebate based on Assan's reporting, yet Assan still issued a rebate to this customer even in instances where the customer did not meet the annual volume target established in the contract.[111]
- Assan made no mention in any of its responses that the annual volume targets established in the contracts are actually not the annual volume targets upon which the rebates are paid. If the target volumes for this particular customer changed after the agreement was signed, Assan must have evidence of that change in its records (*i.e.*, an email exchange, a revised agreement, *etc.*), but Assan did not place any such evidence on the record.
- For the other customer in which supporting documentation was submitted, the proof of payment information reflects only a partial payment of the total reported rebate amount.[112]
- Commerce should continue to set the value adjustment to zero for the final determination.

Commerce's Position: As explained in detail in the *Preliminary Determination*, Assan failed to demonstrate that it was entitled to a rebate adjustment in the home market. Specifically, for one customer, Assan did not demonstrate that the customer reached the sales volume target specified in the rebate agreement, and for the other customer, it failed to demonstrate that the full amount of the rebate was actually paid. Because Assan failed to demonstrate its eligibility for the rebate adjustment, we have continued to deny the adjustment for the final determination.

Comment 7: Use of Assan's Reported Billing Adjustments for BILLADJ1U and BILLADJ2U

Assan's Case Brief

- The record contains sufficient information to demonstrate that the reported billing adjustments BILLADJ1U (billing errors) and BILLADJ2U (quality errors) are accurate. Therefore, Commerce should use the reported adjustments in the final determination.
- BILLADJ1U and BILLADJ2U aggregate totals for the POI were identified by the relevant accounting code[113] and tied to Kibar Americas' trial balance. Assan provided SAP screen shots of Kibar Americas' trial balance for 2019 which reflected the POI balance of these two accounts.[114]
- Since Kibar Americas did not record any invoice specific adjustments, Assan only provided examples of customer specific adjustments, all of which generate the same documentation regardless of the account code.
- Commerce rejected adjustments recorded as BILLADJ1U and BILLADJ2U in its *Preliminary Determination* because Assan only had provided sample documentation related to BILLADJ3U and BILLADJ4U. No further supplemental questionnaires were

[111] *See* Assan SBQR at Exhibit S3-19.
[112] *Id.* at Exhibit S3-19.
[113] *See* Assan SCQR, Exhibit S4-10 at 1-2.
[114] *See* Assan CQR, Exhibit C.3-2 at 1.

issued asking for the additional documentation, and there was no request to verify these other adjustments in Assan's post-preliminary determination questionnaire in lieu of verification.
- There is no evidence to suggest that Assan has been uncooperative or failed to use its best efforts to respond to Commerce's request. Moreover, there is no indication that Commerce intended to apply facts available with an adverse inference.
- Commerce's adjustments have an adverse impact despite the fact that Assan accurately identified each of the billing adjustments at issue in its accounting record, tied that amount to its trial balance, and showed how each adjustment is applied on a customer specific basis. Accordingly, Commerce should use the reported information to make these adjustments.

Petitioners' Rebuttal Brief
- Assan's responses do not explain its policies and practices related to each of these two billing adjustments.
- Assan failed to provide the necessary and requested documentation for the billing adjustments reported in fields BILLADJ1U and BILLADJ2U.
- Commerce satisfied section 782(d) of the Act by notifying Assan of the clear deficiencies in the company's initial questionnaire response regarding the billing adjustments and providing clear instructions to Assan in the supplemental questionnaire regarding how to remedy the issues. Moreover, the burden is on Assan to demonstrate the validity of its requested adjustments by providing the necessary supporting documentation that ties the figures in the submitted worksheets to documentation (credit notes, *etc.*) issued by Assan in the normal course of business, a burden Assan failed to meet here.[115]
- Assan's reconciliation of the account totals for these two billing adjustments with the trial balance is inadequate by itself because the trial balance does not provide any support for the customer-specific and subject merchandise-specific breakdown of the billing adjustments reported by Assan.
- The record lacks any information that Commerce could use to verify that the figures identified by Assan are accurate, and therefore, Commerce should continue to reject Assan's claimed BILLADJ1U and BILLADJ2U in the final determination.

Commerce's Position: As explained in detail in the *Preliminary Determination*, Assan failed to demonstrate that it is entitled to these two adjustments to U.S. price. Although aggregate totals for each of these billing adjustments were reported and tied to the SAP accounts and trial balance, no customer-specific documentation was provided.[116] Specifically, the sample documentation which was provided for Assan's other reported billing adjustments included copies of credit notes which verified the purpose of these adjustments. In the case of the reported billing adjustments related to billing and quality errors under BILLADJ1U and BILLADJ2U, we have no credit notes or other source documentation on the record to confirm the validity of these adjustments. Since Assan has not demonstrated that it is entitled to BILLADJ1U which benefits Assan, we will continue to deny this adjustment for the final determination,

[115] *See* section 351.401(b)(1).
[116] *See* Assan SCQR at Exhibit S4-10.

As discussed above, we disagree that use of an adverse inference under section 776(b) of the Act is warranted. In the *Preliminary Determination*, we incorrectly set BILLADJ2U to the lowest reported value. For the final determination, we will use the reported information on the record for BILLADJ2U since this adjustment does not benefit Assan because it results in a lower U.S. price.

Comment 8: Whether Teknik's Freight Expenses Should Have Been Reported on a Transaction-Specific Basis

Petitioners' Case Brief

- Commerce should apply partial AFA to the freight expenses in variables USBROKU, INTNFRU, and INLFPWU for all warehouse sales because Teknik was able to link AAM's incoming and outgoing shipments to report transaction-specific CEP inventory carrying costs, thereby demonstrating it could have reported transaction-specific freight expenses instead of relying on the average expenses for all warehouse sales.
- Teknik applies shipping instruction numbers to its outgoing shipments and AAM can use these numbers to track specific freight expenses, which would not require a manual review of documents. According to the petitioners, the shipping instruction numbers are systematically linked to each of AAM's sales in its sales register and are also available electronically.
- Because Teknik has the ability to report transaction-specific freight expenses using the shipping instructions number, Commerce should apply partial AFA to the variables USBROKU, INTNFRU, and INLFPWU by using their highest reported values for all warehouse sales. Consequently, Commerce should apply an adverse inference to Teknik in the final determination as a result of Teknik's failure to report its freight expenses in the form and manner requested consistent with *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel from Korea*[117] and *ABB*.[118]

Teknik's Rebuttal Brief

- Commerce should not apply partial AFA to certain U.S. movement expenses.
- Teknik reported certain U.S. movement expenses (*i.e.*, USBROKU, INTNFRU & INLFPWU) on warehouse sales on an allocated basis because these expenses are not incurred and recorded by its sales invoices in its accounting record at the time the sale is made to unaffiliated U.S. customers. Specifically, Teknik reported that as the subject merchandise goes into AAM's inventory, there is no one-to-one linkage for these expenses because these expenses were incurred prior to the actual sale made to AAM's

[117] *See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 66 FR 3540 (January 16, 2001) (*Cold-Rolled and Corrosion-Resistant Carbon Steel from Korea*), and accompanying IDM at Comment 7.
[118] *See ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 (CIT 2018) (*ABB*).

unaffiliated U.S. customers, thereby providing no direct relation with the sales made by AAM to the unaffiliated customer.

- Teknik's other reported U.S. movement expenses *(i.e.*, INLFWCU) are incurred at the time of the sale and therefore, can be reported on a transaction-specific basis.
- The reporting of certain U.S. movement expenses on an average or allocated basis does not cause inaccuracies and/or distortions to the reporting and dumping margin because the overall expenses remain the same.
- The petitioners' allegation that Teknik selectively applied a transaction-specific imputed inventory carrying cost to get a more favorable result fails to account for Commerce's specific instructions in its supplemental questionnaire to have Teknik recalculate these costs on a more specific basis in response to the petitioners' comments on this issue.
- The petitioners never commented on Teknik's reporting of these certain U.S. movement expenses based on average freight, and Commerce never issued additional questions regarding these reported movement expenses.
- Applying an adverse inference to Teknik is not warranted because unlike *ABB*, Teknik did not submit completely inaccurate information for which Commerce cannot issue a supplemental questionnaire but instead, Teknik did provide the sample documents that were used as the basis of the calculation of average U.S. movement expenses for USBROKU, INTNFRU, and INLFPWU.[119]

Commerce's Position: We find that Teknik's reporting of certain U.S. movement expenses *(i.e.*, USBROKU, INTNFRU & INLFPWU) on warehouse sales on an allocated basis is reasonable based on its explanation that these expenses are not incurred and recorded in its accounting record at the time the sale is made to the unaffiliated U.S. customers. Specifically, Teknik reported that as the subject merchandise goes into AAM's inventory, no one-to-one linkage for these expenses exists because these expenses are incurred prior to the actual sale made to AAM's unaffiliated U.S. customers, thereby there is no direct relation between the sales to AAM and the sales made by AAM to the unaffiliated customer.

We disagree with the petitioners' argument that Teknik's ability to link shipping instruction numbers in its sales register to its outgoing shipments equates to a similar ability to electronically link freight expenses to these shipping instruction numbers. As Teknik noted, there is a timing issue involved related to the fact that these expenses are incurred before the actual sale to AAM's unaffiliated customers. In addition, there is also the issue of how much detail is electronically recorded in the accounting ledgers that capture these expenses and if such invoice-specific sales detail is captured in the service providers' invoices. Accordingly, we have no basis to conclude that calculating these U.S. movement expenses on a transaction-specific basis could be completed without an overly burdensome manual review of documents. For the final determination, we will continue to use Teknik's allocated approach for calculating an average POI expense for each of these U.S. movement expenses.

[119] *See* Teknik's Letter, "Common Alloy Aluminum Sheet from Turkey: Teknik Aluminyum Sanayi A.S. – Supplemental Section C Response," dated August 17, 2020 at Exhibit S2-15.

Comment 9: Teknik's Reported CEP Inventory Carrying Costs

Petitioners' Case Brief

- Commerce should use AAM's average inventory carrying periods instead of the reported transaction-specific inventory carrying periods. Specifically, Teknik has not been consistent in reporting its CEP inventory carrying costs for different transactions because it has used different Entry Summary date fields in its reporting methodology. The petitioners contend that this raises significant doubts about the accuracy of the transaction-specific inventory carrying periods used by Teknik to report CEP inventory carrying costs.
- Commerce should base Teknik's inventory carrying costs on an average inventory carrying period for subject merchandise. Moreover, if Commerce decides to not apply partial AFA to the variables USBROKU, INTNFRU, and INLFPWU as noted above, then applying the average inventory carrying period would ensure that the methodology is consistent with the reporting of Teknik's freight expenses for warehouse sales by relying on average expenses instead of transaction-specific expenses.
- Teknik's CEP imputed inventory carrying costs calculation should adjust the CONNUM-specific total cost of manufacture (TCOM) to exclude a start-up adjustment.
- This calculation should also include those costs associated with placing the merchandise in inventory, such as freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse, as well as packing expenses.[120]

Teknik's Rebuttal Brief

- Commerce should continue to use the CEP inventory carrying cost as reported by Teknik on a transaction-specific basis for the final results. Although Teknik initially reported these inventory costs based on the average inventory of carrying days of all aluminum sheet products, Teknik followed Commerce's instructions to revise and report these costs on a transaction-specific basis.
- The petitioners' argument to revise the CEP inventory carrying cost based on its calculation should not be used because it is not a correct reflection of the number of days for which inventory was held by AAM for the subject merchandise sold by AAM. Rather, petitioners' calculation of averaged inventory carrying days was for the inventory which was not yet sold by AAM and not related to the inventory which was sold by AAM.
- Commerce should not include in the calculation of inventory carrying costs, those expenses associated with placing the merchandise in inventory, such as freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse, as well as packing expenses. According to Teknik, the adding of these expenses to TCOM for the purpose of INVCARU would result in double counting of cost (*i.e.*, actual cost as well as opportunity cost on the actual cost).

[120] *See Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 44946 (July 29, 2016) (*CCRS from Brazil*), and accompanying IDM at Comment 3; *see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009), and accompanying IDM at Comment 23; and *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part; 2009–2010*, 79 FR 35312 (June 20, 2014), and accompanying IDM at Comment 10.

Commerce's Position: We find that Teknik's method of calculating transaction-specific CEP inventory carrying costs has been adequately explained and documented. Teknik explained that it can tie the lot/heat number contained on AAM's invoice to the unaffiliated U.S. customer, to the same customer's packing list that also references this same heat number. Teknik includes a reference number in the packing list that corresponds to a number that can be found on the invoice issued by Teknik to AAM, which is also referenced on the entry summary.[121] We reviewed the information contained in the supporting documentation and found it to be consistent with Teknik's description and explanation.[122] Because Teknik is able to demonstrate how it identified the actual inventory carrying days on an invoice-specific basis, we will continue to use the reported transaction-specific CEP inventory carrying costs for the final determination.

We disagree with the petitioners that Commerce should use the same methodology to calculate CEP inventory carrying costs that Commerce used to calculate certain U.S. movement expenses (*i.e.*, USBROKU, INTNFRU, and INLFPWU). As explained above in Comment 8, these U.S. movement expenses on AAM's warehouse sales were based on average expenses instead of transaction-specific expenses because these expenses are not incurred and recorded at the time the sale is made by AAM to the unaffiliated U.S. customers. Unlike the reported CEP inventory carrying costs, Teknik was unable to tie these U.S. movement expenses directly to AAM's invoices.

We agree with the petitioners that our calculation of CEP inventory carrying costs is an imputed expense that should also include those costs associated with placing the merchandise in inventory, such as freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse before sale, as well as packing expenses. This is consistent with our practice that defined the costs to the respondent of the merchandise sitting in inventory to include not only the as-yet-unrecovered cost of manufacturing the merchandise, but also those expenses associated with placing the merchandise in inventory.[123] Accordingly, we will add these other movement expenses plus packing to TCOM in order to calculate INVCARU for the final determination.

Comment 10: Teknik's Gains on Debt Restructuring

Petitioners' Case Brief

- In calculating its financial expense ratio, Teknik reduced its financial expense by the full amount of a gain resulting from a "loan restructuring agreement." Commence normally amortizes gains on debt restructuring and allows the current portion of the gains to offset

[121] *See* Teknik's Letter, "Teknik Aluminyum Sanayi A.S. – Third Supplemental Questionnaire Response," dated September 25, 2020 at S6-1.
[122] *Id.* at Exhibit S6-1.
[123] *See CCRS from Brazil* IDM at Comment 3.

the financial expense.[124] Accordingly, for the final determination, Commerce should only allow the current portion of the gain to offset the financial expenses.

- It is irrelevant whether the gains were derived from a waiver of principal or interest. Commerce offsets the financial expense with only the current portion of the gains even when no principal is waived.[125]
- Teknik argues that the full amount of the gains should be included as an offset to the financial expense because it included all interest in the financial expense ratio calculation. However, Teknik did not demonstrate that it included the interest in the financial expense ratio calculation.
- Teknik also claims that the gains represent the waiver for all interest charged by creditors during the period of investigation. However, the record does not support that the gains at issue were linked to the waiver of interest charged during the POI.
- Therefore, for the final determination, Commerce should only allow the current portion of the gain on debt restructuring as an offset to the financial expense.[126]
- If Commerce only allows the current portion of the gain on debt restructuring, all of Teknik's home market sales will fall below the COP. Consequently, Commerce should base Teknik's constructed value (CV) profit and selling expenses on the rates calculated for the other mandatory respondent Assan pursuant to section 773(e)(2)(B)(ii) of the Act.[127] Other potential sources for the CV profit and selling expenses, like financial statements, are inferior because they reflect sales and production of merchandise not under investigation, and sales to markets other than Turkey.[128]

Teknik's Rebuttal Brief

- In its final determination, Commerce should continue to use the interest expense ratio calculated by Teknik. Commerce should continue to allow the full amount of the gain on debt restructuring as an offset to Teknik's financial expense.
- The gain was derived from the waiver of penal interest charged by banks during the POI and the related interest was already included in the financial expense ratio calculation. The gain was not from the waiver of the loan principal amount.[129]
- For the presentation of the financial statements, Teknik reported the interest expense as "financial expense" and the waiver of the same interest expense as "financial income." Thus, the actual interest cost to the company was the net amount (*i.e.,* financial expense less financial income). As such, it is appropriate to offset the financial expense by the

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[124] *See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 68 FR 41303 (July 11, 2003) (*Preserved Mushrooms from India*), and accompanying IDM at Comment 13; and *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Finial Determination of No Shipments: 2014-2016*, 82 FR 32170 (July 12, 2017) (*Crystalline Silicon Photovoltaic Products from China*), accompanying IDM at Comment 9.

[125] *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000) (*SSB from Korea*), and accompanying IDM at Comment 26.

[126] *See Light Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) (*LWR Pipe and Tube from Mexico*), and accompanying IDM at Comment 28.

[127] *See Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015), and accompanying IDM at Comment 4.

[128] *Id.*; and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 1.

[129] *See* Teknik's Letter, "Teknik Aluminyum Sanayi A.S. – Supplemental Section D Response," dated August 31, 2020 (Teknik's DSQR) at Exhibit S3-32.

total amount of the gains because the waived interest amount was already included in the financial expense.

- If the full amount of the gain is disallowed, Commerce should also disallow the associated interest expense to the extent of this gain.
- Because the gain was related to the waiver of interest and the entire gain was recognized in the current period financial statements, it should not be allocated over the number of the future loan repayments. Thus, Commerce should not recalculate Teknik's financial expense ratio for the final determination.

Commerce's Position: For the final determination, we have continued to include the full amount of the gains on loan restructuring in the financial expenses.

Pursuant to section 773(f)(1)(A) of the Act, "costs shall normally 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 the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of merchandise." In this case, Teknik's reported financial expense was based on its normal books and records that were kept in accordance with Turkish GAAP.[130] Thus, the question facing Commerce was whether the financial expense from Teknik's normal books reasonably reflected the cost to produce and sell the subject merchandise during the POI.

Here, Teknik's fiscal year 2019 consolidated financial statements, prepared in accordance with Turkish GAAP, classified the gain on debt restructuring (*i.e.*, "loan restructuring agreement revenues") as finance income, and recognized the full amount in the current period.[131] The entire amount of the gain recorded in the financial statements reflect financial conditions in the current period and directly impacted the financial costs incurred by the company during the year (*i.e.,* fiscal year 2019). Simply because a loan may extend several years into the future does not mean that any recorded gain or loss associated with the restructuring of such loan in the current period also relates to future periods. The gain or loss recorded in the current period captures the full effect of the financial transaction on the current period. Also, the restructuring of the amount and terms of its current debt repayment resulted in a gain that impacts the overall cash management of the company in the current period. Therefore, for the final determination, we continue to allow the full amount of the gain on debt restructuring as an offset to Teknik's financial expense.

Commerce acknowledges that in some past cases we have amortized the gain on debt restructuring and only allowed a portion of the gains to offset the financial expense.[132] However, more recently, Commerce reevaluated whether our past treatment of the gains on debt restructuring accurately portrays the actual financial costs incurred by the company during the POI. We note that when a company, in accordance with GAAP, recognizes the full amount of the debt restructuring in its financial statements in the current period, that amount impacts the

[130] *See* Teknik's Letter, "Teknik Aluminyum Sanayi A.S. - Section D Response," dated July 2, 2020 (Teknik's DQR) at 9.
[131] *See* Teknik's Letter, "Teknik Aluminyum Sanayi A.S. - Section D Response," dated June 3, 2020 (Teknik's AQR) at Exhibit A-16.
[132] *See Preserved Mushrooms from India* IDM at Comment 13; *see also Crystalline Silicon Photovoltaic Products from China* IDM at Comment 9; *SSB from Korea* IDM at Comment 26; *LWR Pipe and Tube from Mexico* IDM at Comment 28.

overall cash management in the current period and does not benefit or affect future periods. Accordingly, it is Commerce's position that it is appropriate to include the entire gain on debt restructuring because it only effects and impacts the company's current period financial expenses (*i.e.,* cash management).

Further, developing a method for amortizing or deferring the gains associated with the long-term monetary liabilities could be an arbitrary exercise. As such, including only the amortized amount of the gains in the financial expense calculation would not reasonably reflect the cost of producing and selling the subject merchandise during the POI. Therefore, we make no change from our analysis in the *Preliminary Determination*.

Comment 11: Teknik's G&A Expense Ratio

Petitioners' Case Brief

- Teknik included a reversal of provision for "severance pay" in the G&A expense ratio calculation as an offset. This income was related to prior period expense and thus, it should be disallowed as an offset to the G&A expenses for the final determination.[133]

Teknik's Case Brief

- In the preliminary determination, Commerce recalculated Teknik's G&A expense ratio by excluding certain income and expense items. Commerce should include these income and expense items in the G&A expense ratio calculation for the final determination.
- While the "down payment revenue arising from factory sales cancellation" was received by Teknik in the prior period, Teknik's buyer forfeited the amount during the POI.[134] Therefore, this item was not related to a prior period income. Further, because Teknik entered into an agreement to sell the factory, Teknik continued to incur certain G&A expenses which it would not have incurred if there had been no sales agreement (*i.e.,* employment of the office staff and related expenses). Thus, Commerce should allow this income as an offset to the G&A expense.
- Revenues related to the "provisions for customs and tax fines" and "order advances cancellation" were associated with the reversal of expenses that were recorded in the previous years. It is Commerce's practice to consider all write-offs and write-backs recognized in the financial statements as part of the G&A expenses. Thus, Commerce should include these items in the G&A expense ratio calculation.
- Commerce should allow the amount for "previous period income and profits" as an offset to the G&A expense.
- Revenues associated with the "doubtful trade receivables cancellation" and "doubtful other receivables cancellation," and expenses associated with the "doubtful trade and other provision for receivables" and "provision for bad debt" were related to each other.

[133] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019) (*HR from Korea*), and accompanying IDM at Comment 1.E.

[134] Teknik had an agreement with a Turkish company (*i.e.*, buyer) to sell its factory and received an advance payment from the Turkish company. However, the buyer did not follow through with the agreement. Hence, Teknik recognized the advance payment from the buyer as an income in its financial statements. *See* Teknik's DSQR at S3-27. Thus, the "down payment revenue arising from factory sales cancellation" was forfeited by the buyer. However, Teknik incorrectly stated in its case brief that the down payment was forfeited by Teknik. *See* Teknik's Case Brief at 2.

Since these revenues and expenses correspond to each other, Commerce should include all these items in the G&A expense ratio calculation.

- All above items were related to the general operation of the company and were recorded in Teknik's audited financial statements that were kept in accordance with the Turkish GAAP. As such, Commerce should include all above items in the G&A expense ratio calculation for the final determination.

Petitioners' Rebuttal Brief

- Commerce properly excluded the "down payment revenue arising from factory sales cancellation" from the G&A expense ratio calculation.
    - Commerce does not consider a sale of an entire production facility to be a routine disposition of assets, making the inclusion of related gains or losses in the G&A expense inappropriate.[135]
    - Commerce also excludes gains or losses stemming from disposition of other significant fixed assets, such as headquarter building, employee apartment building, and employee health and entertainment facilities because such sales are significant transactions that generate non-recurring income that is unrelated to the general operation of a company.[136]
    - If gains from the sale of an entire factory or division are unrelated to the general operations of a company, then gains arising from an attempted sale of an entire factory or the cancellation of a sale of an entire factory are also unrelated to the general operation of a company. Teknik is in the business of manufacturing and selling aluminum products; it is not in the business of manufacturing and selling entire production facilities.[137] Thus, the "down payment revenue arising from factory sales cancellation" was unrelated to Teknik's general operations. Moreover, the income was earned from a transaction that was significant in both form and value. As such, it was not an appropriate offset to the G&A expense.
    - The event that caused the "down payment revenue arising from factories sales cancelation" income was extraordinary because it was both "unusual in nature"

[135] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) (*Lumber Products from Canada 2005*), and accompanying IDM at Comment 8; *Polyethylene Terephthalate Film Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review*, 66 FR 57417 (November 15, 2001), and accompanying IDM at Comment 1 (; *Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506 (May 10, 2005), and accompanying IDM at Comment 11; *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004) (*Lumber Products from Canada 2004*), and accompanying IDM at Comment 9; *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010), and accompanying IDM at Comment 9 (*Pasta from Italy*); *Certain Oil Country Tubular Good from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying IDM at Comment 34; and *Notice of Final Determination of Sales and Less Than Fair Value and Negative Final Determination of Critical Circumstances; Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004) (*Warmwater Shrimp from India*), and accompanying IDM at Comment 16.

[136] *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 73 FR 18259 (April 3, 2008), and accompanying IDM at Comment 8.

[137] *See Lumber Products from Canada 2005* IDM at Comment 8.

and "infrequent in occurrence." Since it was the extraordinary income, Commerce should not allow this item to offset the G&A expense.[138]
    - While Teknik recognized the income within the POI, it received the payment in a prior period. Because this item was related to the prior period, Commerce should exclude it from the G&A expense ratio calculation.[139]
    - Further, Teknik failed to provide a valid reason for Commerce to depart from its decision in the preliminary determination. As such, Commerce should continue to exclude the "down payment revenue arising from factory sales cancellation" from the G&A expense ratio calculation.
- The "provisions for customs and tax fines" and "order advances cancellation" were related to reversal of provisions made in prior periods. Because these items relate to expenses from the prior periods, Commerce should continue to exclude these items from the G&A expense ratio calculation.[140]
    - Further, the "order advances cancellation" was related to specific sales transaction and it was not related to Teknik's general operation.[141]
    - Reducing the costs of merchandise under investigation (MUI) in the current period with the income related to the prior periods would yield costs that do not reasonably reflect the costs associated with producing the MUI.[142]
- Commerce should continue to exclude the "previous period income and profits" from the G&A expense ratio calculation because, like the "provisions for customs and tax fines" and "order advances cancellation," it was related to a prior period.
- If Commerce includes the "doubtful trade receivables cancellation" and doubtful other receivables cancellation" income in the G&A expense ratio calculation, Commerce should also include the related expense "doubtful trade and other provisions for receivables" and "provision for bad debt" in the G&A expense ratio calculation.

No rebuttal comments were submitted by Teknik regarding the above issue.

Commerce's Position: We agree with the petitioners. Section 773(b)(3)(B) of the Act states that, for purposes of calculating COP, Commerce shall include "an amount for selling, G&A expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question." Because there is no definition in the Act of what a G&A expense is or how the G&A expense rate should be calculated, Commerce has developed a reasonable, consistent, and predictable practice for calculating and allocating G&A expenses. This

[138] *See Pasta from Italy*; *Final Determination of Sales at Less Than fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002), and accompanying IDM at Comment 2; and *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 13.
[139] *See HR from Korea* IDM at Comment 1.E; *Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009) (*SS Bar from Brazil*), and accompanying IDM at Comment 3.
[140] *See HR from Korea*; *SS Bar from Brazil*; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Malaysia*, 65 FR 81825 (December 27, 2000) (*Pipe Fittings from Malaysia*), and accompanying IDM at Comment 19**.**
[141] *See SS Bar from Brazil*; *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 59999 (September 28, 2011), and accompanying IDM at Comment 1; *Prestressed Concrete Steel Rail Tie Wire from Mexico: Final Results for Antidumping Duty Administrative Review; 2013-2015*, 81 FR 40850 (June 23, 2016), and accompanying IDM at Comment 2; *Lumber Products from Canada 2005* IDM at Comment 24.
[142] *See Pipe Fittings from Malaysia* IDM at Comment 19; *see also SS Bar from Brazil* IDM at Comment 3; *HR from Korea* IDM at Comment 1.E.

reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs divided by the company-wide cost of sales as reported in the respondent's audited financial statements and not on a consolidated, divisional, or product-specific basis.[143]

In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole and to the accounting period, as opposed to including only those expenses that directly relate to the production of the merchandise. The CIT has upheld Commerce's finding that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.[144] If Commerce identifies expenses that are directly related to a particular production process or product, we normally consider those expenses to be manufacturing costs. In contrast, G&A expenses by their nature are indirect expenses incurred by the company as a whole and are not directly related to any product.[145]

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.[146] It is Commerce's normal practice to include gains or losses incurred on the routine disposition of fixed assets in the G&A expense ratio calculation.[147] Nevertheless, non-routine sales of fixed assets do not related to the general operations of the company and the resulting gains and losses from the non-routine sales of fixed assets are not included in the calculation of the G&A expenses. For example, the sales of an entire production facility or the fixes assets from a permanently closed plant is normally a non-routine disposition of fixed assets because it is a significant transaction, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations, and are unrelated to the general operation of the company.[148] The sale of an entire production facility does not support a company's general operations; rather, it represents a strategic decision on the part of management to no longer employ the company's capital in a particular production activity.[149]

With respect to the "down payment revenue arising from factory sales cancellation," Teknik was in the process of selling its production factory and received an advance payment from the buyer as a down payment for its factory sale. However, the buyer canceled the sales transaction and Teknik kept the advance payment from the buyer as a penalty and recognized the amount as an income in its financial statements.[150] Teknik's attempted sales transaction of its entire production plant was a non-routine disposition of a fixed asset because it was a significant transaction, both in form and value, and as such, the resulting gains generated from the factory sales cancellation were not part of Teknik's normal business operation. Further, Teknik is in the

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[143] *See 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) (*Bottom Mount Refrigerator from Korea*), and accompanying IDM at Comment 33.
[144] *See U.S. Steel Group*, 998 F. Supp 1154 (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).
[145] *See Bottom Mount Refrigerator from Korea* IDM at Comment 33; *see also Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24354 (May 6, 1999), and accompanying IDM at Comment 25.
[146] *See Warmwater Shrimp from India* IDM at Comment 16; *see also OCTG from Korea* IDM at Comment 34.
[147] *Id.*
[148] *Id.*; *see also Lumber Products from Canada 2004* IDM at Comment 9.
[149] *See OCTG from Korea* IDM at Comment 34.
[150] *See* Teknik's DSQR at S3-26, S3-27, and Exhibit S3-30.

business of producing and selling commercial goods to customers and it is not in the business of manufacturing and selling entire production facilities.[151] As such, we find that the "down payment revenue arising from factory sales cancellation" was unrelated to the general operations of Teknik and have continued to exclude this item from the G&A expense ratio calculation.

With respect to the reversal of provision for "severance pay," "provisions for customs and tax fines," "order advances cancellation," and "previous period income and profits," Teknik stated that all these items were associated with the reversal of prior period expenses.[152] Commerce generally does not consider it appropriate to reduce current period expenses by a correction of over-estimated cost associated with provisions from prior years.[153] This is because the subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of reversal. Rather, the subsequent year's reversal represents a correction of an over-estimated cost which was made in prior years. Because Teknik's reversal of the prior period provisions does not relate to costs incurred in the current period, we continued to exclude these items from the G&A expense ratio calculation.

With respect to the revenues associated with the "doubtful trade receivables cancellation" and "doubtful other receivables cancellation," and the expenses associated with the provision for "doubtful trade and other provision for receivables" and "provision for bad debt," Teknik stated that these income and expense items correspond to each other and they should be included in the G&A expense ratio calculation to arrive at the net amount of doubtful trade and other receivables.[154] However, these types of provisions are typically based on the company's prior experience with non-payment by customers that are related to its sales transactions. As such, these items are considered related to the company's sales activities, not its general operations. Thus, Commerce has not included the amounts in question in Teknik's G&A expenses and instead, has allocated them to common expenses for purposes of calculating Teknik's indirect selling expense ratio since we are unable to assign them to a particular market.

Comment 12: Ministerial and Mathematical Errors in Assan's Margin Program

Petitioners' Case Brief

- One of the variable names used in calculating the U.S. net price adjustments was not correctly identified in the SAS program and therefore, not accounted for in Assan's dumping margin.[155] Commerce should use the correct variable name for the final results.
- Commerce applied an incorrect exchange rate conversion for the similar variable in the home market. The petitioners provided alternative SAS language for properly converting this variable to U.S. dollars.[156]

No rebuttal comments were submitted regarding the above issues.

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[151] *See Lumber Products from Canada 2005* IDM at Comment 8.
[152] *See* Teknik's DSQR at S3-27-S3-30.
[153] *See Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017), and accompanying IDM at Comment at 6; *see also SS Bar from Brazil* IDM at Comment 3; *HR from Korea* IDM at Comment 1.E.
[154] *See* Teknik's DSQR at S3-28-S3-39.
[155] *See* Petitioners' Assan Case Brief at 12.
[156] *Id.* at 13.

Assan's Case Brief

- Commerce improperly calculated the CONNUM-specific average gross unit price by failing to include parentheses around the added values before dividing by the number of non-zero values.[157] Commerce also failed to include a denominator.
- Commerce's calculation of the CEP profit calculation is grossly overstated because the margin program incorrectly calculated the U.S. revenue and expenses using the TL exchange rate. Then, Commerce incorrectly added the USD and TL values together, which resulted in an incorrect CEP profit rate.[158]
- Commerce's calculation incorrectly set the "BEGINDAY" to January 3, 2019 instead of January 1, 2019, and thus excluded 86 home market sales as outside the POI.[159]

No rebuttal comments were submitted regarding the above issues.

Commerce's Position: Commerce agrees with the ministerial and program errors noted above that are related to the calculation of Assan's margin program. For the final determination, Commerce will make the corrections noted in the comments submitted by the petitioners and Assan, as noted in the "Changes from the *Preliminary Determination*" section above.

Comment 13: Ministerial Errors in Teknik's Margin Program

Petitioners' Case Brief

- Commerce stated that it used the earlier of Teknik's shipment date or invoice date as the date of sale in the *Preliminary Determination*. Certain sales falling within the POI were arbitrarily excluded in the margin program even though the shipment or invoice date for the sale in question was during the POI.[160] Accordingly, Commerce should adjust the programming to include all sales whose date of sale is within the POI.

No rebuttal comments were submitted on this issue.

Teknik's Case Brief

- Commerce did not adjust QTYADJU from QTYU to calculate the net quantity and as a result, the margin has been calculated on gross quantity *(i.e.*, based on QTYU). For purposes of the final determination, Commerce should calculate the dumping margin using NETQTYU.

No rebuttal comments were submitted on this issue.

Commerce's Position: Commerce agrees with the ministerial errors noted above that are related to the calculation of Teknik's margin program. For the final determination, Commerce will make the corrections noted in the comments submitted by the petitioners and Teknik, as noted in the "Changes from the *Preliminary Determination*" section above.[161]

Comment 14: Capping Teknik's Freight Revenue

[157] *See* Assan's Case Brief at 3.
[158] *Id.* at 4-5.
[159] *Id.* at 6.
[160] *See* Petitioners' Teknik Case Brief at 38-39.
[161] *Id.*

Petitioner's Case Brief

- Commerce has a policy that any revenues collected by a respondent for services provided with a sale of subject merchandise in the United States must be "capped" and not exceed the amount of the expense to provide that service. This practice is based on the statutory provision that permits U.S. price to be increased only in certain instances and does not include revenues collected for services provided to the U.S. customer.[162]
- Commerce's practice has been affirmed by the Court of International Trade (CIT).[163]

No rebuttal comments were submitted on this issue.

Commerce's Position: Commerce has consistently stated that the statute and its regulations do not permit Commerce to raise U.S. prices for revenues in excess of the related expense.[164] Therefore, Commerce will "cap" this freight revenue in the final determination so that it does not exceed the reported freight expense amount for each reported U.S. sale.

Comment 15: Reconciliation of Teknik's U.S. Sales

Petitioners' Case Brief

- Commerce should apply partial facts otherwise available (AFA) for the alleged unreported sales compromising the difference between AAM's sales of subject merchandise recorded in its account receivables during the POI and Teknik's sales of subject merchandise to AAM during the same period.
- Commerce should apply AFA and treat the unreported sales as US sales because Teknik failed to cooperate to the best of its ability and refused to tie the merchandise, which it could have done.
- Teknik's claim that it is not possible to tie AAM's sales of subject merchandise to Teknik's sales of subject merchandise to AAM is clearly incorrect and therefore merits the application of partial AFA[165] with an adverse inference by applying the highest transaction-specific margin to the unreported U.S. sales quantity.[166]

[162] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016), and accompanying IDM at Comment 3.
[163] *See Hyundai Heavy Industries Co. v. United States*, 332 F. Supp. 3d 1331, 1340 (CIT 2018).
[164] *See, e.g.*, *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; *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 77 FR 63291 (October 16, 2012), 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), unchanged in *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 66110, 66,112 (October 30, 2002).
[165] *See, e.g.*, *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (*CCRS from Italy*), and accompanying IDM at Comment 1.
[166] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and accompanying IDM at Comment 1.

Teknik's Rebuttal Case Brief

- The value reported in its response cannot be reconciled with AAM's account receivables because there was no linkage between the sales made by Teknik and TMT to AAM during the POI, and AAM's accounts receivable recorded on the last day of 2019. Rather, Teknik reconciled the value of sales to AAM in the audited financial statement by tying it to the total export sales in audited financial statements.[167]
- Teknik reconciled its sales of subject merchandise by AAM to unaffiliated U.S. customers with AAM's audited financial statements and provided a summary of sales of subject merchandise by month and by date which included supporting documentation for a month within the POI.[168]
- Teknik tied the two accounting ledgers in which AAM accounts for the sale of subject merchandise, to the reconciliation information from its audited financial statements.[169]
- Teknik submitted a listing of all sales by Teknik to AAM and then AAM's sales to unaffiliated customers which ties with the U.S. sales database and U.S. sales reconciliation.[170] According to Teknik, the difference in the quantity and value of sales by Teknik to AAM and the quantity and value of sales by AAM to its unaffiliated customers is attributed to the quantity still unsold by AAM or not yet entered the United States by the end of the POI. Therefore, Teknik argues because its sale of subject merchandise to AAM is reconciled with Teknik's audited financial statements and its U.S. sales of subject merchandise by AAM to its unaffiliated customers is reconciled with AAM's audited financial statements, the application of partial adverse facts available is not warranted.

Commerce's Position: We disagree with the petitioners, and find that Teknik has provided the necessary information to reconcile the subject merchandise sold by Teknik and its affiliated trading company, TMT, to AAM; and, to also reconcile the subject merchandise sold by AAM to its unaffiliated U.S. customers. In both cases, the information has been reconciled to TMT's and AAM's audited financial statements, respectively. The application of partial adverse facts available is therefore not warranted.

We agree with Teknik that that there is no direct linkage between AAM's end-of-year monthly balance in its account receivables ledger and Teknik's trial balance that is based on cumulative, year to date sales revenues and not monthly sales revenues. In addition, the linkage cannot be made between AAM's account receivables and Teknik's reconciled trial balance sales because the amount of unsold inventory is not reflected in AAM's accounts receivable.

The petitioners rely on *CCRS from Italy* to support their position that the application of partial AFA is warranted for these alleged unreported sales. That case, however, is not on point. In *CCRS from Italy*, Commerce based its determination on the company's verification failure, noting that the discrepancy between the company's monthly sales revenue and the information in its trial balance for cumulative, year-to-date sales revenues, did not contribute to Commerce's finding.[171] Teknik's fact pattern is similar only in that the record here also demonstrates there is

[167] *See* Teknik's SCQR at Exhibits S2-13.a and S2-13.c.
[168] *See* Teknik's Section B&C Response at Exhibits C-3.a and C-3.b.
[169] *See* Teknik's SCQR at Exhibit S2-11.b; *see also* Teknik Section B&C Response at Exhibit C-3.c.
[170] *See* Teknik's SCQR at Exhibit S2-13.e.
[171] *See CCRS from Italy* IDM at Comment 1 at 23.

no direct comparison in linking monthly sales revenue accounts to cumulative year-to-date totals found in the trial balance.

Comment 16: Calculation of Teknik's CEP Indirect Selling Expense Ratio

Petitioners' Case Brief

- Teknik's calculation of its U.S. indirect selling expense (ISE) ratio does not follow Commerce's practice of using the unconsolidated financial statements of the entity responsible for sales of the subject merchandise.[172] According to the petitioners, AAM is the sole entity responsible for U.S. sales of subject merchandise, thus the ratio should derive from AAM's unconsolidated financial results.

Teknik's Rebuttal Brief

- Teknik changed its reporting to follow Commerce's instructions in its supplemental questionnaire to revise its U.S. ISE ratio using the total value reported in the "Consolidated Schedules of Selling, General and Administrative Expenses" section of AAM's financial statements.[173]
- Because Teknik followed Commerce's instructions, Commerce should not further revise Teknik's calculation of the U.S. ISE ratio that was used in the *Preliminary Determination*.

Commerce's Position: We have not changed the reported calculation of Teknik's CEP indirect selling expenses from our *Preliminary Determination*. The ISE ratio is based on the consolidated financial statements which only captures U.S. expenses involved in the selling of subject merchandise. Our review of Note A of the consolidated financial statements regarding the "Organization and Nature of Business" shows that the other entities are organized and operate in support of AAM, and therefore, their activities relate to the sale of all merchandise by AAM in the United States.[174] In addition, the "Consolidating Statements of Income" shows that only one other entity incurred SG&A expenses and these expenses were associated with AAM's reported warehouse expenses.[175] Therefore, Teknik correctly adjusted the SG&A expenses from the consolidated financial statements to exclude this warehouse expense from the calculation of the CEP U.S. ISE ratio to avoid double counting this separately reported expense.[176]

Finally, the *Steel Beams from Germany* case that the petitioners cite to support the use of only the unconsolidated financial statements, notes that Commerce "generally" bases indirect selling expenses on the experience of the U.S. affiliate that makes the sale, while also finding that the necessary information to perform this calculation was contained in the consolidated financial statements because other entities had performed certain functions related to the U.S. sales.[177] Accordingly, this does not demonstrate that Commerce's practice is limited to using only the unconsolidated financial statements for calculating indirect selling expenses.

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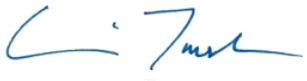
[172] *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 9.
[173] *See* Teknik's SCQR at Question 16.a and Exhibit S2-21.a.
[174] *See* Teknik's AQR at A-9 and Exhibit A-18, Note A at 18, "Consolidating Statements of Income."
[175] *Id.*
[176] *See* Teknik's SCQR at S2-19 and Exhibit S2-21.
[177] *See Steel Beams from Germany* at Comment 9.

VI. RECOMMENDATION

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

☒	☐
Agree	Disagree

3/1/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance