



A-489-844
Investigation
POI: 07/01/2019-06/30/2020
Public Document
E&C/OI: BH

September 16, 2021

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Alex Villanueva
Senior Director, Office I
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Certain Aluminum Foil from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) determines that certain aluminum foil (aluminum foil) from the Republic of Turkey (Turkey) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2019, through June 30, 2020. The Assan Single Entity¹ is the only individually examined exporter or producer in this investigation.

After analyzing the comments submitted by interested parties, we made certain changes to the *Preliminary Determination*.² 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 received comments from the interested parties:

Comment 1: Constructed Export Price Offset
Comment 2: Management Fees as U.S. Indirect Selling Expenses
Comment 3: Management Fees for Non-Subject Products

¹ Commerce preliminarily determined that Assan Aluminyum Sanayi ve Ticaret A.S. (Assan), Kibar Dis Ticaret A.S. (Kibar Dis), and Ispak Esnek Ambalaj Sanayi A.S. (Ispak) are a single entity (collectively, the Assan Single Entity). See *Certain Aluminum Foil from the Republic of Turkey: Preliminary Negative Determination of Sales at Less Than Fair Value, Postponement of Final Determination*, 86 FR 23686 (May 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 5-6; see also Memorandum “Less-Than-Fair-Value Investigation of Certain Aluminum Foil from the Republic of Turkey: Preliminary Affiliation and Collapsing Memorandum for Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S. and Ispak Esnek Ambalaj Sanayi A.S.,” dated April 27, 2021 (Affiliation and Collapsing Memorandum).

² See *Preliminary Determination*.



- Comment 4: Bank Charges as Direct Selling Expenses
- Comment 5: Section 232 Duties
- Comment 6: Home-Market Rebates
- Comment 7: Duty Drawback
- Comment 8: Raw Material Metal Premium Costs
- Comment 9: Hedging Gains and Losses as Cost of Manufacture
- Comment 10: Adjustment to the Cost of Manufacture for Goods in Transit
- Comment 11: Manual Adjustment Ratio
- Comment 12: Packing Cost Offset in Reported Costs
- Comment 13: General and Administrative Expenses
- Comment 14: Financial Expenses

II. BACKGROUND

On May 4, 2021, Commerce published in the *Federal Register* its *Preliminary Determination* in the LTFV investigation of aluminum foil from Turkey.

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. In the *Preliminary Determination*, Commerce notified interested parties that it was unable to conduct on-site verification.³ In lieu of on-site verification, Commerce issued a Verification Questionnaire to the Assan Single Entity to collect additional or supporting documentation related to information that the Assan Single Entity had already submitted to the record.⁴ On July 20, 2021, we received an in-lieu of on-site Verification QR from the Assan Single Entity.⁵ We used the in lieu of on-site Verification QR to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.

On July 22, 2021, we invited parties to comment on the *Preliminary Determination* and the in-lieu of on-site Verification QR.⁶ On August 2, 2021, we received case briefs from the Aluminum Association Trade Enforcement Working Group and its individual members⁷ (collectively, the petitioners) and the Assan Single Entity.⁸ On August 12, 2021, we received rebuttal briefs from the petitioners and the Assan Single Entity.⁹ Although the petitioners filed a

³ See *Preliminary Determination*, 86 FR at 23686.

⁴ See Commerce's Letter to the Assan Single Entity, dated July 9, 2021 (in-lieu of on-site Verification Questionnaire).

⁵ See Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S. and Ispak Esnek Ambalaj Sanayi A.S.'s Response to the Questionnaire in Lieu of Verification," dated July 20, 2021 (in-lieu of on-site Verification QR).

⁶ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Aluminum Foil from the Republic of Turkey: Briefing Schedule," dated July 22, 2021.

⁷ The individual members of the Aluminum Association Trade Enforcement Group include Granges Americas Inc; JW Aluminum Company; and Novelis Corporation. The petitioners indicated that Novelis Corporation acquired Aleris Corporation (including all of Aleris' aluminum foil-related operations), effective April 14, 2020.

⁸ See Petitioners' Letter, "Certain Aluminum Foil from Turkey: Petitioners' Case Brief Concerning Assan," dated August 2, 2021 (Petitioners' Case Brief); see also Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S. and Ispak Esnek Ambalaj Sanayi A.S.'s Case Brief," dated August 2, 2021 (Assan Single Entity's Case Brief).

⁹ See Petitioners' Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S. and Ispak Esnek Ambalaj Sanayi A.S.'s Rebuttal Case Brief," dated August 12, 2021

request for a hearing,¹⁰ they later withdrew their request.¹¹ As a result, we did not hold a hearing for this investigation. We received no scope comments from interested parties in response to the Preliminary Scope Decision Memorandum,¹² other than the petitioners' comment that Commerce should adopt the preliminary scope decision for the final determination.¹³

III. AFFILIATION AND SINGLE ENTITY TREATMENT

In the *Preliminary Determination*, based on record evidence, we preliminarily found that Assan, Kibar Dis, and Ispak are affiliated, pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Because these companies are majority-owned by Kibar Holding, the record demonstrated that the ownership, management, and operational structure of these companies is such that Kibar Holding, and the Kibar family, is in a position to assert control over decisions concerning Assan, Kibar Dis, and Ispak's production, pricing and cost of in-scope merchandise.¹⁴ Furthermore, because Assan, Kibar Dis, and Ispak are affiliated pursuant to section 771(33)(F) and section 351.102(b)(3) and, consistent with section 19 CFR 351.401(f)(1), because the operations performed by Assan, Kibar Dis, and Ispak result in significant potential for the manipulation of price or production, including potential for the restructure of certain manufacturing or selling priorities, we preliminarily collapsed Assan, Kibar Dis, and Ispak and treated these companies as a single entity (and referred to the entity as the Assan Single Entity) and calculated a single estimated weighted-average dumping margin for the *Preliminary Determination*.¹⁵ Since the *Preliminary Determination*, no additional information on the record would lead us to reconsider our collapsing decision. Accordingly, we continue to find that Assan, Kibar Dis, and Ispak constitute a single entity.

IV. CHANGES FROM THE PRELIMINARY DETERMINATION

- We denied a constructed export price (CEP) offset. *See* Comment 1.
- We revised the CEP indirect selling expense (ISE) ratio to include certain management fees, less the component of these management fees associated with non-subject merchandise, and made a corresponding adjustment to general and administrative (G&A) expenses. *See* Comments 2 and 3.
- We revised our calculation of the duty drawback adjustment to account for a filing penalty payment discount. *See* Comment 7.

(Petitioners' Rebuttal Brief); *see also* Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S. and Ispak Esnek Ambalaj Sanayi A.S.'s Rebuttal Case Brief," dated August 12, 2021 (Assan Single Entity's Rebuttal Brief).

¹⁰ *See* Petitioners' Letter, "Aluminum Foil from the Republic of Turkey – Petitioners' Request for Hearing," dated June 3, 2021.

¹¹ *See* Petitioners' Letter, "Aluminum Foil from the Republic of Turkey – Petitioners' Withdrawal of Hearing Request," dated August 4, 2021.

¹² *See* Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Preliminary Scope Decision Memorandum," dated April 27, 2021 (Preliminary Scope Decision Memorandum).

¹³ *See* Petitioners' Letter, "Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey – Petitioners' Final Scope Comments," dated September 8, 2021.

¹⁴ *See* Affiliation and Collapsing Memorandum.

¹⁵ *Id.*

- We revised the reported net hedging gains to mitigate the timing differences between the actual purchases of aluminum and the closing of the related commodity hedging contract. *See* Comment 9.
- We reduced the denominators used in the calculation of the COM adjustment rate, manual adjustment rate, and exempted duty drawback rate by the packing material costs to ensure that the denominators used in the rate calculations are on the same basis as COM to which the rates are applied. *See* Comment 11.
- We allowed the packing conversion cost that was embedded within the COM to offset the reported COM. *See* Comment 12.
- We excluded “unearned credit finance income” from Assan’s reported financial expenses. *See* Comment 14.

V. DISCUSSION OF THE ISSUES

Comment 1: Constructed Export Price Offset

For the *Preliminary Determination*,¹⁶ we granted a CEP offset in our margin calculations for the Assan Single Entity.

Petitioners’ Arguments:

- Commerce correctly found in the *Preliminary Determination* that a CEP offset is not warranted.¹⁷
- Despite this finding, Commerce inadvertently granted the Assan Single Entity a CEP offset in the margin calculation program.¹⁸
- Commerce should correct this error in the margin calculation program for the final determination.¹⁹

Assan Single Entity’s Rebuttal Arguments:

- The Assan Single Entity did not comment on this issue.

Commerce’s Position: Although we determined in the *Preliminary Determination* that record information demonstrates that a CEP offset is not warranted,²⁰ we inadvertently granted a CEP offset in the margin calculation program. Given that no information has been presented to Commerce since the *Preliminary Determination* that would cause us to consider granting a CEP offset, we will revise the margin calculation program to deny a CEP offset for the final determination.²¹

¹⁶ *See Preliminary Determination.*

¹⁷ *See* Petitioners’ Case Brief at 7 (citing Preliminary Determination PDM at 14-15; and Memorandum “Less-Than-Fair-Value Investigation of Certain Aluminum Foil from the Republic of Turkey: Preliminary Determination Analysis Memorandum for the Assan Single Entity,” dated April 27, 2021 at 6-7).

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ *See* Preliminary Determination PDM at 12-15.

²¹ For more details, *see* the “Changes to Margin Calculation Since the Preliminary Determination” section of the company-specific margin-calculation memorandum, “Less-Than-Fair-Value Investigation of Certain Aluminum Foil from the Republic of Turkey: Final Determination Analysis Memorandum for the Assan Single Entity,” dated concurrently with this memorandum (Assan Single Entity Final Analysis Memorandum).

Comment 2: Management Fees as U.S. Indirect Selling Expenses

For the *Preliminary Results*, we used in our margin calculations the CEP indirect selling expense (ISE) ratio reported by the Assan Single Entity's affiliated U.S. reseller, Kibar Americas Inc. (Kibar Americas), which excluded certain management fee charges from its parent company Assan.

Petitioners' Arguments:

- The Assan Single Entity's CEP ISE ratio improperly excluded an account comprising certain management fees, stating that they do not concern selling expenses, they concern expenses incurred in Turkey, not the United States, and including them in CEP ISEs would result in double counting because the management fees are already reflected in Assan's reported G&A expenses (GNA) or U.S. ISEs incurred in the home market (DINDIRSU).²²
- The Assan Single Entity is wrong to claim that the management fees do not concern sales office rent and salesmen's salaries, because Commerce's questionnaire lists "sales office rent and salesmen's salaries" as examples of indirect selling and administrative expenses that the Assan Single Entity should report as a CEP ISE incurred in the United States (INDIRSU).²³
- The Assan Single Entity acknowledges that at least some of the expenses within this account are properly considered selling expenses.²⁴
- The management fee expenses were incurred in the United States by Kibar Americas, a U.S.-based company, or on the company's behalf.²⁵
- Consistent with Commerce's practice and section 772(d)(1)(d) of the Act.²⁶ because Kibar Americas is exclusively a reseller and has no manufacturing activities of its own, all expenses within this account should be treated as selling expenses.²⁷
- The nature of the expenses that comprise this account is such that Commerce's questionnaire instructs that they be included in INDIRSU.²⁸
- Commerce should include all of Kibar Americas' expenses in this account in CEP ISEs, because all such expenses can only be in support of Kibar Americas' sole function: the resale of products manufactured by Assan.²⁹

²² See Petitioners' Case Brief at 8-9.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Petitioners' Case Brief at 9-10 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019) (*HR Steel Korea*), and accompanying Issues and Decision Memorandum (IDM) at Comment 8.

²⁷ *Id.* at 10 (citing Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to Section A Questionnaire," dated December 22, 2020 (AQR) at A-8).

²⁸ *Id.* at 10-11 (citing Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to the March 12 Section C Second Supplemental Questionnaire (Questions 21-28)," dated April 2, 2021 (5SQR) at Exhibit S6C-34).

²⁹ *Id.* at 11-12 (citing *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018), and accompanying IDM (*Ripe Olives Spain*) at Comment 4; *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014), and accompanying IDM (*Citric Acid Canada*) at Comment 3; *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 49622 (September 28, 2001), and accompanying IDM (*HR Thailand*) at Comment 10; and *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (June 18, 1997) (*Final Rule*)).

- The Assan Single Entity incorrectly claims that this account involves expenses incurred in Turkey.³⁰
- Kibar Americas is the “CEP entity,” and Commerce’s practice is to base indirect selling expenses in CEP situations on the experience of the U.S. affiliate which makes the sale.³¹
- By charging the expenses to Kibar Americas and collecting the associated revenue, Assan had shifted those expenses onto Kibar Americas and, therefore, there are no expenses to consider on behalf of Assan.³²
- Even if Commerce considers the Assan Single Entity’s argument that those expenses are incurred in Turkey by Assan (based on Assan’s records), Commerce’s practice is to include expenses in CEP ISE that were incurred on behalf of the CEP entity by its U.S. affiliate.³³
- Contrary to the Assan Single Entity’s claims, whether the expenses are incurred in the United States is not dispositive in determining whether they should be included as a CEP ISE, but rather whether that expense is associated with economic activity in the United States.³⁴
- Commerce and the courts have found that expenses associated with a respondent’s sales to its CEP entity *are not* associated with economic activity in the United States, while expenses associated with the CEP entity’s sale to unaffiliated U.S. customers *are* associated with economic activity in the United States.³⁵
- Record evidence explicitly indicates that the expenses pertain to Kibar Americas’ operations (*i.e.*, sales to unaffiliated U.S. customers) and not to Assan’s operations (*i.e.*, sales to, among others, Kibar Americas), which comports with how Assan calculated the management fees to charge to Kibar Americas.³⁶
- Because the activities underlying the management fees relate to Kibar Americas’ sales to unaffiliated U.S. customers (*i.e.*, Kibar Americas’ operations), and not to Assan’s sales to Kibar Americas, such expenses are associated with economic activity in the United States.³⁷
- Even if Kibar Americas did not incur these expenses in the United States, Commerce should include these expenses as a CEP ISE regardless of where the expenses were incurred.³⁸
- The Assan Single Entity’s claim that these expenses in CEP ISE would result in double counting, because Assan captures its expenses associated with providing management services to Kibar Americas in DINDIRSU or GNA is wrong and unsupported.³⁹
- The Assan Single Entity previously refused to identify where such expenses are captured in its response and, when instructed to identify where, it did not identify the accounts and

³⁰ *Id.* at 12.

³¹ *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM (*SSBs Germany*) at Comment 9).

³² See Petitioners’ Case Brief at 13-14.

³³ *Id.* at 15-16.

³⁴ *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996) (*Pasta Italy*) at Comment 3; and *Mitsubishi Heavy Indus. v. United States*, 54 F. Supp. 2d 1183, 1185-86 (CIT 1999) (*Mitsubishi II*) (quoting *Mitsubishi Heavy Indus. v. United States*, 15 F. Supp. 2d 807, 818 (CIT 1998) (*Mitsubishi I*))).

³⁵ *Id.* at 17 (citing *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying IDM (*Cookware Mexico*) at Comment 3 (quoting *Mitsubishi I* and *Mitsubishi II*)).

³⁶ *Id.* at 19.

³⁷ *Id.* (citing *Cookware Mexico* IDM; and 19 CFR 351.402(b)).

³⁸ *Id.* (citing *Pasta Italy*).

³⁹ *Id.*

amounts of corresponding expenses. Rather, it left the relevant columns empty in its exhibit.⁴⁰

- As a result of Assan’s failure to respond to Commerce’s explicit request for information, it is not possible for Commerce to determine if Assan incorporated expenses associated with its provision of management services to Kibar Americas in its reported DINDIRSU and G&A.⁴¹
- The Assan Single Entity explicitly stated that its reported costs do not include these expenses, so the record contradicts its claim that Assan’s costs for providing these management services to Kibar Americas are already part of DINDIRSU or GNA.⁴²
- Alternatively, if Commerce remains concerned about the possibility of double-counting, then Commerce should reincorporate this revenue in Assan’s GNA, and also incorporate the expenses in Kibar Americas’ CEP ISEs without any possibility of double-counting.⁴³
- The Assan Single Entity’s arguments against the inclusion of these expenses in CEP ISE should be rejected by Commerce.⁴⁴
- The Assan Single Entity improperly relies on prior proceedings where Commerce treated management fees as G&A expenses.⁴⁵
- Commerce properly included management fees in G&A expenses when the expenses were incurred by a manufacturer. However, Kibar Americas is exclusively a reseller, so its general expenses (including management fees) are selling expenses because those expenses can only be in support of Kibar Americas’ sole function.⁴⁶
- Commerce properly excluded corporate expenses when the expenses were related to the management of production facilities (*i.e.*, steel mills) in the United States, *i.e.*, the CEP was not exclusively a reseller but had manufacturing activities of its own, so such expenses should be assigned to its manufacturing activities and not included as a CEP ISE.⁴⁷
- Commerce properly excluded from ISEs certain line items from a financial statement that were specifically tied to non-sales related activities which are largely passive based on the notes from the financial statements and, consistent with Commerce’s practice, which involve investment activities not related to the general production operations but as separate profit-making activity.⁴⁸

⁴⁰ *Id.* (citing Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to the March 8, 2021 Section D Second Supplemental Questionnaire,” dated March 29, 2021 (SDQR) at Exhibit S5D-41).

⁴¹ *Id.* at 20-21 (citing SDQR at 5S-48).

⁴² *Id.*

⁴³ *Id.* at 21.

⁴⁴ *Id.* at 23 (citing Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Rebuttal to Petitioners’ April 8 and April 15 Pre-Preliminary Comments,” dated April 20, 2021 at 27-30).

⁴⁵ *Id.* at 24.

⁴⁶ *Id.* (citing *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016), and accompanying IDM (*Welded Pipe UAE*) at Comment 1).

⁴⁷ *Id.* at 24-26 (citing *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 22, 2006), and accompanying IDM at Comment 6).

⁴⁸ *Id.* at 26-27 (citing *HR Steel Korea* at Comment 8; *Dioctyl Terephthalate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 28824 (June 26, 2017), and accompanying IDM at Comment 10; and *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at 56).

- In the instant investigation, Kibar Americas' management fee expenses are either selling-related or administrative based on the Assan Single Entity's own descriptions, and not associated with a separate profit-making activity like investments.⁴⁹
- Thus, the Assan Single Entity falsely claims that it has provided explanations to support the nature of this non-sales related expense, because Kibar Americas is exclusively a reseller, and therefore, only has selling activities. All expenses that relate to Kibar Americas' general operations must relate to selling, even Kibar Americas' expenses that Assan characterizes as general or administrative expenses.⁵⁰
- Commerce's questionnaire, the preamble to Commerce's regulations, and overwhelming administrative precedent support that G&A expenses of entities that are exclusively resellers should be treated as selling expenses.⁵¹

Assan Single Entity's Rebuttal Arguments:

- Commerce correctly calculated the Assan Single Entity's CEP ISE ratio by excluding these management fee expenses because they were management fees from the parent company that Assan incurred in Turkey for overall group support which did not relate to sales activities occurring in the United States.⁵²
- Consistent with the antidumping statute, Commerce adjusts CEP prices by deducting indirect selling expenses incurred in the United States;⁵³ and Commerce has had a long-standing policy of making deductions to CEP prices for expenses associated with sales economic activity in the United States.⁵⁴
- In its responses, the Assan Single Entity reported for INDIRSU a large number of indirect selling expenses associated with its US sales activities, including office rent, salaries for US employees, insurance, consulting services, travel expenses, entertainment expenses, postage, telephone, postage, etc.⁵⁵
- The Assan Single Entity excluded the management fees from INDIRSU, and included them in Assan's G&A expenses, because they are management fees assessed by Assan to Kibar Americas for a portion of head office administrative activities to manage group operations, because the actual costs which the expense covers were incurred in Turkey.⁵⁶
- Not all expenses incurred by affiliated resellers are selling expenses. Commerce's "general" practice to treat expenses incurred by affiliated resellers as selling expenses, but qualified as to where the expense was incurred and whether it relates to sales economic activity in the United States.⁵⁷
- The petitioners omit key facts when they rely on *Ripe Olives Spain* to support their position that all expenses of a reseller should be included regardless of origin or type. There was no

⁴⁹ *Id.* at 27-28 (citing 5SQR at 2 and Exhibit S6C-34).

⁵⁰ *Id.* at 28, 29 (citing *HR Steel Korea* at Comment 8).

⁵¹ *Id.* at 28-29 (citing Section C of Commerce's Letter, Initial AD Questionnaire, dated November 18, 2020 (AD Questionnaire) at 51; *Final Rule* 62 FR at 27351; *Ripe Olives Spain* at Comment 4; *Citric Acid Canada* at Comment 3; and *HR Thailand* at Comment 10).

⁵² See Assan Single Entity's Rebuttal Brief at 3.

⁵³ *Id.* at 4 (citing section 772(d)(1)(D) of the Act).

⁵⁴ *Id.* at 4 (citing Statement of Administrative Action, H.R. Doc. No.103-316 at 823) (1994); and *Pasta Italy* at Comment 3.

⁵⁵ See Assan Single Entity's Rebuttal Brief at 4.

⁵⁶ *Id.*

⁵⁷ *Id.* at 5 (citing *Pasta Italy* at Comment 3; *Welded Pipe UAE* at Comment 1; and *Cookware Mexico* at Comment 3).

dispute about whether the expenses in question related to economic activity in the United States.⁵⁸

- The petitioners omit key facts and parts of Commerce’s conclusion when they rely on *Citric Acid Canada* as support for the general proposition to include all reseller expenses. The expenses in question were incurred directly by the U.S. affiliate for U.S. management, not foreign parent allocated expenses.⁵⁹
- The petitioners omit key facts when they rely on *HR Steel Thailand* as support for including all expenses. The respondent reported G&A expenses specifically incurred by its affiliated U.S. reseller as home market expenses reported in the sales data of a home market reseller, so Commerce properly shifted the expense incurred by the U.S. company in the United States back to that U.S. reseller.⁶⁰
- In past decisions, Commerce has properly excluded expenses from the U.S. reseller, and both Commerce and the courts have determined that investment expenses unrelated to sales activity should not be included in ISEs.⁶¹
- The reported management fees occurred in Turkey, were reported as part of Assan’s expenses and costs, and the fact that Kibar Americas may have been assessed a management fee does not change the nature or location of the expense, nor should the expense be double counted.⁶²
- The petitioners omit key facts when they rely on *SSBs Germany* to support reallocating the expenses at issue as a CEP ISE. The issue was how to allocate ISEs of the U.S. consolidated group when a portion of the activities and expenses related to non-subject sales. There was no dispute over whether the expenses were incurred in the United States or involved economic activity in the United States.⁶³
- The petitioners incorrectly argue that the reallocation as a CEP ISE is warranted, because the management fees are related to economic activities that occurred in Turkey, *i.e.*, Assan *managing* its wholly owned subsidiary Kibar Americas in Turkey, which has no connection with Kibar Americas’ economic activity in the United States, *i.e.*, selling aluminum to U.S. customers.⁶⁴
- Commerce’s questionnaire explicitly instructs inclusion of parent company management fees or expenses when reporting G&A expenses in section D of the antidumping questionnaire, and there is no such instruction in section C to report such expenses as a part of INDIRSU.⁶⁵
- The petitioners omit key facts when they cite to *Pasta Italy* to support the claim that expenses incurred in Italy were included in CEP ISE. Commerce included expenses associated with economic activity in the United States as a CEP ISE even when those expenses were incurred

⁵⁸ *Id.* at 5-6 (citing *Pasta Italy* at Comment 3).

⁵⁹ *Id.* at 6 (citing *Citric Acid Canada* IDM at Comment 3).

⁶⁰ *Id.* at 6-7 (citing *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Notice of Final Determination of Sales at Less Than Fair Value*, 66 FR 49622 (September 28, 2001) (*HR Steel Thailand*), and accompanying IDM at Comment 10).

⁶¹ *Id.* at 7 (citing *Cookware Mexico* at Comment 3; *HR Steel Korea* at Comment 8; and *U.S. Steel Corp v. United States*, 712 F.Supp.2d 1330 (CIT 2010)).

⁶² *Id.* at 8 (citing Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Alüminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to Question 6 of the March 31, 2021 Sections B and C Supplemental Questionnaire,” dated April 12, 2021 at 1-2).

⁶³ *Id.* at 8-9 (citing *SSBs Germany* at Comment 9).

⁶⁴ *Id.* at 9-10.

⁶⁵ *Id.* at 10-11.

outside the United States, but that was at the request of both sides and Commerce acknowledged its departure from the normal approach.⁶⁶

- The Assan Single Entity objects to this type of allocation in the instant investigation where Assan sells foil to multiple countries and assists in managing several operating entities as discussed in the section A responses.⁶⁷
- In the event Commerce considers an adjustment to Kibar Americas' reported ISEs is necessary, it should be limited to a certain single line item in the management fees, as no other element is related to U.S. sales economic activity.⁶⁸

Commerce's Position: We agree with the petitioners that certain management fees incurred by the Assan Single Entity's U.S. reseller, Kibar Americas, should be treated as a U.S. ISE and, therefore, we find it appropriate to revise the CEP ISE ratio to include these management fees with expenses reported for INDIRSU. Further, we also find it appropriate to make a corresponding offset (*i.e.*, reduction) to Assan's reported G&A expenses for the management fees added to the U.S. ISEs.

Commerce's questionnaire,⁶⁹ the preamble to Commerce's regulations,⁷⁰ and administrative precedent⁷¹ support the concept that G&A expenses of a company that is exclusively a reseller, with no manufacturing activities, should be treated as indirect selling expenses, because the expenses can only be in support of the company's sole function as a reseller. As such, the management fees incurred by Kibar Americas, the Assan Single Entity's U.S. reseller, should be treated as an U.S. indirect selling expense and included with expenses reported for INDIRSU.

Despite the Assan Single Entity's claim, it did not demonstrate that Assan's costs for providing these services to Kibar Americas are included as part of either U.S. ISEs incurred in Turkey, DINDIRSU, or in G&A expenses, GNA. Further, the record shows that Assan incurred these expenses to provide management services to Kibar Americas,⁷² and Kibar Americas, in turn, incurred these expenses when it "purchased" the management services from Assan.⁷³ Therefore, we determine that it is appropriate to include these management fees, less the amount associated solely with non-subject merchandise, as discussed in Comment 2, as part of the CEP ISE ratio used to calculate INDIRSU.⁷⁴

Based on our understanding of the record, the management fees incurred by Assan are related to expenses such as managers salaries that are already captured in Assan's reported G&A.

⁶⁶ *Id.* at 11.

⁶⁷ *Id.*

⁶⁸ *Id.* at 13-14

⁶⁹ See AD Questionnaire at C-27, which instructs the respondent to report for Field INDIRSU "the unit cost of indirect selling and administrative expenses."

⁷⁰ See *Final Rule*, 62 FR at 27351 ("Typically, the primary, if not sole, function of an affiliated U.S. importer is to sell. Therefore, many or all general and administrative expenses of such firms are properly considered as selling expenses and must be deducted under section 772(d)(1)(D).")

⁷¹ See, e.g., *Ripe Olives Spain* at Comment 4; *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014), and accompanying IDM at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 49622 (September 28, 2001), and accompanying IDM at Comment 10.

⁷² See 5SQR at 2 and Exhibit S6C-34.

⁷³ *Id.* at Exhibits S6C-34 and S6C-35.

⁷⁴ For details on our calculation which contain the Assan Single Entity's BPI, see the "Changes to the Margin Calculation Since the Preliminary Determination" section of Assan Single Entity Final Analysis Memorandum.

Likewise, the management fees are also recognized as income by Assan, but were excluded from the reported G&A costs.⁷⁵ Given that the management fees are now captured as a U.S. ISE, we find it reasonable to apply an income offset to reported G&A expenses to avoid double-counting of this amount in the margin calculation.⁷⁶

Comment 3: Management Fees for Non-Subject Products

For the *Preliminary Results*, we used in our margin calculations the CEP ISE ratio reported by the Assan Single Entity, which excluded expenses related to non-subject merchandise.

Petitioners' Arguments:

- The Assan Single Entity improperly excluded expenses related to non-subject products, stating that they relate to non-subject aluminum sheet.⁷⁷
- The Assan Single Entity calculated the CEP ISE ratio using Kibar Americas' company-wide sales revenue as the denominator, so it is incongruous for the Assan Single Entity to remove indirect selling expenses associated with non-subject products from the numerator of the CEP ISE ratio.⁷⁸

Assan Single Entity's Rebuttal Arguments:

- Expenses associated with non-subject products should be excluded from the numerator of the CEP ISE ratio.⁷⁹
- The Assan Single Entity used the value of all sales as the denominator of the CEP ISE ratio because the current numerator of the calculation relates to all products, including foil. Whereas in this case, a particular expense is explicitly associated to non-subject products and, therefore, should be excluded.⁸⁰
- Because the numerator consists of common expenses, the only way to determine the foil related selling expenses would have been to allocate the expenses in the numerator by value and in the process to exclude any charges that expressly and explicitly relate to non-subject products. The result would have been the same.⁸¹
- Commerce does not automatically apply ISEs incurred with respect to non-subject merchandise to subject ISEs, despite the petitioners' argument that seems to rely on the position that, "generally," Commerce considers all selling expenses incurred by a reseller.⁸²

⁷⁵ See 5SQR at 2; see also SDQR at 5S-48 and Exhibit S5D-41.

⁷⁶ For summaries of additional comments submitted by parties which contain the Assan Single Entity's BPI, see the "Discussion of the Issues" section of the Assan Single Entity Final Analysis Memorandum. For details on our calculation which contain the Assan Single Entity's BPI, see the "Changes to the Margin Calculation Since the Preliminary Determination" section of Assan Single Entity Final Analysis Memorandum.

⁷⁷ See Petitioners' Case Brief at 21-22.

⁷⁸ *Id.* at 22 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003), and accompanying IDM at Comment 2; and *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 18, 2011), and accompanying IDM at Comment 3).

⁷⁹ See Assan Single Entity's Rebuttal Brief at 12.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 13 (citing *SSBs Germany* at Comment 9).

Commerce’s Position: We agree with the Assan Single Entity that the management fees related only to non-subject merchandise, which comprise a portion of the management fees incurred by the Assan Single Entity’s U.S. reseller, Kibar Americas, should not be included with U.S. indirect selling expense. Although we have found it appropriate to revise the CEP ISE ratio to include the management fees which Assan had excluded from Kabir Americas’ U.S. ISEs,⁸³ we do not find it appropriate to also include the component of these management fees associated only with non-subject merchandise.

The Assan Single Entity’s calculation of the CEP ISE ratio includes in the numerator expenses common to all products and, in the denominator the sales value of all products. The petitioners argue that it would be ‘incongruous’ to include the component of the management fees that do not relate to subject merchandise in the numerator of the CEP ISE ratio calculation, because the denominator includes sales of all products. We disagree. Expenses associated with all products must be allocated over all products. Expenses associated only with in-scope merchandise must be allocated over in-scope merchandise. Expenses associated only with non-scope merchandise are not relevant. Simply because the denominator of the CEP ISE ratio includes the sales value of all products does not mean that the numerator must include the expenses associated exclusively with non-subject merchandise. When, as in the instant investigation, “an expense is demonstrated to be unrelated to the sale of subject merchandise, that expense may be removed from the ISE calculation.”⁸⁴ The denominator must correspond with the numerator and not the other way around, *i.e.*, we first look to the nature of the expenses to be captured in the numerator to determine what is appropriate for the denominator. As a result of our analysis in Comment 2, we are including in the CEP ISE ratio certain management fees, but, as a result of our analysis of this issue, we are not including the component of the management fees identified as being related only to non-subject merchandise.⁸⁵

Comment 4: Bank Charges as Direct Selling Expenses

For the *Preliminary Results*, we included in our margin calculations certain bank charges reported as home market direct selling expenses.

Petitioners’ Arguments:

- Commerce should disallow home market bank charges reported in Fields BANKCHARH and DIRSEL1H.⁸⁶
- As Commerce explained in its questionnaire, it only allows sale-specific bank charges as direct selling expenses and considers expenses to be direct expenses if they are: (1)

⁸³ See Comment 2 of this memorandum.

⁸⁴ See *U.S. Steel Corporation v. United States*, 712 F. Supp. 2d 1330, 1345 (CIT 2010) (citing *NSK Ltd. v. United States*, 29 CIT at 17-18, 358 F. Supp. 2d at 1291 (upholding Commerce’s decision to exclude selling expenses related to non-subject merchandise from pool of indirect selling expenses); *NSK Ltd. v. United States*, 27 CIT at 108-10, 245 F. Supp. 2d at 1378-79 (sustaining Commerce’s determination to deduct “certain expenses attributable to non-scope merchandise” from indirect selling expenses); and *Timken Co. v. United States*, 209 F. Supp. 2d at 1379-81 (upholding Commerce’s decision to “exclude certain expenses attributable to non-scope merchandise” from indirect selling expenses)).

⁸⁵ For details on our calculation which contain the Assan Single Entity’s BPI, see Assan Single Entity Final Analysis Memorandum at section “Changes to the Margin Calculation Since the Preliminary Determination.”

⁸⁶ See Petitioners’ Case Brief at 63.

“variable,” and (2) “traceable in a company’s financial records to sales of the merchandise under investigation or review.”⁸⁷

- In its initial questionnaire response, however, the Assan Single Entity did not explain why it considers the expenses reported in BANKCHARH or in DIRSEL1H to be directly related to sale of the foreign like product.⁸⁸
- Commerce gave the Assan Single Entity two additional opportunities to demonstrate the variable nature of these expenses and, although the Assan Single Entity showed that both of these expenses are sale-specific, the petitioners argue that Assan Single Entity failed to adequately support the variable nature of the bank charges.⁸⁹
- In addition, the Assan Single Entity failed to provide documentation demonstrating that the amount of the expenses depends on the volume of Assan’s sales.⁹⁰
- Regarding the bank charge expenses reported in BANKCHARH, the Assan Single Entity argues that the bank charges Assan by applying a pre-arranged rate to customer-specific limits.⁹¹
- The Assan Single Entity argues that these expenses are variable because the amount of the expense depends on the amount of the customer-specific limits but failed to tie this explanation to the supporting documents it provided.⁹²
- The Assan Single Entity’s exhibits do not show: (1) the rate that the bank uses to calculate the expenses; (2) the customer-specific limits; or (3) how the bank applied the rate to the customer-specific limits to calculate the amount of the expense to charge to Assan.⁹³
- Regarding the bank charge expenses reported in DIRSEL1H, the Assan Single Entity explained that the bank charges it by applying a commission rate to the amount of Assan Single Entity’s sales.⁹⁴
- The Assan Single Entity argues that the expenses are variable because the amount of the expense depends on the amount of the sales related the expense but failed to tie its explanation to the provided supporting documentation.⁹⁵
- The Assan Single Entity’s exhibits do not demonstrate: (1) the commission rate, and (2) how the bank applied the commission rate to the amount of Assan’s sales related to these expenses in order to calculate the amount of the expenses to charge to Assan.⁹⁶
- Commerce’s precedent makes clear that the agency does not treat expenses as direct selling expenses unless the respondent proves that the expense varies with the quantity sold, which the Assan Single Entity has failed to demonstrate with respect to expenses reported for BANKCHARH and DIRSELH and, thus failed to meet its evidentiary burden.⁹⁷

⁸⁷ *Id.* (citing AD Questionnaire at Appendix I, “GLOSSARY OF TERMS”).

⁸⁸ *Id.* at 63.

⁸⁹ *Id.* at 63-64 (citing Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to the Sections B and C Supplemental Questionnaire,” dated March 16, 2021 (4SQR) at Exhibits S4BC-27 and S4BC-28).

⁹⁰ *Id.*

⁹¹ *Id.* at 65 (citing Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to the March 31 Sections B-C Supplemental Questionnaire (Questions 1-5),” dated April 7, 2021 (6SQR Part I) at 4).

⁹² *Id.* at 65 (citing 4SQR at 4).

⁹³ *Id.* at 65 (citing 6SQR Part I at Exhibits S8B-11 and S8B-12).

⁹⁴ *Id.* at 66.

⁹⁵ *Id.*

⁹⁶ *Id.* (citing 6SQR Part I at Exhibits S8B-13 and S8B-14).

⁹⁷ *Id.* at 66-67 (citing 19 CFR 351.401(b)(1); and Statement of Administrative Action, Uruguay Round Agreements Act, H.R. Doc. No. 316. Vol. 1, 103d Cong. 2d Sess. 656 (1994) at 829).

- Treating home market bank charges as indirect expenses, rather than direct expenses, is also consistent with how the Assan Single Entity treated bank charges in its U.S. sales response.⁹⁸

Assan Single Entity's Rebuttal Arguments:

- Home-market bank charges are direct selling expenses.⁹⁹
- As required by the statute, Commerce made adjustments in circumstances of sale by deducting home market direct selling expenses, where appropriate.¹⁰⁰
- The petitioners' claim that the reported bank charges are not sale-specific is premised on the Assan Single Entity's supposed failure to meet its evidentiary burden for failing to provide information that was not requested by Commerce.¹⁰¹
- However, in response to Commerce's request, the Assan Single Entity provided all documents related to the bank charge expenses incurred on the sample sales and explained how the expenses can be linked to the sales.¹⁰²
- The Assan Single Entity explained that there is a commission for each money transfer by credit cards, which is charged by the banks on a quarterly basis, and that, due to the small nature of these charges and Assan's inability to report them on a transaction-specific basis, the charges were reported as period averages, which is a methodology routinely accepted by Commerce.¹⁰³
- To comply with Commerce's request to report the price adjustment or expense on a more specific basis using Assan's records, the Assan Single Entity revised its reporting to provide a revised BANKCHARH factor calculation on a quarterly basis and to provide a revised monthly factor calculation for DIRSEL1H.¹⁰⁴
- The Assan Single Entity was fully responsive to Commerce's request that it provide documentation to demonstrate that the expenses charged by the bank depend on the volume of Assan's sales.¹⁰⁵
- With respect to the expenses reported in BANKCHARH, the Assan Single Entity explained that there is no quarterly invoice generated by which Assan's bank charged Assan for these expenses, but rather the bank simply deducts the commissions from the transferred funds.¹⁰⁶
- The Assan Single Entity also provided supporting documentation to show that the variable expenses are directly dependent on the total amount of the customer limits and invoices processed.¹⁰⁷

⁹⁸ *Id.* at 67 (citing Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Alüminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to the March 12 Section C Second Supplemental Questionnaire," dated March 31, 2021 at 31).

⁹⁹ *See* Assan Single Entity's Rebuttal Brief at 37.

¹⁰⁰ *Id.* at 37 (citing section 773(a)(6)(C)(iii) of the Act).

¹⁰¹ *Id.* at 37.

¹⁰² *Id.* at 37-38 (citing 4SQR at 22 and Exhibits S4BC-27 and S4BC-28).

¹⁰³ *Id.* at 38 at 23-24 (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination in the Less-Than-Fair-Value Investigation*, 75 FR 59223 (September 27, 2010), and accompanying IDM at 4-5 (concerning Comment 10); and *Honey from Argentina: Notice of Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004), and accompanying IDM at Comment 18).

¹⁰⁴ *Id.* at 38-39 (citing 4SQR at S4BC-29.1).

¹⁰⁵ *Id.* at 39-40.

¹⁰⁶ *Id.* at 39 (citing 6SQR Part I at 3-4 and Exhibits S8B-11 and S8B-12).

¹⁰⁷ *Id.*

- With respect to the expenses reported in DIRSEL1H, the Assan Single Entity explained that there is no invoice generated by which Assan’s bank charged Assan for these expenses, but rather the bank simply deducts such commissions from the transferred funds.¹⁰⁸
- The Assan Single Entity also provided supporting documentation to show that the total charge is directly dependent on the total value of the invoices processed based on calculated commissions.¹⁰⁹
- The petitioners wrongly rely on 1996 precedent and ignore more recent, consistent Commerce practice in which it has found that bank charges and fees are actual expenses incurred by a company, recorded on its books, and typically should be reported as a direct selling expense, when, as in the instant situation, they are charged on specific sales.¹¹⁰
- The fact that the Assan Single Entity does not incur sale-specific bank charges on U.S. sales is irrelevant, and Commerce does not require “consistency” in the treatment of bank charges for U.S. and home market sales.¹¹¹

Commerce’s Position: We agree that the bank charges the Assan Single Entity reported for Fields BANKCHARH and DIRSEL1H should be treated as direct selling expenses and deducted from home market price, and, thus, we will make no changes for the final determination.

It is Commerce’s practice to deduct as direct selling expenses from home market or U.S. price bank charges and fees that are charged on specific sales. The antidumping duty questionnaire qualifies direct expenses as “variable expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred),” “traceable in a company’s financial records to sales of merchandise under investigation,” and provides examples such as “credit expenses” and “commissions.”¹¹² The courts have ruled that direct selling expenses are expenses that “vary with the quantity sold,”¹¹³ *or* are “expenses related to a particular sale,” and deducted from home market price “under the ‘circumstances-of-sale provision’” of our regulations.¹¹⁴

Thus, a direct selling expense is incurred based on the fact that a sale has been made, and this expense otherwise would not have been incurred if the sale had not been made. The Assan Single Entity incurred bank charges and other direct selling expenses because it consummated sales of the foreign like product in the home market. Such expenses are properly reported as direct selling expenses as part of its home market sales data. Such expenses could have been based on sales value, on sales quantity, or a flat fee, but any of these bases constitute a variable, direct selling expense for the purposes of these margin calculations.

¹⁰⁸ *Id.* at 39-40.

¹⁰⁹ *Id.* (citing 6SQR Part I at Exhibits S8B-13d and S8B-14).

¹¹⁰ *Id.* at 40 (citing *Pasta Italy* at Comment 5; *Ripe Olives Spain* at Comment 4; *Certain Lined Paper Products from India: Final Results of the Antidumping Duty Review and Final Determination of No Shipments; 2018-2019*, 86 FR 28058 (May 25, 2021), and accompanying IDM at Comment 4; *Strontium Chromate from France: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review 2019-2020*, 86 FR 41441 (August 2, 2021); and *Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review 2019-2020*, 86 FR 38015 (July 19, 2021)).

¹¹¹ *Id.* at 41.

¹¹² See section 773(a)(6)(C)(iii) of the Act; see also 19 CFR 351.410(c).

¹¹³ See *Zenith Electronics Corp. v. United States*, 77 F.3d 426 (Fed. Cir. 1996) (citing 19 CFR 351.410(a),(c)).

¹¹⁴ See *Torrington Co. v. United States*, 68 F.3d 1347 (Fed. Cir. 1995).

Despite the petitioners' arguments to the contrary, we find that the Assan Single Entity met its evidentiary burden to demonstrate and explain that the bank charges are incurred on a sale-specific basis and further vary with the quantity sold. First, the Assan Single Entity explained for both types of bank charges that, due to the small nature of these bank charges and the inability to report on a transaction-specific basis, the Assan Single Entity reported these charges as period averages based on the period (quarterly or monthly) totals.¹¹⁵

With regard to the bank charges reported for Field BANKCHARH, the Assan Single Entity demonstrated with supporting documentation that the banks charge Assan these expenses on a quarterly basis as a result of sales of foreign like products, the payment type of each invoice is traceable in Assan's accounting system, and Assan calculated a factor by allocating the total of such charges to only those sales on which the charges are incurred.¹¹⁶ The petitioners argue that the Assan Single Entity's exhibits do not show the commission rate that the bank uses to calculate the expenses, the customer-specific limits, or how the bank applied the commission rate to the customer-specific limits to calculate the amount of the expense to charge to Assan. However, while the record may lack this particular information, we do not find that this information is necessary to substantiate that these bank charges are a direct result of Assan's sales of the foreign like product in the home market.

With regard to the bank charges reported for Field DIRSEL1H, the Assan Single Entity explained that the customer inputs the details of credit cards with their password and then transfers the money to Assan, and the bank charges a commission during this transfer.¹¹⁷ Assan demonstrated with supporting documentation that it recorded the credit to the customer account and matched the total credit with the outstanding invoices, that the bank charge type of each invoice is traceable in Assan's accounting system, and Assan calculated a factor by allocating the total charges to those sales that are made through each bank charge type.¹¹⁸

The record demonstrates that the bank charges reported for Fields BANKCHARH and DIRSEL1H are a direct result of Assan's sales of the foreign like product in the home market, *i.e.*, "in the absence of the sale these expenses would not be incurred."¹¹⁹ Given that record evidence indicates that reporting on either a quarterly or monthly basis for these expenses is on as specific a basis as Assan's books and records would allow, we find reporting bank charges based on period averages to be reasonable. Moreover, we find that the information the Assan Single Entity provided for the bank charges reported for Fields BANKCHARH and DIRSEL1H, as detailed above, reasonably supports a finding that the bank charges in question "are variable expenses that are incurred as a direct and unavoidable consequence of the sale," "traceable in Assan's financial records to sales of merchandise under investigation."

Comment 5: Section 232 Duties

For the *Preliminary Determination*, we deducted from U.S. price section 232 duties reported by the Assan Single Entity for certain sales to the United States.

¹¹⁵ See 4SQR at 22-23.

¹¹⁶ *Id.* at 22 and Exhibit S4BC-27.

¹¹⁷ *Id.* at 23.

¹¹⁸ *Id.* at 23 and Exhibit S4BC-28.

¹¹⁹ *Id.* at 22-23 and Exhibits S4BC-27, S4BC-28, S4BC-29.1, and S4BC29.2.

Assan Single Entity's Arguments:

- Section 232 tariffs on steel and aluminum imports are “special tariffs” that are distinct from “normal” customs duties and, like AD/CVD and 201 safeguards, are imposed to remedy threats to national security (in this case a threat to the viability of the U.S. aluminum industry) and should not be deducted from export price.¹²⁰
- The statute does not contemplate adjustments for “special tariffs.” Commerce is statutorily mandated to reduce the price used to establish both export price (EP) and CEP by, *inter alia*, United States import duties.¹²¹
- Commerce has determined that the phrase “United States import duties” does not cover all U.S. customs duties imposed on imported merchandise, but rather excludes “special” or remedial remedies, including safeguards.¹²²
- The U.S. Court of International Trade (CIT) has found that there is a distinction between “special” dumping tariffs and “ordinary” customs duties on at least five occasions.¹²³
- The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed that this interpretation of “United States import duties” as not including “special” tariffs is reasonable, that Congress did not intend all duties to be considered “United States import duties,” and that section 201 safeguards are special tariffs that should not be deducted from EP and CEP.¹²⁴
- Commerce has interpreted section 772(c)(2)(A) of the Act to provide for the deduction only of regular customs duties and not special remedial tariffs and is obliged to follow its established course of action until it provides a reasoned analysis explaining why a change is necessary. In the instant case, the ‘reasoned analysis’ is limited to a single sentence indicating that deductions were for section 232 duties.¹²⁵
- Commerce has acknowledged the extraordinary nature of 232 duties.¹²⁶
- Commerce and the Administration contemplated the section 232 tariffs on steel and aluminum as an alternate means to remedy injury to a domestic industry, consistent with the underlying purpose of other “special” tariffs and, similar to section 201 safeguards, are remedial, temporary, and were implemented under Congress’s delegation of authority.¹²⁷

¹²⁰ See Assan Single Entity’s Case Brief at 9-10 (citing section 232 of the Trade Expansion Act of 1962; the Assan Single Entity’s questionnaire responses and IDM at 10; and *Publication of a Report on the Effect of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, 85 FR 40202 (July 6, 2020)).

¹²¹ *Id.* at 10 (citing section 731 of the Act; section 772(a)-(b) of the Act; and section 772(c)(2)(A) of the Act).

¹²² *Id.* at 10-11 (citing *Stainless Steel Wire Rod from the Republic of Korea*, 69 FR 19153, 19159 (April 12, 2004) (*SWR Korea*); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404, 18421 (April 15, 1997)).

¹²³ *Id.* at 11 (citing *Hoogovens Staal BV v. United States*, 4 F. Supp. 2d 1213, 1220 (Ct. Int’l Trade 1998); *Bethlehem Steel Corp. v. United States*, 27 F. Supp. 2d 208 (Ct. Int’l Trade 1998); *U.S. Steel Group v. United States*, 15 F. Supp. 2d 892, 898–900 (CIT 1998); *AK Steel Corp. v. United States*, 988 F. Supp. 594 (Ct. Int’l Trade 1997) (*AK Steel*); *Federal Mogul Corp. v. United States*, 813 F. Supp. 856, 872 (CIT 1993); and *PQ Corp. v. United States*, 652 F. Supp. 724, 737 (CIT 1987)).

¹²⁴ *Id.* at 11-13 (citing *Wheatland Tube Co. v. United States*, 495 F.3d 1355 (Fed. Cir. 2007) (*Wheatland Tube*)).

¹²⁵ *Id.* at 12-13 (citing *NMB Singapore Ltd. v. United States*, 557 F.3d 1316, 1328 (Fed. Cir. 2009)).

¹²⁶ *Id.* at 13 (citing Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019 at 7 (232 Tariffs Memo)).

¹²⁷ *Id.* at 13.

- The President and the Secretary of Commerce have frequently indicated that the section 232 tariffs on steel and aluminum imports are directed at the same overarching purpose of protecting domestic producers.¹²⁸
- Given that Commerce and the President viewed the section 232 tariffs as an alternate means to remedy injury to a domestic industry, equivalent to “special” tariffs like AD/CVD and section 201, they cannot be treated differently from those provisions and be deducted from U.S. price.¹²⁹
- In finding that section 201 safeguards are properly characterized as “special tariffs,” Commerce and the CAFC found it significant that section 201 safeguards, like antidumping tariffs, are remedial in nature.¹³⁰
- In each case, the amount of tariffs imposed is related directly to the extent of the particular conditions determined to exist and the ability of the Executive Branch to impose them flows directly from an express delegation of authority through legislation from Congress, which is in stark contrast to ordinary U.S. import duties, which are determined and imposed by Congress pursuant to the United States’ World Trade Organization (WTO) obligations.¹³¹
- In finding that section 201 safeguards were more similar to AD/CVD, the CAFC emphasized that both were temporary in nature compared to normal customs duties that are permanent unless modified by Congress.¹³²
- Section 232 tariffs do not require congressional action to be modified and the proclamation implementing them expressly directs the Secretary of Commerce to continue to monitor imports of steel articles and to periodically review the status to inform the President of any circumstances that might require modifications, which the President has done on several occasions.¹³³
- Unlike regular customs duties, section 232 tariffs are not passed by Congress, but rather imposed by the President pursuant to delegated authority, so Commerce’s treatment of section 232 tariffs as “ordinary” customs duties ignores constitutional principles and the statutory scheme established by Congress.¹³⁴
- The President’s directive to “revise the HTSUS” pursuant to *Proclamation 9740* and the modification of “certain provisions of chapter 99” of the HTSUS in the Annex further evidences the “special” nature of the section 232 tariffs.¹³⁵

¹²⁸ *Id.* at 13-15 (citing 232 Tariffs Memo at 7 (citing *Wheatland Tube*, 495 F.3d at 1364); Section 232 Aluminum Report at 40509; and Section 232 Steel Report at 30216-18, 40204, 40211).

¹²⁹ *Id.* at 15 (citing *Proclamation 9705 of March 8, 2018: Adjusting Imports of Steel into the United States*, 83 FR 11625 (March 15, 2018)).

¹³⁰ *Id.* at 15 (citing *SWR Korea*, 69 FR at 19159; and *Wheatland Tube*, 495 F.3d at 1362).

¹³¹ *Id.* at 16 (citing U.S. Const. art. I, § 8; Section III.C.2; section 232(b)(1)(A) of the Trade Expansion Act of 1962).

¹³² *Id.* at 16-17 (citing *Wheatland Tube*, 495 F.3d at 1362).

¹³³ *Id.* at 17 (citing *Proclamation 9704*, 83 FR at 11621-22; *Proclamation 9711 of March 22, 2018*, 83 FR 13361 (Mar. 28, 2018); *Proclamation 9740 of April 30, 2018*, 83 FR 20683 (May 7, 2018); *Proclamation 9759 of May 31, 2018*, 83 FR 25857 (June 5, 2018); *Proclamation 9772 of August 10, 2018*, 83 FR 40429 (Aug 15, 2018); *Proclamation 9886 of May 16, 2018*, 84 FR 23421 (May 21, 2019); *Proclamation 9894 of May 19, 2019: Adjusting Imports of Steel Into the United States*, 84 FR 23987 (May 23, 2019); and *Proclamation 9980 of January 24, 2020: Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 FR 5281 (Jan. 29, 2020)).

¹³⁴ *Id.* at 17 (citing S. Rep. No. 90-1385(II) at 1385 (1968); and section 1204 of the Omnibus Trade and Competitiveness Act of 1988).

¹³⁵ *Id.* at 18 (citing *Proclamation 9740*, 83 FR 20683, 20687 (Annex) (May 7, 2018); HTSUS, Ch. 99; and *Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System*, Inv. No. 332-131, USITC Pub. 1400) (June 1983) at 16 n.1 and 28).

- Commerce has previously recognized that Chapter 99 is reserved for special or temporary tariffs.¹³⁶
- The courts have found that deducting section 232 tariffs imposes a double remedy.¹³⁷
- If there is no preexisting dumping margin, Commerce’s methodology would create one, which is contrary both to the remedial purpose of the antidumping statute, as well as Commerce’s obligation to calculate dumping margins “as accurately as possible.”¹³⁸

Petitioners’ Rebuttal Arguments:

- Commerce should continue to deduct section 232 duties from U.S. Price.¹³⁹
- Section 232 duties are “United States import duties.” The Assan Single Entity is wrong to argue that the statute does not contemplate adjustments for “special tariffs,” and that 232 duties are “special tariffs” and, therefore may not be deducted from U.S. price.¹⁴⁰
- Commerce is required by statute to reduce U.S. price by, *inter alia*, United States import duties.¹⁴¹
- Contrary to Assan’s assertion that the statute does not contemplate adjustments for “special duties,” the CAFC has determined only that Commerce’s determination to not deduct safeguard duties from U.S. price is a reasonable interpretation of the statute – not an interpretation that is required.¹⁴²
- Commerce has consistently determined that section 232 duties, unlike antidumping, countervailing and section 201 duties, are akin to normal customs duties and, thus, should be deducted from U.S. price under section 772(c)(2)(A) of the Act.¹⁴³
- The CIT has sustained Commerce’s treatment of section 232 duties as “United States import duties” under section 772(c)(2)(A) of the Act as a reasonable interpretation of the statute, and the Assan Single Entity has not presented any new information or argument that undermines Commerce’s prior determinations and the CIT’s decision affirming one such determination.¹⁴⁴
- The Assan Single Entity incorrectly argues that deducting section 232 duties from U.S. price imposes a double remedy based on its claim that section 232 duties are remedial in nature like antidumping duties.

¹³⁶ *Id.* at 18-19 (citing *SWR Korea*, 69 FR at 19160).

¹³⁷ *Id.* at 19 (citing *AK Steel*, 988 F. Supp. at 607; and *Wheatland Tube*, 495 F.3d at 1363, 1365).

¹³⁸ *Id.* Brief at 20 (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).

¹³⁹ *Id.* at 11.

¹⁴⁰ *Id.* at 12.

¹⁴¹ *Id.* (citing section 772(c)(2)(A) of the Act).

¹⁴² See Petitioners’ Rebuttal Brief at 12-13 (citing *Wheatland Tube*, 495 F.3d at 1359-63).

¹⁴³ *Id.* at 13 (citing Memorandum, “2017-2018 Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Section 232 Duties,” dated July 10, 2019 at 7-10; Memorandum, “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2018-2019,” dated July 16, 2020 at 10-12; Memorandum, “Decision Memorandum for the Preliminary Results of the 2018- 2019 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy,” dated July 16, 2020 at 11-13; and *Common Alloy Aluminum Sheet From Turkey: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 13326 (March 8, 2021) (*Aluminum Sheet Turkey*), and accompanying IDM at Comment 2 (citing to the Annex of *Proclamation 9740* that refers to section 232 duties as “ordinary” customs duties, and 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.”))

¹⁴⁴ *Id.* at 14 (citing *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 494 F. Supp. 3d 1365, 1371-76 (CIT 2021) (*Borusan Mannesmann*)).

- Section 232 duties 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, but rather prevent a threat to national security and are not aimed at remedying injury to any specific industry.¹⁴⁵

Commerce’s Position: Consistent with our recent determination in *Aluminum Sheet Turkey*, we find that section 232 duties should be treated as U.S. import duties and deducted from U.S. price for purposes of section 772(c)(2)(A) of the Act.¹⁴⁶ Thus, we will make no changes for this final determination. The CIT has recently held that it is reasonable for Commerce to treat section 232 duties as U.S. import duties and deduct them in this manner.¹⁴⁷

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.¹⁴⁸ 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.”¹⁴⁹ 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.”¹⁵⁰

Section 232 duties are not akin to antidumping or section 201 duties.¹⁵¹ *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...”¹⁵² The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the article.”¹⁵³ The particular national security risk identified in *Proclamation 9705* is

¹⁴⁵ *Id.*

¹⁴⁶ See *Aluminum Sheet Turkey* at Comment 2.

¹⁴⁷ See *Borusan Mannesmann*, 494 F. Supp. 3d at 1371-77.

¹⁴⁸ See *Wheatland Tube*, 495 F. 3d 1355 at 1362.

¹⁴⁹ *Id.* at 1362-63.

¹⁵⁰ *Id.* at 1365.

¹⁵¹ See *Borusan Mannesmann*, 494 F. Supp. 3d at 1371-77.

¹⁵² See *Proclamation 9705*, 83 FR at 11627 (March 8, 2018) (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).

¹⁵³ 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”).

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.”¹⁵⁴ 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, *Proclamation 9705* states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.¹⁵⁵ 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.

Accordingly, for the reasons discussed above and in line with the CIT’s recent holding, we continue 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.¹⁵⁶

Comment 6: Home-Market Rebates

For the *Preliminary Determination*, we denied as a post-sales adjustment certain home-market rebates.

¹⁵⁴ See *Proclamation 9705*, 83 FR at 11627.

¹⁵⁵ *Id.*; 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.

¹⁵⁶ 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 *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), and accompanying PDM at 12-13, unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 15645 (March 24, 2021); *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), and accompanying PDM, unchanged in *Aluminum Sheet Turkey*; and *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), and accompanying PDM at 11-12, unchanged in *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 33646 (June 25, 2021).

Assan Single Entity's Arguments:

- Commerce should grant the Assan Single Entity's deductions for rebates issued in its home market.¹⁵⁷
- Under section 773(a)(1)(B)(i) of the Act, in calculating normal value, Commerce should use "the price at which the foreign like product is first sold ... for consumption in the exporting country."¹⁵⁸
- Commerce's regulations explain that the price used for normal value will be "a price that is net of any price adjustment, as defined in 19 C.R 351.102(b), that is reasonably attributable to the ... foreign like product."¹⁵⁹
- Commerce has a long-standing practice to deduct rebates from the starting price, pursuant to 19 CFR 351.401(c), where those rebates are known to the customer prior to the sale and are customer specific.¹⁶⁰
- In determining a party's entitlement to its claimed adjustment, Commerce requires proof that buyers were aware of the conditions to be fulfilled and the approximate amount of the rebates at the time of the sale to protect against manipulation.¹⁶¹
- Commerce's regulatory considerations for granting the rebate and its denial of price adjustments for rebates are when a requesting party provided evidence contrary to the claimed rebate requirement, and it failed to respond to requests for information.¹⁶²
- Commerce should grant the Assan Single Entity's volume-based customer rebates reported for Field REBATEH because the terms are known to its customers prior to the execution of the relevant sales.¹⁶³
- Assan has a single rebate program based on annual or quarterly targets, and its customers know the terms of the rebate before sales occur, because they were negotiated and agreed upon between the Assan Single Entity and the specific customer on a yearly basis at the beginning of each year.¹⁶⁴
- Similarly, customers were aware that there is nothing in Assan's rebate policy that limited its discretion in business relationships to grant rebates.¹⁶⁵
- Unlike *CORE Taiwan*, there was no uncertainty surrounding the rebate that would invite Commerce's concern that price manipulation can occur after an administrative proceeding is commenced. The Assan Single Entity has provided all requested information and explained the manner in which it grants rebates.¹⁶⁶
- Commerce should reject the incorrect idea that rebates granted outside the confines of specific volume targets are in any way a departure from the known terms of Assan's rebate strategy.¹⁶⁷

¹⁵⁷ See Assan Single Entity's Case Brief at 21.

¹⁵⁸ *Id.* at 21 (citing section 773(a)(1)(B)(i) of the Act).

¹⁵⁹ *Id.* at 21 (citing 19 CFR 351.401(c)).

¹⁶⁰ *Id.* at 22 (citing *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) (*CORE Taiwan*), and accompanying IDM at Comment 4).

¹⁶¹ *Id.* at 22-23 (citing *Modification of Regulations Regarding Price adjustments in Antidumping Duty Proceedings*, 81 FR 15641, 15644-45 (March 24, 2016); and *China Steel Corp. v. United States*, 393 F.Supp.3d 1322, 1347 (CIT 2019)).

¹⁶² *Id.* at 23 (citing *CORE Taiwan* at Comment 4).

¹⁶³ *Id.* at 23.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 24.

¹⁶⁶ *Id.* at 24 (citing *China Steel Corp. v. United States*, 393 F.Supp.3d 1322, 1350 (CIT 2019)).

¹⁶⁷ *Id.* at 26.

- The petitioners improperly rely on *Aluminum Sheet Turkey* to support their argument that Assan provided insufficient evidence to warrant the rebate-related price adjustments. That investigation has a different record but, to the extent that that case is informative, Assan’s rebates are not limited to a singular volume target structure.¹⁶⁸
- In the absence of countervailing evidence, Commerce should grant the rebate-related price adjustments in accordance with 19 CFR 351.401(c) and Commerce’s long-established practice.¹⁶⁹
- Commerce should grant the Assan Single Entity a price adjustment for rebates reported for Fields REBATE1H and REBATE2H because terms are known to the customers prior to the execution of sales.¹⁷⁰
- Record evidence demonstrates that the Assan Single Entity has a long-established business relationship with its customers, which regularly received these rebates prior to and during the POI, which is evidence that the customers are aware that they will receive a rebate for their sales, and the specific terms and conditions were memorialized in the Assan Single Entity’s internal approval protocol which was shared with the customers.¹⁷¹
- The absence of documentation prior to the sale is merely because the Assan Single Entity had not needed to continuously document rebates in the manner envisaged by the petitioners.¹⁷²
- The Assan Single Entity has provided all the documentation requested, which it keeps in the ordinary course of business, along with certified statements about how it conducts its business in relation to these rebates.¹⁷³

Petitioners’ Rebuttal Arguments:

- Commerce correctly denied certain home market rebates reported for Fields REBATEH, REBATE1H and REBATE2H as adjustments to the Assan Single Entity’s home market price.¹⁷⁴
- Commerce does not accept post-sale adjustments, unless a respondent can demonstrate with supporting documentation whether the terms and conditions of the adjustment were established or known to the customer at the time of sale.¹⁷⁵
- Commerce has specifically disallowed rebates where it has found that the terms and conditions of those rebates were not set prior to the sale, and the CIT has affirmed this practice.¹⁷⁶
- The fact that Assan provided and paid the rebates is not sufficient to demonstrate its entitlement to a rebate price adjustment, because the Assan Single Entity failed to document

¹⁶⁸ *Id.* at 26 (citing Petitioners’ Pre-Prelim Comments at 36-37; and *Aluminum Sheet Turkey* at Comment 6).

¹⁶⁹ *Id.* at 26-27.

¹⁷⁰ *Id.* at 27.

¹⁷¹ *Id.* at 27-29.

¹⁷² *Id.* at 29 (citing Petitioners’ Pre-Prelim Comments at 39).

¹⁷³ *Id.* at 29-30.

¹⁷⁴ *Id.* at 15.

¹⁷⁵ See Petitioners’ Rebuttal Brief at 16 (citing 19 CFR 351.401(c); and *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641, 15644-45 (March 24, 2016) (*Final Modification*)).

¹⁷⁶ See Petitioners’ Rebuttal Brief at 16 (citing *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) and accompanying IDM (*CORE Taiwan*) at Comment 4; and *China Steel Corp. v. United States*, 393 F. Supp. 3d 1322, 1348-1349 (CIT 2019) (*China Steel Corp.*)).

that the terms and conditions of the adjustment were established and known to the customer at the time of sale.¹⁷⁷

- Despite the Assan Single Entity’s contention that its customers knew the terms of these target-based rebates at the time of sale based on the sale agreement, the sale agreement establishes certain required conditions for receiving the rebate, and there is no indication in the agreement or any other documentary evidence that suggests the customer would receive a rebate without meeting these conditions.¹⁷⁸
- If Assan granted a target-based rebate to a customer that failed to meet the required terms and conditions, then that customer cannot be considered to have known the terms and conditions of the rebate at the time of sale.¹⁷⁹
- The Assan Single Entity fails to distinguish the instant investigation from *Uncoated Paper Portugal*.¹⁸⁰
- It is irrelevant that Assan has the discretion to grant rebates when any aspect of the agreement is not met.¹⁸¹
- What is relevant is whether Assan’s customers knew at the time of sale that they would be awarded rebates based on certain other factors besides the terms and conditions in the agreement.¹⁸²
- The Assan Single Entity wrongly asserts that it provided extensive record evidence demonstrating that Assan’s customers have had a long-established business relationship with Assan and regularly received these rebates prior to and during the POI.¹⁸³
- The CIT has rejected the argument that the long-standing nature of a rebate implied customer knowledge of the rebate terms at the time of the sale.¹⁸⁴
- Despite the Assan Single Entity’s characterization of the internal approval memorandum, the document does not establish that Assan’s customers knew the terms of the rebate at the time of the sale.¹⁸⁵
- The Assan Single Entity incorrectly argues that the customers knew the terms of the rebates reported for Fields REBATE1H and REBATE2H at the time of sale because the customers regularly received these rebates and, thus, knew the terms of the rebate based on its past dealings, and Assan specifies the terms of the rebates in the internal approval protocols that it shares with the customers.¹⁸⁶
- The record does not contain a history of Assan granting these rebates to the customers other than in 2019 and 2020. A two-year history establishes only that the customers were generally aware that they might receive the rebate, not that they knew at the time of sale that they were “assured” a rebate or the amount.¹⁸⁷

¹⁷⁷ See Petitioners’ Rebuttal Brief at 16-17 (citing *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 64040 (November 20, 2019) and accompanying IDM (*Uncoated Paper Portugal*) at Comment 1; and *CORE Taiwan* at Comment 4).

¹⁷⁸ See Petitioners’ Rebuttal Brief at 18-19 (citing the Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to the Sections B and C Supplemental Questionnaire,” dated March 16, 2021 (4SQR) at 15 and Exhibit S4BC-16).

¹⁷⁹ *Id.* at 19.

¹⁸⁰ *Id.* at 23.

¹⁸¹ *Id.* at 25.

¹⁸² *Id.* at 26 (citing 4SQR at Exhibit S4BC-16).

¹⁸³ *Id.* at 29 (citing 4SQR at S4BC-15).

¹⁸⁴ *Id.* at 29-30 (citing *China Steel Corp.*, 393 F. Supp. 3d at 1348).

¹⁸⁵ *Id.* at 33 (citing 4SQR at S4BC-18).

¹⁸⁶ *Id.* at 28-29, 33-34.

¹⁸⁷ *Id.* at 34 (citing 4SQR at S4BC-20; and *China Steel Corp.*, 393 F. Supp. 3d at 1348).

- The internal approval protocols that Assan shared with the customers do not establish that the customers knew the terms of the rebates at the time of sale.¹⁸⁸

Commerce’s Position: Consistent with our recent determination for *Uncoated Paper Portugal*, we find that, where the customer did not meet the known terms of a rebate, we should deny the post-sale price adjustments for the Assan Single Entity’s home market rebates reported for Fields REBATEH, REBATE1H and REBATE2H. Thus, we will make no changes for the final determination.¹⁸⁹

Commerce considers a number of factors in determining whether a party has demonstrated entitlement to a rebate adjustment: (1) whether the terms and conditions of the adjustment were established and known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment.¹⁹⁰ Section 351.401(c) of Commerce’s regulations provides that Commerce “will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates...its entitlement to such an adjustment.” In promulgating the regulation, we clarified that Commerce generally will not consider a price adjustment “unless the party claiming such price adjustment demonstrates that the terms and conditions of the adjustment were established and known to the customer at the time of the sale.”¹⁹¹ Commerce has not granted such adjustments when the respondent was not able to demonstrate that its customers were aware of the terms and conditions of such adjustments at the time of the sale.¹⁹² Commerce analyzed the factors outlined in the *Final Modification*, and consistent with our practice, we reviewed whether the Assan Single Entity’s entitlement to these post-sale price adjustments was warranted in the *Preliminary Determination*, and determined that, in certain circumstances, it was not entitled to such adjustments.¹⁹³

The Assan Single Entity argues that it has demonstrated with supporting documentation that the terms of the three rebate programs were known to the customer prior to the sale through rebate agreements or internal approval protocols, and that the Assan Single Entity has the discretion to grant the rebates to the customer because of “other factors” or because there is a history of customers being granted these rebates. The Assan Single Entity has produced no documentary evidence that specifically demonstrates that its customers knew at the time of the sale that it would receive the rebate, or how much, absent fulfilling the established requirements known at the time of sale. The fact that the Assan Single Entity can exercise its discretion to grant rebates for whatever reason is akin to the Assan Single Entity establishing the rebate requirements after the time of sale, even if the customer is aware of this discretion or that the Assan Single Entity

¹⁸⁸ *Id* at 34 (citing 4SQR at S4BC-20).

¹⁸⁹ For summaries of additional comments submitted by parties and more details on Commerce’s discussion of this issue which contain the Assan Single Entity’s BPI, see the “Discussion of the Issues” section of the Assan Single Entity Final Analysis Memorandum.

¹⁹⁰ See *Final Modification*, 81 FR at 15644-45.

¹⁹¹ *Id*.

¹⁹² See, e.g., *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying IDM at Comment 5; *CORE Taiwan* at Comment 4; and *Uncoated Paper Portugal* at Comment 1.

¹⁹³ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Aluminum Foil from the Republic of Turkey: Preliminary Determination Analysis Memorandum for the Assan Single Entity,” dated April 27, 2021 at 8.

may have exercised this discretion in the past. The ability to retroactively rewrite the requirements for a rebate does not mean that the customer knew at the time of sale that the Assan Single Entity would exercise its discretion to do so, or how it would do so. The Assan Single Entity's ability to retroactively rewrite the established and known requirements for a given rebate program, at its own discretion, is exactly the situation that the revision¹⁹⁴ to 19 CFR 351.401(c) was meant to address to avoid the manipulation of the dumping analysis. Accordingly, we continue to find that the Assan Single Entity has not demonstrated for certain of its reported rebate programs that the customer was aware at the time of the sale of the conditions to be fulfilled and the amount of the rebates in question and we continue to deny the claimed post-sale price adjustments for these rebate programs.¹⁹⁵

Comment 7: Duty Drawback

For the *Preliminary Results*, we made an adjustment to U.S. price for duty drawback based on the total amount of the duty drawback benefit for exempted import duties realized by the Assan Single Entity for exports of aluminum foil to the United States during the POR as documented on closed Inward Processing Certificates (IPCs), less certain filing penalties, and allocated the amount of this benefit to all U.S. sales reported by the Assan Single Entity during the POI.

Assan Single Entity's Arguments:

- Commerce should grant a full drawback adjustment to the Assan Single Entity and correct certain clerical errors in the calculation of the drawback adjustment.¹⁹⁶
- Commerce incorrectly calculated the per unit adjustment because it divided the duty exemptions received on closed IPCs by all U.S. exports.¹⁹⁷
- This approach is also inconsistent with prior Commerce practice where Commerce calculated the duty drawback adjustment by allocating the amount of duties attributable to IPCs deemed to be closed over the total quantity of exports under the closed IPC's listing exports to the U.S. during the POR, not all U.S. sales.¹⁹⁸
- Commerce incorrectly reduced the drawback benefit by the amount of certain filing penalties assessed. There is nothing in the statute or Commerce rulings to authorize offsetting a drawback adjustment based on late penalties paid.¹⁹⁹

¹⁹⁴ See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016).

¹⁹⁵ For additional summaries of comments submitted by parties and our analysis of this issue which contain the Assan Single Entity's BPI, see the "Discussion of the Issues" section of Assan Single Entity Final Analysis Memorandum.

¹⁹⁶ See Assan Single Entity's Case Brief at 30.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 30-31 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 28574 (May 27, 2021), and accompanying IDM at Comment 2; *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018), and accompanying IDM at Comment 1; and Memorandum, "Final Determination Calculations for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Turkey," dated March 19, 2018)).

¹⁹⁹ *Id.* at 31 (citing section 772(c)(1)(B) of the Act; section 772(B) of the Act; and *Saha Thai Steel Pipe (Public) Co. v United States*, 635 F 3d 1335, 1340-41 (Fed. Cir. 2011)).

- Furthermore, the deduction amount calculated should be corrected, as it did not account for discounted payments made toward the penalties, a stamp tax exemption, or that fact that the penalty applied to all sales covered by the drawback request, not just U.S. sales.²⁰⁰

Petitioners' Rebuttal Arguments:

- Commerce should not modify the duty drawback adjustment as the Assan Single Entity proposes, because its methodology would be contrary to the statute, Commerce's two-pronged test, and the agency's court-approved practice.²⁰¹
- The statute directs Commerce to increase U.S. price by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.²⁰²
- Commerce' two-pronged test requires that (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.²⁰³
- Commerce's practice is to grant drawback adjustment claims under the Inward Processing Regime (IPR) for only those IPCs that are closed (which demonstrates that the Turkish government has forgiven the duty liability) and that include exports reported in the U.S. sales database, and the CIT has sustained this practice.²⁰⁴
- Under the Assan Single Entity's proposed approach, the company's U.S. sales not subject to a closed IPC would receive a per-unit adjustment, which is the reverse of Commerce's practice, and the duties on these U.S. sales imposed by Turkey, which constitute a significant majority of sales in the U.S. sales database, have not been collected by reason of the exportation of the subject merchandise to the United States.²⁰⁵
- In addition, all U.S. sales in the sales database pursuant to open IPCs do not pass the first prong of Commerce's two-pronged test, because the exemption from import duties on closed IPCs is not linked to the exportation of subject merchandise pursuant open IPCs.²⁰⁶
- If Commerce determines it is appropriate to modify the methodology employed in the preliminary determination, the only modification that is consistent with the statute and Commerce's two-pronged test would be to divide the amount of duties not collected under the closed IPCs by the volume of exports reported under the IPCs, and apply the resulting per-unit adjustment to only those sales exported under the closed IPCs.²⁰⁷

²⁰⁰ *Id.* at 31-32.

²⁰¹ *See* Petitioners' Rebuttal Brief at 35.

²⁰² *Id.* at 35-36 (citing section 772(c)(1)(B) of the Act).

²⁰³ *Id.* at 36 (citing *Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 29094 (June 22, 2018), and accompanying IDM at Comment 3.

²⁰⁴ *Id.* at 36 (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 11230 (February 24, 2021), and accompanying IDM at Comment 2; *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61632 (October 13, 2015) at Comment 3; and *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.Ş. v. United States*, 361 F. Supp. 3d 1314, 1348-49 (CIT 2019).

²⁰⁵ *Id.* at 37.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 38.

- Contrary to Assan’s claim, there is nothing in the statute that prevents Commerce from offsetting the duty drawback adjustment by penalties it paid to the Turkish government, and it is reasonable.²⁰⁸
- Penalties paid by the Assan Single Entity are akin to a duty liability that has not been forgiven by the Turkish government. As such, the offset fits neatly within the plain language of the statute, while not doing so would be contrary to the statute.²⁰⁹
- The Assan Single Entity wrongly claims that the filing penalties apply to all exports under the IPC(s) and so only a portion of the penalty should be allocated to the U.S. exports during the POI. The filing penalties apply only to certain exports on the IPC(s), so Commerce should make no changes.²¹⁰
- The Assan Single Entity has provided no analysis or explanation for why the stamp tax constitutes an “import duty” under section 772(c)(1)(B) of the Act, which it has a burden to do to justify an adjustment to U.S. price, so Commerce should not include uncollected stamp tax in the final duty drawback calculation.²¹¹

Commerce’s Position: We find that the methodology employed in this investigation to calculate a duty drawback adjustment is reasonable and consistent with the statute and the “two-pronged” test. Thus, we are making no changes to our calculation of the adjustment for duty drawback for this final determination, except to adjust the duty drawback calculation to account for an early payment discount not included in the filing penalty amount that was deducted from the duty drawback benefit in the calculation in the *Preliminary Determination*.

In determining whether a respondent is entitled to a duty drawback adjustment, we look for a reasonable link between the duties imposed and those exempted or refunded, *i.e.*, “two-pronged” test: (1) the exemption from or refund of import duties is linked to exportation of the subject merchandise; and (2) there were sufficient imports of materials to account for the exemption or refund granted for the export of the subject merchandise. In general, we have found that the Turkish IPR satisfies the “two-pronged” test. Further, regarding the Turkish IPR system, our practice has been to consider only closed IPCs to determine the amount of duty drawback benefit that include imports of aluminum coil useable for the production of in-scope aluminum foil.

The Assan Single Entity’s calculation of the duty drawback adjustment for U.S. price is not consistent with our practice. To determine the U.S. price adjustment for duty drawback, our practice is to consider only *closed* IPCs to quantify the total amount of the duty drawback, *i.e.*, the amount of exempted import duties, for exports during the POI. Accordingly, we have calculated a per-unit duty drawback adjustment based on: (1) the total amount of duty drawback for exempted import duties associated with exports of subject merchandise during the POI, that fall under the Harmonized Tariff Schedule subheadings for in-scope merchandise; and (2) the total quantity of sales during the POI in the U.S. sales data (*i.e.*, the total amount of the duty drawback benefit has been allocated over all reported U.S. sales).

We find, contrary to parties’ arguments, that allocating the total amount of duty drawback to all sales in the U.S. sales data is preferable to allocating that amount only to the sales which the Assan Single Entity has identified in the U.S. sales data as being associated with closed IPCs,

²⁰⁸ *Id.* at 38 (citing *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

²⁰⁹ *Id.* at 38-39.

²¹⁰ *Id.* at 39.

²¹¹ *Id.* at 39-40 (citing 19 CFR 351.401(b)(1)).

because: (1) the two-pronged test does not require a material-input-to-exported-merchandise-specific link between the imports where the import duties have been exempted or refunded and the exports which generate the duty drawback benefit; (2) POI-exempted import duties are allocated to all production of aluminum foil and are not applied to the production of the specific sales of aluminum foil that are only associated with closed IPCs (*i.e.*, there is a single, CONNUM-specific cost of production (COP) and COP is generally not a sale-specific amount); and (3) in general, individual U.S. sales may not be linked with specific exports from the country of origin, especially when U.S. sales may be made from inventory after importation into the United States.

In contrast, to calculate the U.S. price adjustment for duty drawback, the Assan Single Entity has based this amount on the amount of exempted import duties and stamp taxes reported on open IPCs that report Turkish imports of aluminum coil during the POI. As noted above, Commerce's practice is to limit a claimed duty drawback adjustment to that included on only closed IPCs. Thus, for the *Preliminary Determination* and this final determination, we have limited the calculation of Assan Single Entity's duty drawback benefit to the information reported on its closed IPCs.

With respect to whether Commerce should adjust the duty drawback calculation for filing penalties incurred by the Assan Single Entity, we continue to find that it is appropriate to offset the amount of the duty drawback benefit from the associated closed IPC(s) by the amount of the filing penalties. There is nothing in the statute that prevents Commerce from offsetting the duty drawback adjustment by penalties incurred. We continue to find that, because the penalties do not apply to all exports but only exports under the IPC(s) which we used to calculate the duty drawback benefit and without which Assan would have no duty drawback benefit during the POI claimed on the IPC(s), we will continue to reduce the amount of the exempted import duties by the amount of the penalty which is expressly provided for as part of the IPR. However, because the penalty amount we deducted from the duty drawback benefit did not account for an early payment discount which Assan realized, we have adjusted the calculation accordingly.²¹²

With respect to whether Commerce should include stamp taxes in the duty drawback calculation, we find that the Assan Single Entity has provided no record evidence or explanation that would support a conclusion that the stamp tax constitutes an "import duty" under section 772(c)(1)(B) of the Act; the Assan Single Entity bears the burden of demonstrating with record evidence that such a tax should be included.²¹³ As such, for this final determination, we will continue to exclude uncollected stamp taxes in the calculation of the duty drawback benefit and the adjustment to U.S. price.

Comment 8: Raw Material Metal Premium Costs

Assan submitted two versions of its cost of production in this investigation one version based on its normal books and records which values the London Metal Exchange (LME) portion of the aluminum input cost on a CONNUM-specific basis, and a second, alternate version where it restated the LME portion of the aluminum cost (*i.e.*, DIRMATLME) based on a single weighted-average LME amount for the entire period of investigation (POI) due to the LME fluctuations.

²¹² For details on this calculation, which contain the Assan Single Entity's BPI, *see* Assan Single Entity Final Analysis Memorandum at section "Changes to the Margin Calculation Since the Preliminary Determination."

²¹³ *See* 19 CFR 351.401(b)(1).

However, for the raw material aluminum premium costs (*i.e.*, DIRMATMP), Assan reported CONNUM-specific amounts in both versions of the costs of production. In the *Preliminary Determination*, Commerce determined that the reported DIRMATLME and DIRMATMP amounts reflect cost differences between CONNUMs that are unrelated to differences in the physical characteristics of the products. Thus, Commerce relied on the costs of production that reflects the LME portion of the aluminum costs based on a single weighted average. In addition, Commerce calculated a single weighted-average DIRMATMP to mitigate the fluctuation of the aluminum premium costs among CONNUMs that was unrelated to the product's physical characteristics.²¹⁴

Petitioners' Arguments

- Commerce weight averages a respondent's reported costs when: (1) the reported costs reflect differences unrelated to the physical characteristics; and (2) such cost differences affect a significant portion of total production. The record of this investigation shows that there are significant variations in DIRMATMP. Thus, Commerce should continue to weight average the Assan Single Entity's DIRMATMP for the final determination.²¹⁵
- The variations in DIRMATMP do not depend on the physical characteristics. Instead, such differences are driven by the choice of inputs used in a particular production order (primary aluminum, aluminum scrap, or purchased aluminum sheet), yield loss, and metal premium price fluctuation over time.²¹⁶
 - The Assan Single Entity interchangeably uses primary aluminum, aluminum sheet, and scrap in the production of subject merchandise. The reported DIRMATMP cost depends on the production order-specific choice of inputs (primary aluminum, aluminum scrap, or purchased aluminum sheet) and the choice of inputs does not generally depend on the product's physical characteristics. Accordingly, to the extent that variations in DIRMATMP reflect varying choices of inputs across production orders, Commerce should find that such cost variations do not relate to the product's physical characteristics.²¹⁷
 - The Assan Single Entity asserts that differences in yield loss among products cause the variations in DIRMATMP. However, the Assan Single Entity did not demonstrate that the yield loss differences were caused by the product's physical characteristics. Accordingly, to the extent that variations in DIRMATMP reflect varying yield loss rates across production orders, Commerce should find that such cost variations do not relate to the product physical characteristics.²¹⁸
 - Like the LME aluminum price, the aluminum premiums are determined by market forces and are subject to significant volatility. The Assan Single Entity hedges its aluminum

²¹⁴ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Assan Aluminyum Sanayi ve Ticaret A.S. and Ispak Esnek Ambalaj San. A. S.," dated April 27, 2021 (Preliminary Cost Calculation Memorandum).

²¹⁵ See Petitioners' Case Brief at 70-71; see also *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review: 2018-2019*, 85 FR 27362 (May 8, 2020), and accompanying IDM at Comment 15; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review: 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 9; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016), and accompanying IDM at Comment 8, *aff'd Dong-A Steel Co. v. United States*, 337 F. Supp. 3d 1356, 1371 (CIT 2018).

²¹⁶ See Petitioners' Case Brief at 71.

²¹⁷ *Id.* at 71-72.

²¹⁸ *Id.* at 73-74.

premiums to protect itself from significant fluctuations in the aluminum premiums. Accordingly, to the extent that variations in DIRMATMP reflect metal premium fluctuations over time, Commerce should find that such cost variations relate to the timing of production which do not relate to the product's physical characteristics. The Assan Single Entity acknowledged this as a legitimate reason to average its reported DIRMATLME. The same reasoning applies to the reported metal premium costs in DIRMATMP.²¹⁹

- The Assan Single Entity failed to explain and provide supporting documents why the reported differences in DIRMATMP are reasonable. Due to the Assan Single Entity's failure to respond to Commerce's request, necessary information concerning the reasonableness of the Assan Single Entity's reported DIRMATMP differences is not available on the record. Accordingly, Commerce should apply facts available (FA) under section 776(a) of the Act for the final determination. As FA, Commerce should continue to weight average the Assan Single Entity's reported DIRMATMP.²²⁰

The Assan Single Entity's Arguments

- The Assan Single Entity's cost accounting system records and tracks each material cost based on its pricing components. Because its usage of raw materials is based on yield loss rates reflected in the Assan Single Entity's DIRMATMP, weight averaging the DIRMATMP costs distorts the cost applied to the individual products. Thus, Commerce should not weight average the DIRMATMP for the final determination.²²¹
- The reported DIRMATMP cost reflects significant variations depending on the product yield loss and raw material composition (*i.e.*, primary aluminum, sheet, or scrap). Thus, the DIRMATMP cost differences among CONNUMs are related to yield losses and the material input used, which is also partly related to physical characteristics of the products. As such, an analysis of the cost differentials between CONNUMs should be based on total cost of manufacturing (TOTCOM) rather than material costs.²²²
- Commerce's approach for weight averaging DIRMATMP, results in the same per-unit aluminum cost for all subject merchandise regardless of yield loss or CONNUM material requirements. In doing so, Commerce ignores the Assan Single Entity's detailed recording of product costs in its cost accounting system for certain CONNUMs that use semi-finished materials (not scrap) which introduces distortions in the cost calculations. It effectively caused all subject merchandise to have the same per-unit aluminum cost which is incorrect given the significant yield loss and DIRMATMP differentials between finished products.²²³
- Commerce is responsible for calculating accurate dumping margins and relying on the costs in actual books and records of the respondent unless the costs are distorted. In its normal books and records the Assan Single Entity tracks the usage rates of specific materials on an actual usage basis and it maintains the records in accordance with Turkish Generally Accepted Accounting Principles (GAAP). Also, the Assan Single Entity's allocation method reasonably reflects the costs associated with producing specific CONNUMs.²²⁴

²¹⁹ *Id.* at 74-75.

²²⁰ *Id.* at 75-76.

²²¹ See Assan Single Entity's Case Brief at 3-4.

²²² *Id.* at 4-5.

²²³ *Id.* at 5-6.

²²⁴ *Id.* at 6-7; see also section 773(f)(1)(A) of the Act; and *U.S. Steel Corp. v United States*, 179 F Supp. 3d 1114, 1132 (CIT 2016).

- Deciding whether to rely on actual cost accounting records by a respondent, Commerce places emphasis on (i) whether cost accounting system is fully integrated with the financial accounting system and reconciles to the respondent’s audited financial statements and (ii) whether the costs calculated in the cost accounting system are used to value the ending inventory balances in the financial accounting system. The Assan Single Entity has demonstrated that both factors are satisfied in this investigation.²²⁵
- Commerce recognized in a prior determination that a simple cost averaging methodology would lead to distortions in the cost calculation applied to CONNUMs in certain instances.²²⁶ The facts and logic of that review are equally applicable here given the nature of the product, the Assan Single Entity’s active raw material hedging, and its detailed cost tracking accounting system.²²⁷
- Commerce has not alleged that the Assan Single Entity’s method of allocating material costs is either distortive or does not “reasonably reflect the costs of production” of subject merchandise. Commerce glossing over the rationale regarding physical attributes is not the end of the analysis, when the method the Assan Single Entity provided is accurate and is consistent with its books and records. Thus, DIRMATMP cost should not be weight averaged for the final determination.²²⁸

Petitioners’ Rebuttal Arguments

- The Assan Single Entity argues that its cost accounting system tracks actual costs and that certain CONNUMs tend to use certain types of raw materials, while other CONNUMs tend to use other types of raw materials. Thus, the Assan Single Entity claims that the physical characteristics of the CONNUMs do result in different raw material premium costs. However, the Assan Single Entity’s argument is not supported by record evidence.
- Specifically, the Assan Single Entity conceded that primary aluminum, aluminum sheet, and scrap inputs can be interchangeably consumed in the production of subject merchandise. Consequently, the differences in costs for its CONNUMs are driven by production timing and the raw material input mix, not the physical characteristics of the CONNUMs. As such, Commerce correctly weight-averaged the Assan Single Entity’s DIRMATMP in the *Preliminary Determination*.²²⁹
- Even if the Assan Single Entity’s records are in accordance with Turkish GAAP, the statute requires that the reported costs must “reasonably reflect the costs associated with the production and sale of the merchandise.” The product physical characteristics are a prime consideration when Commerce conducts its analysis. The Assan Single Entity’s reported DIRMATMP does not reasonably reflect the costs associated with the production and sale of the merchandise.²³⁰
- Commerce’s adjustment is also consistent with its treatment of the Assan Single Entity’s aluminum premium costs in *Aluminum Sheet Turkey*. The Assan Single Entity has not

²²⁵ See Assan Single Entity’s Case Brief at 7; see also *Carbon and Certain Alloy Steel Wire Rod from Mexico: Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 39527 (June 24, 2020), and accompanying IDM at Comment 1.

²²⁶ See *Brass Sheet and Strip from Germany: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 66347 (October 28, 2010), and accompanying IDM at Comment 1 (*Brass Sheet and Strip Germany*).

²²⁷ See Assan Single Entity’s Case Brief at 8.

²²⁸ *Id.* at 8-9; see also *Dillinger France, S.A. v. United States*, 981 F.3d 1318, 1322 (Fed. Cir. 2020).

²²⁹ See Petitioners’ Rebuttal Brief at 7-9.

²³⁰ *Id.* at 9-10; see also section 773(f)(1)(A) of the Act; *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1365-65 (Fed. Cir. 2014); *Dong-A Steel Co. v. United States*, 337 F. Supp. 3d 1356, 1370 (CIT 2018); and *Nexteel Co. v. United States*, 355 F. Supp. 3d 1336, 1361-62 (CIT 2019).

identified evidence or circumstances to differentiate this investigation from *Aluminum Sheet Turkey*.²³¹

- As support for its argument the Assan Single Entity cited *Brass Sheet and Strip Germany*, but that review is distinguishable from the facts on this record. In that review, the respondent was able to demonstrate that it shifted the entire risk of fluctuating metal prices to its customers. However, in this investigation, while the Assan Single Entity manages the risk of fluctuating aluminum prices through its hedging activities, it does not transfer the risk to its customers. Thus, Commerce's reasoning for relying on daily metal costs in *Brass Sheet and Strip Germany* is not applicable in this final determination. Therefore, the differences in the DIRMATMP costs are not based on the physical characteristics of the CONNUMs and Commerce should continue to weight-average the Assan Single Entity's DIRMATMP costs for the final determination.²³²

The Assan Single Entity's Rebuttal Arguments

- Averaging the DIRMATMP costs results in the same unit metal cost for all subject merchandise, regardless of yield loss or raw material requirements. It is impossible for all CONNUMs to have the same aluminum cost. Also, there are yield loss differences. Commerce's preliminary determination is not reasonable given Commerce's and the Court's emphasis on accounting for yield loss among different CONNUMs. While the Assan Single Entity's aluminum premium reporting methodology accounts for yield loss, Commerce methodology does not. As such, Commerce should not weight average the Assan Single Entity's reported DIRMATMP costs for the final determination.²³³

Commerce's Position: We agree with the petitioners. To mitigate the raw material aluminum premium cost (*i.e.*, DIRMATMP) differences between CONNUMs that are unrelated to the product's physical characteristics, we have continued, consistent from the *Preliminary Determination*, to weight average the reported DIRMATMP costs for all CONNUMs.²³⁴ When Commerce evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act directs that 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 GAAP of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. Accordingly, Commerce will typically rely on a company's normal books and records if two conditions are met: (1) the books are kept in accordance with the home country's GAAP; and (2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant investigation, Assan's reported costs are derived from its normal books and records, and those books and records are kept in accordance with Turkish GAAP. Thus, the question facing Commerce is whether the reported material costs from Assan's normal books and records reasonably reflect the cost to produce the merchandise under consideration based on the physical characteristics identified by Commerce.

In this investigation, Commerce identified the physical characteristics that are the most significant to define unique products, *i.e.*, CONNUMs, which is a concatenation of the codes reported for the physical characteristics (*i.e.*, gauge, coating, width, casting method, alloy, temper, and surface finish). These physical characteristics are used to define unique

²³¹ *Id.* at 10-11; *see also Aluminum Sheet Turkey*).

²³² *See* Petitioners' Rebuttal Brief at 11.

²³³ *See* Assan Single Entity's Rebuttal Brief at 42-43.

²³⁴ *See* Preliminary Cost Calculation Memorandum.

merchandise sold in the United States, and to identify identical or similar merchandise sold in the comparison market to serve as the basis for normal value. Equally important, these physical characteristics differentiate the production costs between distinct, unique CONNUMs.²³⁵ Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) and (iii) of the Act, a respondent's reported costs should reflect meaningful cost differences attributable to these different physical characteristics. This approach ensures that the CONNUM-specific costs that Commerce uses for the sales-below-cost test, constructed value (CV), and difference-in-merchandise (DIFMER) adjustments accurately reflect the physical characteristics of the products used in Commerce's margin calculations. Thus, Commerce normally does not rely on a respondent's reported costs where cost differentials between CONUMs are driven by factors other than the difference in the physical characteristics, such as timing differences or routing variations or cost system conventions.²³⁶ The CIT has upheld Commerce's reallocation of costs for the sales-below-cost test, the calculation of CV, and then DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than Commerce's established physical characteristics.²³⁷

During the investigation, Assan explained that the reported LME portion of the aluminum cost (*i.e.*, DIRMATLME) for each CONNUM is based on the actual average cost for all production records, and in turn, the individual production records are based on the LME price specific to that production order in that period (*i.e.*, month).²³⁸ Consequently, according to Assan, the reported DIRMATLME may show variances between products that are due to timing and are unrelated to the differences in product's physical characteristics.²³⁹ Thus, Assan provided a single average DIRMATLME for the entire POI so that the differences in CONNUM-specific costs only reflect the differences in the product's physical characteristics rather than the LME fluctuations.²⁴⁰ In contrast, Assan stated that weighted average of the aluminum premium cost (*i.e.*, DIRMATMP) is not appropriate because the CONNUM-specific yield loss rates are reflected in DIRMATMP.²⁴¹ Assan also stated that it has a preference to use a specific type of input for a certain products because it has a preferred production routing due to certain characteristics of its production equipment. However, according to Assan, all raw material input types (*i.e.*, primary aluminum, aluminum sheet, or scrap) can be used interchangeably in the production of subject merchandise.²⁴²

To determine whether Assan's reported costs reflected significant raw material cost differences among CONNUMs that are unrelated to the product's physical characteristics, Commerce analyzed Assan's reported aluminum costs. Based on the analysis, Commerce determined that

²³⁵ See AD Questionnaire.

²³⁶ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 35248 (June 12, 2013), and accompanying IDM at Comment 1; see also *Certain Oil Country Tubular Good 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 23; and *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2016, 83 FR 4028 (January 29, 2018), and accompanying IDM at Comment 3.

²³⁷ See *Thai Plastic Bag Indus. Co. Ltd. v. United states*, 752 F. Supp. 2d 1316, 1324-25 (CIT 2010).

²³⁸ See SDQR at 5S-13- 5S-14.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See SDQR at 5S-13-5S-14; see also Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to Questions 1,2, and 3 of the May 4, 2021 section D Fifth Supplemental Questionnaire," dated May 17, 2021 (4SDQR Part II) at 11-12.

²⁴² See 4SDQR Part II at 12-13.

the reported aluminum costs (*i.e.*, sum of DIRMATLME and DIRMATMP) reflected significant cost differences between CONNUMs that are unrelated to the product's physical characteristics.²⁴³ Further, as stated above, all of the raw material input types can be used interchangeably to produce all in-scope merchandise. Consequently, with the exception of product yield losses, the significant DIRMATMP cost differences among CONNUMs are driven by factors other than the product's physical characteristics, such as timing and the type of raw material input used.

With regard to the product yield losses, while we do acknowledge, as argued by Assan, that the product yield losses are a part of the total included in the DIRMATMP costs, Commerce requested that Assan identify and separately report the costs associated with yield losses for each CONNUM. Specifically, we requested that Assan break out from the reported DIRMATMP costs associated with the product yield losses. However, Assan failed to provide this information.²⁴⁴ Regularly, respondents providing data in an antidumping proceeding are faced with accounting systems limitations, and, regularly, those respondents determine reasonable methods that enable them to provide the information to Commerce in the manner in which the data was requested. A large, sophisticated company like Assan can reasonably determine CONNUM-specific yield losses and the related costs embedded in the DIRMATMP field regardless any limitations in its accounting system. We acknowledge that providing this information would require some effort, however, it could have been accomplished using information from production runs, engineering specifications, and other production records. Assan, however, made no attempt to provide Commerce with the CONNUM-specific yield loss costs embedded in the DIRMATMP costs. It was clear based on both Commerce's request and the timing of the request (*i.e.*, after the *Preliminary Determination*) that the requested information was necessary to properly address the issues related to the DIRMATMP cost differences unrelated to the differences in physical characteristics and the product yield losses; however, Assan did not provide the requested cost breakout and thus this necessary information is missing from the record within the meaning of section 776(a)(1) of the Act. Pursuant to section 776(a) of the Act, Commerce will use "facts otherwise available" to fill gaps in the record where such necessary information is not available. Here, Assan did not provide the necessary breakout of the DIRMATMP costs, therefore, as facts available, consistent with the *Preliminary Determination*, we have continued to weight average the reported DIRMATMP costs for all CONNUMs for the final determination to mitigate the cost differences unrelated to the product's physical characteristics.

With respect to *Brass Sheet and Strip Germany*, that determination is distinguishable from this proceeding. Unlike this investigation, the respondent's reported raw material costs in that review did not reflect the cost differences between CONNUMs that are unrelated to the product physical characteristics.²⁴⁵ Here, however, Assan's reported raw material costs reflect the cost differences among CONNUMs that are unrelated to the product physical characteristics. Thus, Commerce's reasoning for relying on daily metal costs in *Brass Sheet and Strip Germany* is not applicable in this investigation. Accordingly, for the final determination, Commerce continues to weight average Assan's reported DIRMATMP costs.

²⁴³ See Preliminary Cost Calculation Memorandum.

²⁴⁴ See 4SDQR Part II at 14-15.

²⁴⁵ See *Brass Sheet and Strip Germany*.

Comment 9: Hedging Gains and Losses as Cost of Manufacture

Assan routinely engages in aluminum commodity hedging transactions for purposes of eliminating the risk of fluctuations in the cost of the input aluminum used to produce subject merchandise, and records the related gains and losses arising from these hedging transactions in the cost of sales. During the POI, Assan generated net gains from its hedging transactions and reduced the cost of manufacturing (COM) by these net gains. In the *Preliminary Determination*, Commerce allowed the net gains to offset the reported COM.²⁴⁶

Petitioners' Arguments

- Commerce should not allow the Assan Single Entity to offset its reported COM with the net gains arising from its hedging transactions.
- The Assan Single Entity purchases hedging contracts on the commodities exchange after it has purchased the aluminum input. Thus, virtually all of the Assan Single Entity's hedging operations involve short hedging contracts (*i.e.*, the sale of futures). A hedge, however, relates to future expected transactions. Therefore, the short hedge associated with a particular raw material purchase does not hedge that raw material purchase.²⁴⁷
- Hedging is buying or selling a futures contract on a commodity exchange as a temporary substitute for an intended "later transaction" in the cash market. The short hedge is a hedging strategy used by manufacturers and producers to lock in the price of a product or commodity to be delivered sometime in the future. On the other hand, the long hedge is a hedging strategy used by manufacturers and producers to lock in the price of a product or commodity to be purchased sometime in the future.²⁴⁸
- Hedges concern a forecasted transaction or firm commitment that is expected to occur, and the Assan Single Entity's short hedges cannot concern the associated raw material purchases because at the time it initiates the short hedge, the associated raw material purchase has already occurred. There is no price risk associated with the raw material purchase because, at the time the Assan Single Entity enters the futures market, that raw material purchase has already been made at a price that has already been set.²⁴⁹
- While triggered by a raw material purchase, the Assan Single Entity's short hedge does not hedge that raw material purchase. Rather, when the Assan Single Entity initiates a short hedge after a raw material purchase, that hedge relates to future events concerning the raw material in question: (1) future losses from the marking-to-market of inventory, including raw material inventory, pursuant to International Financial Reporting Standards (IFRS) requirements, and (2) future lost revenue from the sale of finished goods produced from that raw material.²⁵⁰
 - Once the Assan Single Entity purchases raw material, it can incur losses due to the IFRS required marking-to-market of the LME portion of its inventory. The Assan Single Entity's short hedges protect (or hedge) against the mark-to-market losses, with the short hedges generating a gain when LME price decline, thereby helping to offset the inventory mark-to-market losses caused by declining LME prices. During the POI, the Assan Single Entity had net gains from marking its inventory to market. Because there are no mark-to-market losses included in the Assan Single Entity's reported costs, there are no

²⁴⁶ See Preliminary Cost Calculation Memorandum.

²⁴⁷ See Petitioners' Case Brief at 30.

²⁴⁸ *Id.* at 31-32.

²⁴⁹ *Id.* at 32.

²⁵⁰ *Id.* at 32-33.

- costs or losses in the Assan Single Entity's cost of production for the hedging gains to offset. Thus, Commerce should exclude the hedging gains and losses associated with the LME and aluminum premium cost from the Assan Single Entity's reported COM.²⁵¹
- The LME aluminum price affects the value (*i.e.*, selling price) of the Assan Single Entity's finished goods. Thus, declining LME prices decrease the Assan Single Entity's sales revenues by decreasing its finished goods sales prices. Short hedges protect (or hedge) against this lost revenue. Specifically, a short hedge generates a gain when LME prices decline, thereby helping to offset the revenue that it loses when declining LME prices lower its finished goods selling price. The short hedges inherently relate to the sale of an output, rather than the purchase of an input.²⁵²
 - The sale of futures contracts amounts to a substitute sale for the producer, who is acting as a short hedger. The Assan Single Entity only initiates the short hedges after raw material purchases that are in excess of its finalized sales of finished goods. The short hedges, therefore, are substitute sales conducted in lieu of actual physical sales of the Assan Single Entity's output.²⁵³
 - For raw material purchases without a matching actual physical sale (*i.e.*, raw material purchases in excess of the Assan Single Entity's finalized sales), the short hedge protects the value of the LME portion of the raw material until such time as the finished good produced from that raw material is actually physically sold. Because the Assan Single Entity's short hedges are substitutes for its sales, they do not concern the Assan Single Entity's costs and should not offset its reported costs. Commerce has found in many cases that gains or losses related to finished goods are irrelevant to a respondent's cost of production and should not be included therein.²⁵⁴ Further, no adjustment to sales prices for the hedging gains is allowed.²⁵⁵
 - Commerce should also exclude the Assan Single Entity's hedging related gains and losses from its reported costs as FA because the Assan Single Entity failed to explain the circumstances of all its derivative trading that generated the gains and losses at issue.²⁵⁶
 - The Assan Single Entity asserts that the gains and losses pertain only to its LME hedging of raw material purchases and raw material inventory. However, the POI hedging quantity that generated the gains and losses significantly differs from the Assan Single Entity's POI raw material purchase quantity.
 - Based on the Assan Single Entity's descriptions, the Assan Single Entity's quantity of hedging transactions should be lower than the quantity of its raw material purchases

²⁵¹ *Id.* at 33-34.

²⁵² *Id.* at 35-36.

²⁵³ *Id.* at 36-37.

²⁵⁴ *Id.* at 37-38; see also *Certain Hot-rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review: 2016-2017*, 84 FR 32720 (July 9, 2019), and accompanying IDM at Comment 12; *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Results of Antidumping Duty Administrative Review: 2016-2018*, 85 FR 3028 (January 17, 2020), and accompanying IDM at Comment 2; *Certain Oil country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review: 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8; *Notice of Final Determination of Sales at Less Than Fair Value; Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan*, 64 FR 56308, 56326 (October 19, 1999) at Comment 24; and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742, 749 (January 6, 2000), and accompanying IDM at Comment 4.

²⁵⁵ See Petitioners' Case Brief at 38; see also *USEC Inc. v. United States*, 489 F Supp. 2d 1337, 1354 (CIT 2007).

²⁵⁶ See Petitioners' Case Brief at 39.

because it does not open a hedging position for raw material purchases that are already naturally hedged by its finalized sales. However, the record shows otherwise.²⁵⁷

- Even if considering the timing differences between when the Assan Single Entity opens and closes hedging transactions, this alone cannot explain the significant quantity difference between the raw material hedging and purchase transactions during the POI. Therefore, the hedging gains and losses are not solely related to raw materials.
- While Commerce should apply FA and exclude the hedging related gains and losses from the Assan Single Entity's reported costs, if Commerce does not omit the hedging related gains and losses, Commerce should make an adjustment based on the relative ratio of raw material purchases and hedging quantities.²⁵⁸
- According to the Assan Single Entity, it would not open a long hedge while its net inventory position is positive (*i.e.*, beginning raw material inventory plus purchased raw material minus finalized sales). Accordingly, the Assan Single Entity should not have had any long hedges during the POI (*i.e.*, buying futures) because its net inventory position was positive throughout the POI. However, the record shows otherwise. The Assan Single Entity did not explain this inconsistency and as such, Commerce should apply FA because the Assan Single Entity withheld information that has been requested by Commerce.²⁵⁹
- In the alternative, Commerce should include the hedging related gains and losses in the financial expense calculation, instead of including it as an offset to COM.
 - The Assan Single Entity considers hedging transactions as a financing activity in the cash flow statement. Also, the hedging activity related commission expense is classified as a financial expense in the income statement.
 - The Assan Single Entity does not take delivery of its LME commodity contracts. Rather, its commodity contracts are means of risk and cash management. Thus, the Assan Single Entity's hedging with LME contracts is a financing and not an operating activity. Therefore, pursuant to section 773(f)(1)(A) of the Act, Commerce should incorporate the hedging related gains and losses in the financial expense calculation, instead of as an offset to the COM.²⁶⁰

The Assan Single Entity's Rebuttal Arguments

- In the *Preliminary Determination*, Commerce correctly allowed the hedging gains and losses in the calculation of the Assan Single Entity's reported COM. The same hedging gains and

²⁵⁷ *Id.* at 39-41.

²⁵⁸ *Id.* at 41-44; *see also* section 776(a)(2)(A).

²⁵⁹ *Id.*

²⁶⁰ *See* Petitioner's Case Brief at 47-55; *see also* *Certain Polyethylene Terephthalate Resin from Canada: Final Determination of Sales at Less Than Fair Value*, 81 FR 13319 (March 14, 2016), and accompanying IDM at Comment 1; *Phosphor copper from the Republic of Korea: Final affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 2, 2017), and accompanying IDM at Comment 2; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 10; *Polyethylene Terephthalate Resin from the Republic of Korea: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination Critical Circumstances, in Part*, 83 FR 48283 (September 24, 2018), and accompanying IDM at Comment 3; *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011), and accompanying IDM at Comment 19; and *Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 7254 (January 27, 2021), and accompanying IDM at Comment 1.

losses were also allowed in the recently completed *Aluminum Sheet Turkey* investigation with respect to the Assan Single Entity.²⁶¹

- When the Assan Single Entity purchases aluminum, it creates a short hedge for a future sale of that material at a set price. This assures that the aluminum costs are fixed during production and avoids volatility in costs of finished products. The Assan Single Entity provided numerous documents linking its hedging transactions to particular aluminum purchases. On the other hand, none of hedging related example documents provided by the petitioners are related to aluminum. They do not even relate to metals or even a manufacturing operation.²⁶²
- The short hedge protects the hedger against falling prices. The Assan Single Entity engages in short hedges to protect the value of its purchased aluminum, aluminum inventory, and “expected production” against LME price fluctuations. It normally takes anywhere between 2 to 4 months for the Assan Single Entity to procure raw materials. Therefore, the Assan Single Entity creates short hedges to protect against LME price decreases which would reduce the value of its raw material inventory.²⁶³
- The various hedging related examples provided by the petitioners are associated with agricultural products, where there is a distinct target date for harvest and a known pre-determined output volume that must be sold. Unlike grain or cattle producers, the Assan Single Entity does not know what products it will produce, when it will produce, and how much it will produce at the time the raw material is purchased. As such, it does not hedge its output unlike the grain or cattle manufacturers.
- The Assan Single Entity engages in short hedges to protect the value of its aluminum inventory. This is why a short hedge is created after the raw material is purchased, which the petitioners interpret as evidence the short hedge relates to the Assan Single Entity’s sales.²⁶⁴
- The hedge occurs after the Assan Single Entity buys the raw materials because it does not need to hedge the purchase until it buys the materials which it intends to consume in the production. Insurance premiums on a house are to protect against the future event of a fire, but no one buys insurance for a house they do not yet own. The hedge on the raw material purchase is to stabilize production costs which Commerce has recognized as valid costs.²⁶⁵
- Assan’s financial statement footnotes explain that the Assan Single Entity entered into commodity exchange contracts to mitigate its risk on aluminum price fluctuations. This statement is consistent with evidence and information presented by the Assan Single Entity throughout this proceeding. The Assan Single Entity protects its aluminum inventory and purchases against risks on aluminum price fluctuations through short hedges.²⁶⁶
- The Assan Single Entity is not in the business of taking speculative positions and profiting from them. its business is manufacturing and selling aluminum products. The hedging transactions generate gains or losses on the aluminum depending on how aluminum prices fluctuate, but in the end, the hedge stabilizes the Assan Single Entity’s costs and neutralizes any gains or losses arising from those aluminum price fluctuations.²⁶⁷

²⁶¹ See Assan Single Entity’s Rebuttal Brief at 14-15; see also *Aluminum Sheet Turkey*.

²⁶² See Assan Single Entity’s Rebuttal Brief at 15-16.

²⁶³ *Id.*

²⁶⁴ *Id.* at 17.

²⁶⁵ *Id.*; see also *USEC v United States*, 498 F Supp. 2d 1337, 1353 (CIT 2007); and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181-9182 (February 24, 1998).

²⁶⁶ See Assan Single Entity’s Rebuttal Brief at 17-18.

²⁶⁷ *Id.* at 18.

- The petitioners' arguments regarding the mark to market valuation of LME portion of inventory are incorrect. The mark to market inventory valuations are part of the Assan Single Entity's manual adjustments and it demonstrated the impact of declining LME prices on the value of its inventory during the POI.
- The Assan Single Entity recognized an overall inventory valuation loss during the POI. The net amount for the twelve-month period ending as a gain does not change the fact that the Assan Single Entity observed substantial inventory valuation losses during the period. The hedging transactions and overall inventory valuation adjustments relate specifically to aluminum purchased for manufacturing into coil, and they are properly reported as part of the COM. Further, Commerce has historically considered both hedging gains and losses in the cost calculation.²⁶⁸
- The petitioners' attempt to link the aluminum hedging transaction to product sales transactions should be rejected. The Assan Single Entity has reported its hedging activities and linked those hedges to raw material purchases. The hedging transactions were not initiated on sales contracts or sales invoices. In some sense all costs are related to sales, but this does not mean the hedging transaction is related to any specific sales. The Assan Single Entity's record supports the determination that its's hedging activities are directly linked to its aluminum purchases.²⁶⁹
- The Assan Single Entity properly explained and documented the circumstances of all trading that generated the hedging gains and losses.
 - The petitioners argue that the quantity of the hedging transactions is greater than the quantity of aluminum purchases. As the Assan Single Entity explained, at the due date of the hedge sell transaction, the positions are closed with reverse buy transactions at spot prices. Therefore, as requested by Commerce, the Assan Single Entity's reported hedging quantity includes both the initial sell hedge contracts and the reversing spot buy contracts because they are separate hedging contracts.
 - The quantity of the Assan Single Entity's hedging transactions is far greater than its sales quantity of finished goods. As such, the Assan Single Entity does not engage in speculative hedging and it disproves the petitioners' argument that the Assan Single Entity's hedging transactions are related to sales of finished products.²⁷⁰
 - The petitioners claim that the Assan Single Entity should not have had any long hedges during the POI (*i.e.*, buying futures) because its net inventory position was positive throughout the POI. On the contrary, the Assan Single Entity explained that it was also engaged in the long hedging positions in rare cases.²⁷¹
- The Assan Single Entity's hedging gains and losses are not related to financing costs. The cash flow statement classification reflects a grouping of financial instruments that are executed with financial institutions. That is why the hedging gains and losses are listed under financing activities in the cash flow statement.

²⁶⁸ *Id.* at 19-21; *see also* section 773(f)(1)(A); *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8; *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and accompanying IDM at Comment 7; and *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 76721 (December 13, 2002), and accompanying IDM at Comment 9.

²⁶⁹ *See* Assan Single Entity's Rebuttal Brief at 22.

²⁷⁰ *Id.* at 23-24.

²⁷¹ *Id.* at 24-25.

- The most important point is where in the Assan Single Entity’s financial statements the items in question are recorded. The hedging gains and losses are part of cost of sales in Assan’s audited financial statements. Thus, they are related to its’s production costs and not financing costs.
- Commerce’s policy is to consider hedging activity in the context of the underlying purpose for the hedging contracts involved. The Assan Single Entity’s reported hedging gains and losses are related to manufacturing and production, not sales. Therefore, Commerce should include the hedging gains and losses in the reported COM for the final determination.²⁷²

Commerce’s Position: In the *Preliminary Determination*, Commerce allowed the net hedging gains to offset the reported COM.²⁷³ For the final determination, we continue to allow Assan’s net hedging gains to offset the reported COM. However, we adjusted the reported net hedging gains to account for the timing difference related to the purchases of aluminum input and the settlement of the associated commodity hedging contract.

Assan explained in this investigation that to meet customer demands and offer a reasonable delivery time to its customers, Assan maintains extra raw material inventory.²⁷⁴ According to Assan, raw material purchase transactions are generally concluded within the first three weeks of each month. However, because raw material prices are subject to significant fluctuations, Assan also engages in hedging transactions for the purchased raw materials to eliminate the risk of fluctuations in the metal cost. The related hedging position (sell transactions in commodities markets) are generally opened in the third week of each month (*i.e.*, towards the end of each month) given the consideration to its raw material inventory position at that time.²⁷⁵ Assan stated that, to ascertain this, it routinely monitors its total raw material inventory “position” and the related hedging positions are updated several times each week. According to Assan, it is not in the business to make a profit on its hedging transactions, but to ensure stability related to its raw material costs.²⁷⁶ During the POI, Assan generated net hedging gains from its hedging activities, and the related gains were recorded as a part of cost of goods sold in the audited financial statements. For the costs of production reported in this investigation, Assan reduced the reported COM by the net hedging gains as reflected in its normal books and records.

Section 773(f)(1)(A) of the Act instructs Commerce to calculate costs based on a respondent’s normal books and records if they are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. The records show that Assan’s hedging gains and losses are directly associated with purchases of the raw material aluminum and are recorded as a part of cost of goods sold.²⁷⁷ Accordingly, we consider it appropriate to include the net hedging gains as a part of the reported COM. However, the raw material aluminum purchases made during the POI and the recorded POI net hedging gains, resulting from the associated commodity hedging contracts, are not properly linked due to timing differences. When Assan purchases its raw material aluminum, it enters into ninety-day commodity hedging contracts to sell a similar quantity of aluminum metal in the future (*i.e.*,

²⁷² *Id.* at 25-27; see also *Notice of Final Determination of Sales at Not Less than fair Value: Low Enriched Uranium from the United Kingdom, Germany, and the Netherlands*, 66 FR 65886 (December 21, 2001), and accompanying IDM at Comment 17.

²⁷³ See Preliminary Cost Calculation Memorandum.

²⁷⁴ See 4SDQR Part II at 1-3.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ See 4SDQR Part II at Exhibit S10D-7; see also SDQR at Exhibits S5D-36.

based on the hedging documents provided by Assan). At the time, the hedging contracts expire, Assan closes the hedging contracts by reversing its position in the commodities market. Thus, the sum of the resulting gain or loss on the commodities hedging contracts and the raw material purchases that triggered the hedging contract reflect Assan's raw material costs associated with the POI. Inherent in this hedging scheme is a timing difference between the actual purchase of the raw material metal and the closing of the related ninety-day commodity hedging contract. Accordingly, to link the POI raw material purchases with the associated hedging gains or losses, and mitigate the timing differences, we find it appropriate to calculate the reported POI net hedging gains by incorporating a ninety-day lag. Assan provided the monthly hedging information related to raw material purchases for eighteen months (*i.e.*, including the POI).²⁷⁸ Using this information, we calculated the POI net hedging gains by incorporating a ninety-day lag to mitigate the timing differences between the POI raw material purchase and the settlement of the associated commodity hedging contract.²⁷⁹ Accordingly, for the final determination, we continued to allow Assan's net hedging gains to offset the reported COM. However, as explained above, we adjusted Assan's reported net hedging gains to account for the timing difference related to purchase of the raw material and the settlement of the associated commodity hedging contract.

We disagree with the petitioners that Assan's hedging transactions are related to Assan's sales of finished goods, and thus the hedging gains are unrelated to Assan's cost of production. Throughout this proceeding, Assan consistently explained and demonstrated that its hedging activities are to protect the value of its purchased raw material aluminum.²⁸⁰ Assan provided specific record evidence and demonstrated that the net hedging gains were directly associated with the purchases of its aluminum material inputs.²⁸¹ Further, Assan's audited financial statement accompanying footnotes state that the company enters into commodity contracts to mitigate its risk on aluminum price fluctuations (*i.e.*, raw material inputs, not finished goods).²⁸² We find that Assan's statements are consistent with record evidence and information presented by Assan throughout this proceeding. Accordingly, we find that Assan's hedging activities and associated net hedging gains are related to Assan's aluminum purchases.

The petitioners' argument with regard to marking to market is misplaced. The GAAP concept of marking to market value refers to a method that ensures Assan's assets and liabilities on the balance sheet at a particular point in time reflect fair values. In the instant situation, the marking to market values relate to the current market value of Assan's physical inventory on hand and open hedging contracts as of the end of the POI, not gains or losses on closed hedging contracts. In other words, the marking to market refers to the valuation of assets (*i.e.*, inventory) on the balance sheet that are on hand at a point specific point in time (*i.e.*, the end of the POI),

²⁷⁸ See Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to the June 15, 2021 Section D Sixth Supplemental Questionnaire," dated June 21, 2021 at Exhibit S12D-1.

²⁷⁹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Assan Aluminyum Sanayi ve Ticaret A.S. and Ispak Esnek Ambalaj San. A. S.," dated September 16, 2021.

²⁸⁰ See SDQR at 5S-33 – 5S-35; *see also* Assan Single Entity's Letter, "Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.'s Response to Questions 5 through 10 of the April 9, 2021 Section D Forth Supplemental Questionnaire," dated April 15, 2021 (3SDQR Part II) at 3-4; and 4SDQR Part II at 1-3.

²⁸¹ See 4SDQR Part II at Exhibit S10D-7.

²⁸² See AQR at Exhibit A-14.

whereas the gains and losses on closed hedging contracts are related to inventory that was consumed during the POI, not assets remaining on the balance sheet.

The petitioners contend that there is a significant difference between the quantity associated with the aluminum hedging contracts and the quantity of aluminum purchased during the POI, even after accounting for the timing differences between the purchase of the raw material and the settlement of the associated commodity hedging contract. As such, according to the petitioners, Assan's net hedging gains are not solely related to Assan's aluminum inputs. We disagree. Contrary to the petitioners' claim, record evidence shows that on the expiration date of the short hedging contract, the hedging positions are closed by reverse buy transactions at spot prices.²⁸³ Consequently, the reported hedging quantity includes both the initial sell hedge contracts and the reversing spot buy contracts because each transaction is accounted as a separate hedging contract. The petitioners further assert that Assan's explanation implies that it never engaged in long hedging positions because its net inventory position was positive throughout the POI. However, Assan explained that it engaged in long hedging positions in rare cases during the POI, not never.²⁸⁴ Therefore, we determine, based on the record evidence, that the petitioners' claims regarding the application of facts available under section 776 of the Act due to excessive hedging quantities and long hedging contracts are without merit. Finally, we also disagree with the petitioners that Assan's net hedging gains should be alternatively included in Assan's financial expense ratio. Assan's net hedging gains are recorded as a part of cost of goods sold in its audited financial statements and relate to aluminum purchases used in the production of merchandise under consideration, therefore, it is inappropriate to include this amount in the financial expense ratio.

Comment 10: Adjustment to Cost of Manufacture for Goods in Transit

The Assan Single Entity's Arguments

- In the *Preliminary Determination*, Commerce disallowed an amount for a reconciling item "goods in transit" and increased the Assan Single Entity's reported COM.²⁸⁵
- The amount in question is related to IFRS treatment of consignment sales which are not yet delivered to customers. As required under IFRS rules, the Assan Single Entity may not recognize sales until goods are delivered. Therefore, the Assan Single Entity removed undelivered consignment goods from both the sales revenue and the cost of sales. Specifically, this amount is associated with goods invoiced in the previous period but delivered in the current period.²⁸⁶
- The Assan Single Entity removed the cost of sales of goods that were invoiced in the previous period but delivered in the current period because it is not related to the POI cost of production. The Assan Single Entity's reported costs reflect production of subject merchandise during the POI, and thus Commerce should not increase the reported COM by this amount.²⁸⁷

Petitioners' Rebuttal Arguments

- Commerce should disallow the reconciling item "goods in transit" for the following reasons.

²⁸³ See 4SDQR Part II at 3 and 7.

²⁸⁴ *Id.* at 4 and 5.

²⁸⁵ See Assan Single Entity's Case Brief at 34.

²⁸⁶ *Id.* at 35-36.

²⁸⁷ *Id.* at 36.

- The Assan Single Entity provided three inconsistent explanations for the nature of this item: 1) the “cost of sales adjustments for timing differences between Assan and Kibar Americas”; 2) the cost of consignment sales that are not yet delivered to the customers; and 3) the cost of sales of goods invoiced in the previous period but delivered in the current period. The Assan Single Entity failed to develop an accurate record concerning the nature of this item.²⁸⁸
- The Assan Single Entity’s assertion is incorrect that this item is only related to cost of sales and not cost of production. The differences between cost of sales and cost of production are changes in beginning and ending finished goods inventories. Specifically, goods that are included in the beginning finished goods inventory as a part of cost of goods sold is not relevant to the cost of production.
- The Assan Single Entity lists the “goods in transit” and the beginning finished goods inventory separately and thus, Commerce correctly disallowed this amount in the *Preliminary Determination*. Accordingly, Commerce should continue to disallow the reconciling item “goods in transit” for the final determination.²⁸⁹

Commerce’s Position: We agree with the petitioners. In the overall cost reconciliation, Assan reduced its reported COM by including a reconciling item labeled “goods in transit”.²⁹⁰ When Commerce inquired about this item, Assan initially stated that this item was related to “cost of sales adjustments for timing differences between sales of Assan and Kibar Americas.” Assan also stated that it had no impact on the reported COM as it was related to cost of sales.²⁹¹ However, Assan already had a separate reconciling item for “adjustment relating to timing differences between Assan and Kibar America’s sales.” Commerce again requested Assan to clarify the nature of the transactions reflected in the reconciling item “goods in transit.”²⁹² Commerce also requested Assan to explain how this adjustment was different from the reconciling item “adjustment relating to timing differences between Assan and Kibar America’s sales.”²⁹³ In response, Assan stated that under IFRS, Assan could not recognize sales revenue and cost of sales pertaining to the “goods in transit” because these consignment sales were not yet delivered to its customers. Thus, Assan reduced the reported COM by the amount of “goods in transit” since this item was related to sales.²⁹⁴ Further, Assan stated that the reconciling item “adjustment relating to timing differences between Assan and Kibar America’s sales” represented the elimination entries used in the preparation of financial statements.²⁹⁵ Based on Assan’s explanation, this adjustment would impact both cost of sales and ending finished goods inventory, but not COM.²⁹⁶ Accordingly, in the *Preliminary Determination*, Commerce disallowed the reconciling item “goods in transit” because Assan failed to clearly explain why it was appropriate to reduce COM by the reconciling item.

²⁸⁸ See Petitioners’ Rebuttal Brief at 43-45; see also *Longkou Maimeng Mach. Co. v. United States*, 617 F. Supp. 2d 1363, 1372 (CIT 2009).

²⁸⁹ See Petitioners’ Rebuttal Brief at 45-47.

²⁹⁰ See SDQR at Exhibit S5D-36.

²⁹¹ *Id.* at Exhibit 5S-30.

²⁹² See 3SDQR Part II at 9.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ When finished products are sold, the accounting entry is a debit to cost of sales and a credit to finished goods inventory.

In its case brief, Assan now asserts that the reconciling item “goods in transit” was related to goods invoiced in the previous period but delivered in the current period and thus, it was not related to the POI costs of production. However, this still does not address the issue at hand which is why it is appropriate to reduce the reported COM by the amount of “goods in transit.” As noted above, an adjustment for “goods in transit”, whether in the current period or the prior period, impacts both cost of sales and finished goods inventory, not COM. While Assan adjusts the cost of sales for this item, it does not additionally adjust finished goods inventory. The decrease in cost of sales and the increase in finished goods inventory would cancel each other out resulting in no impact to the COM. Thus, it is still unclear why, even if the claimed adjustment relates to the prior year, it should result in a reduced reported COM.

Commerce has reasonably placed the burden to establish entitlement for adjustments to the reported costs on the party seeking the adjustment or offset and the party with access to the necessary information.²⁹⁷ In this proceeding, Commerce provided Assan the opportunity to explain the reconciling item at issue (*i.e.*, “goods in transit”). However, Assan failed to provide a clear and consistent explanation for this item. Thus, we continue to disallow this reconciling item for the final determination.

Comment 11: Manual Adjustment Ratio

The Assan Single Entity’s Arguments

- In the *Preliminary Determination*, Commerce revised the denominator used in the calculation of the manual adjustment ratio to ensure that the denominator used in the ratio calculation is on the same basis as COM to which the ratio is applied. While the denominator used in the calculation of the ratio includes packing costs, the ratio was applied to the reported COM exclusive of packing. Thus, for the final determination, Commerce should deduct the packing costs from the denominator that was used in the calculation of the manual adjustment ratio.²⁹⁸

Petitioners’ Rebuttal Arguments

- The Assan Single Entity argues that the denominator used to calculate the manual adjustment ratio is not on the same basis as the per-unit cost to which the ratio is applied. The denominator that Commerce used to calculate the manual adjustment ratio is packing inclusive. Also, the per-unit COM to which Commerce applied the manual adjustment ratio also includes packing costs and does not incorporate the packing offset (*i.e.*, variable PACKOFFSET).²⁹⁹
- If the Assan Single Entity’s reported per-unit COM excludes packing cost, Commerce should adjust the denominator used in the calculation of manual adjustment ratio because the denominator used in the ratio calculation includes packing cost.³⁰⁰
- However, if the Assan Single Entity’s reported per-unit COM includes packing cost, an adjustment is not necessary for the denominator used in the calculation of manual adjustment ratio because the denominator used in the ratio calculation includes packing cost.³⁰¹

²⁹⁷ See 19 CFR 351.401(b)(1).

²⁹⁸ See Assan Single Entity’s Case Brief at 33-34.

²⁹⁹ See Petitioners’ Rebuttal Brief at 41-43.

³⁰⁰ *Id.*

³⁰¹ *Id.*

- Accordingly, Commerce should only adjust the manual adjustment ratio denominator to be packing-exclusive if Commerce agrees with the petitioners that the Assan Single Entity’s reported costs are already packing cost-exclusive.³⁰²

Commerce’s Position: We agree with both parties, in part. In its normal books and records, Assan records certain revenue and expense items directly to the cost of goods sold and these amounts are not captured in the cost accounting system. As such, to ensure these items are captured in the reported CONNUM-specific costs, Assan calculated a manual adjustment ratio by dividing the company-wide POI total manual adjustment amount by the company-wide POI cost of goods sold. Assan then calculated the CONNUM-specific manual adjustment amount by applying the manual adjustment ratio to the CONNUM-specific per-unit COM.

In the *Preliminary Determination*, we adjusted the denominator used in the calculation of the manual adjustment ratio to ensure that the denominator used in the ratio calculation was on the same basis as COM which the ratio was applied.³⁰³ However, the denominator used included both the raw material and conversion costs related to packing, while the per-unit COM to which Commerce applied the manual adjustment ratio only reflected the packing conversion costs (*i.e.*, the COM before PACKOFFSET).³⁰⁴ Thus, for the final determination, we reduced the denominator used in the calculation of manual adjustment ratio by the packing raw material cost to ensure that the denominator used in the ratio calculation is on the same basis as COM to which the ratio is applied.

Comment 12: Packing Cost Offset in the Reported Costs

Petitioners’ Arguments

- Commerce allowed the Assan Single Entity to revise its packing conversion cost offset based on a product-specific or CONNUM-specific basis. However, the Assan Single Entity reported the same per-unit packing conversion cost for all products. The Assan Single Entity failed to provide the product-specific or CONNUM-specific packing conversion cost, and thus, Commerce should continue to disallow the packing offset from the reported COM.³⁰⁵
- The Assan Single Entity claims that the packing offset captures packing conversion costs from two cost centers where it manufactures pallets and wooden boxes based on the specific requests and packing types. Thus, the packing offset applies only to “specific requests and packing types” and reporting the same per-unit packing cost for all products is inappropriate and distortive.³⁰⁶
- The Assan Single Entity also failed to demonstrate that the packing offset at issue was not reflected in “Ambalaj” (*i.e.*, *packing costs*) which it already excluded from the reported COM. Thus, the Assan Single Entity is potentially removing packing costs twice. Due to the lack of clarity on the record, Commerce should continue to disallow the packing conversion cost offset.³⁰⁷

³⁰² *Id.*

³⁰³ See Preliminary Cost Calculation Memorandum.

³⁰⁴ *Id.*; see also SDQR at Exhibit S5D-36; and Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Alüminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to Questions 2a, 2b, 2c, 2e and 4 of the May 4, 2021 Section D Fifth Supplemental Questionnaire,” dated May 14, 2021 (4SDQR Part I) at Exhibit S10D-5.

³⁰⁵ See Petitioners’ Case Brief at 68.

³⁰⁶ *Id.* at 69.

³⁰⁷ *Id.*

The Assan Single Entity's Arguments

- To be on the same basis, the Assan Single Entity reduced the reported COM by the same per-unit packing conversion cost reported in the home market sales response. Therefore, Commerce should allow the packing conversion cost offset in the latest costs of production data.³⁰⁸

Petitioners' Rebuttal Arguments

- The Assan Single Entity's reported COM already excludes the "Ambalaj" (*i.e.*, packing). Thus, it is not clear that deducting additional packing conversion cost is necessary. The lack of clarity is from its refusal to reconcile its packing costs to its trial balance.³⁰⁹
- The Assan Single Entity also states in its case brief that the total reported COM represents the total production costs without packing (*i.e.*, see the "manual adjustment factor calculation" comment).³¹⁰
- Importantly, the Assan Single Entity failed to provide the "product-specific" or "CONNUM-specific" packing conversion costs. Thus, Commerce should continue to disallow the Assan Single Entity's packing conversion cost offset to the COM.³¹¹

Assan Single Entity's Rebuttal Arguments

- The Assan Single Entity reported the packing conversion costs based on its normal books and records. The Assan Single Entity also reported the packing conversion cost offset in the cost response on the same basis as the packing conversion costs reported in the sales response.
- Because the Assan Single Entity does not maintain packing conversion costs on a CONNUM-specific basis in its accounting system, Commerce is imposing an overly burdensome requirement. Thus, Commerce should grant the packing cost offset to its reported COM for the final determination.³¹²

Commerce's Position: We agree with Assan and have allowed the packing conversion cost offset to the reported COM. In the initial cost response, Assan calculated a packing conversion cost ratio and applied it to the CONNUM-specific COM to eliminate the packing conversion cost that was included in the reported COM. The deducted CONNUM-specific packing cost was based on the relative value of reported CONNUM-specific COM. In the *Preliminary Determination*, Commerce determined that Assan's initial packing cost offset methodology was unreasonable because there was no logical correlation between the deducted CONNUM-specific packing cost and the relative value of CONNUM-specific COM. Thus, Commerce disallowed the deduction of packing conversion cost from the COM.³¹³ Subsequently, upon request from Commerce, Assan provided a revised packing conversion cost based on the same packing conversion cost reported in the home market sales response.³¹⁴

³⁰⁸ See Assan Single Entity's Case Brief at 32-33.

³⁰⁹ See Petitioners' Rebuttal Brief at 40-41.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² See Assan' Rebuttal Brief at 41-42.

³¹³ See Preliminary Cost Calculation Memorandum.

³¹⁴ See 4SDQR Part I at 2 and Exhibit S10D-5.

Assan explained that the reported packing cost is directly obtained from its accounting system and it has two components; packing raw material costs and packing conversion costs.³¹⁵ Specifically, Assan calculated the packing raw material costs based on each packing type and reported them in the home market sales response.³¹⁶ Likewise, Assan calculated the packing conversion costs by identifying the cost centers associated with packing process and reported them in the home market sales response.³¹⁷ Based on record evidence, the reported packing costs are based on Assan’s normal books and records and the per-unit packing conversion cost offset reported in the cost response is based on the same per-unit packing conversion cost reported in the home market sales response.³¹⁸ Assan also traced the POI total packing conversion costs to its accounting reports.³¹⁹ Further, contrary to the petitioners’ claim, the record shows that the excluded packing cost “Ambalaj” is related to packing raw materials (*i.e.*, packing spool, packing roll, packing case, etc.), not conversion costs.³²⁰ Thus, we find it appropriate to allow the reported packing conversion cost offset to the COM for the final determination.

Comment 13: General and Administrative Expenses

Petitioners’ Arguments

- The Assan Single Entity failed to include certain items in the calculation of the G&A expense ratio. Commerce should include these items in the G&A expense ratio calculation even though they are reflected in the comprehensive income/loss section of its income statement.³²¹
- The Assan Single Entity reduced the G&A expenses with “special consumption tax (SCT) refund income” and explained that this item was related to reimbursements from the Government of Turkey for special consumption tax that it paid on certain inputs. However, the Assan Single Entity indicated that its reported costs did not include any internal taxes (*i.e.*, SCT).

³¹⁵ See Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to Section B Questionnaire,” dated January 14, 2021 (BQR) at 42-44 and Exhibits B-18.1 and B-18.2.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*; see also 4SDQR Part I at Exhibit S10D-5.

³¹⁹ See BQR at 42-44 and Exhibit B-18.2.

³²⁰ See Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to Section D Questionnaire,” dated January 19, 2021 at Exhibits D-14 and D-19.2; see also Assan Single Entity’s Letter, “Aluminum Foil from the Republic of Turkey: Assan Aluminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Response to Questions 1-4 of the April 9, 2021 Section D Fourth Supplemental Questionnaire,” dated April 13, 2021 3 at Exhibit S9D-1; and BQR at Exhibit B-18.1.

³²¹ See Petitioners’ Case Brief at 56-57; see also *Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 84 FR 25391 (May 1, 2020), and accompanying IDM at Comment 6; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 3, 2007), and accompanying IDM at Comment 7; *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the Republic of Korea*, 68 FR 13681, 13684 (March 20, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the Republic of Korea*, 68 FR 47540 (August 11, 2003); *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 3, 2010), and accompanying IDM at comment 7; and *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016), and accompanying IDM at Comment 4 (*Circular Welded Steel Pipe from UAE*).

- The Assan Single Entity also did not demonstrate that SCT was part of its reported costs. Because the Assan Single Entity's reported costs did not include SCT, it is inappropriate to allow the offset.³²² As such, Commerce should exclude the SCT refund income offset from the G&A expense ratio.³²³

Assan Single Entity's Rebuttal Arguments

- Commerce's *Preliminary Determination* with respect to the Assan Single Entity's G&A expense ratio is correct and should not change for the final determination.³²⁴
- In calculating the G&A expense ratio, Commerce's practice is to include only those items that relate to the general operations of the company as a whole. As such, whether to include or exclude particular income or expense items from the G&A expense ratio, Commerce reviews the nature of each item and its relationship to the general operation of the company.³²⁵
- The items at issue are reflected in the comprehensive income/loss section of Assan's income statement and they are considered part of the company's equity. Specifically, they are reserve funds that the Assan Single Entity set aside to meet its future costs and they are neither a revenue nor an expense generated by the company in the normal course of business. Commerce does not consider reserve accounts to be actual expense items.³²⁶
- The determinations the petitioners cited address classifications of certain expenses incurred by a respondent for which Commerce determined to be G&A expenses. Thus, the facts are distinguishable from this investigation. Therefore, the Assan Single Entity properly reported the G&A expense exclusive of these losses in accordance with its audited financial statements.³²⁷
- Contrary to the petitioners' claim, the Assan Single Entity demonstrated that the costs associated with the SCT paid for inputs are recorded and captured in the reported costs. Because the costs associated with the SCT refunds are included in the reported costs, the Assan Single Entity properly included the SCT refund as an offset to the G&A expense.³²⁸
- The internal tax field in the cost database is used to report taxes on purchases of inputs that are not refunded or paid by the customers. Since the Assan Single Entity did not report input taxes that are not refunded or paid by the customer, the petitioners suggest that the Assan

³²² See Petitioners' Case Brief at 58-59; see also *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 65 FR 77851 (December 13, 2000), and accompanying IDM at Comment 14; *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the Republic of Korea*, 66 FR 33526 (June 22, 2001), and accompanying IDM at Comment 7; *Certain Steel Concrete Reinforcing bar from Turkey; Final Results and Rescission of antidumping Duty Administrative Review in part*, 71 FR 65082 (November 7, 2006), and accompanying IDM at Comment 9; and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2002), and accompanying IDM at Comment 13.

³²³ See Petitioners' Case Brief at 60-61.

³²⁴ See Assan Single Entity's Rebuttal Brief at 27-28.

³²⁵ *Id.* at 28-29; see also *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying IDM at comment 10; and *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665 (November 8, 2005), and accompanying IDM at Comment 13.

³²⁶ See Assan Single Entity's Rebuttal Brief at 29; see also *Koyo Seiko Co. Ltd v United States*, 92 F. 3d 1162, 1167 (August 1996); and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not to Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011), and accompanying IDM at Comment 7.

³²⁷ See Assan Single Entity's Rebuttal Brief at 30.

³²⁸ See Assan Single Entity's Rebuttal Brief at 31.

Single Entity did not report any taxes (including the SCT) regardless of whether the taxes are refunded or paid by the customer. The petitioners' argument is misleading and there is no evidence supporting the petitioners' claim. Thus, Commerce should continue to allow the SCT refund as an offset to the G&A expense.³²⁹

Commerce's Position: We agree with the Assan Single Entity. Section 773(b)(3)(B) of the Act states that, for purposes of calculating COP, Commerce shall include "an amount for selling, general and administrative expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question." Because the Act does not specifically define a G&A expense 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, which 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.³³⁰

We disagree with the petitioners that certain items reflected in the other comprehensive income/loss section of Assan's financial statements should be included in Assan's G&A expense ratio. Other comprehensive income/loss includes revenues, expenses, gains, and losses that have yet to be realized and they are normally excluded from net income. Specifically, these line items are not recognized as a part of company's net income on the financial statements, are not realized income or expenses, and do not flow through to company's current period retaining earnings. The purpose of these items is only to give the financial statement user a more comprehensive picture of the organization. As such, Commerce normally does not include the other comprehensive income and losses in the calculation of cost of production.³³¹ The items at issue are not a part of Assan's current period net income on the audited financial statement. Accordingly, Assan appropriately excluded these items from the calculation of its G&A expense ratio. Regarding most of the determinations cited by the petitioners, they are distinguishable from this investigation because the items discussed in those determinations were not part of other comprehensive income and losses. Although Commerce acknowledges that in *Circular Welded Steel Pipe from UAE*, we included depreciation expenses that were reflected in the comprehensive income/loss section in the respondent's G&A expense ratio, Commerce is not bound to a prior incorrect decision as long as Commerce explains its reasoning.³³² Accordingly, as explained above, the items reflected in the other comprehensive income/loss section are not recognized as a part of Assan's net income on the financial statements, are not realized expenses for Assan, and do not flow through to Assan's current period retaining earnings. Thus, we determined that it is inappropriate to include them in Assan's G&A expense ratio.

With respect to the income associated with the SCT refund, Assan demonstrated that the cost of inputs that were associated with SCT are captured in the reported costs.³³³ Assan also reconciled the total reported costs including G&A expense to its audited financial statements.

³²⁹ *Id.* at 31-33.

³³⁰ 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), and accompanying IDM at Comment 33.

³³¹ See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2016-2017*, 84 FR 11506 (March 27, 2019), and accompanying IDM at Comment 2.

³³² See *Allegheny Ludlum Corp. v. United States*, 112 F. supp. 2d 1141, 1147 (CIT 2000).

³³³ See 3SDQR Part II at 12-11.

Consequently, there is no evidence on the record that Assan did not include any internal taxes (including the SCT) in the reported costs. Thus, for the final determination, we allowed the SCT refund as an offset to Assan’s G&A expense.

Comment 14: Financial Expense

Petitioners’ Arguments

- The Assan Single Entity reduced its financial expenses with “unearned credit finance income” and explained that “according to IFRS rules, the interest portion in prices for sales and purchases must be classified as interest income/expenses.” The “unearned credit finance income” is a component of the Assan Single Entity’s selling price that the Assan Single Entity has deemed to be related to payment/credit terms. It is inappropriate to offset the financial expenses with “unearned credit finance income” because it is the Assan Single Entity’s credit expenses on sales that are not relevant to the cost of production. On the other hand, “unearned credit finance expense” relates to the Assan Single Entity’s credit costs on purchases which is relevant to the cost of production.³³⁴
- Commerce does not allow interest income to offset the financial expenses unless the record establishes that the income is earned from the short-term working capital. As such, Commerce should not include “unearned credit finance income” in the financial expense ratio.³³⁵

Assan Single Entity’s Rebuttal Arguments

- The Assan Single Entity correctly reduced its reported financial expenses by the amount of the “unearned credit finance income.” Pursuant to the IFRS, the interest portion in prices on sales and purchases must be classified as interest income/expense. Thus, the Assan Single Entity properly classified the portion of its selling prices related to interest (*i.e.*, extended payment terms) as “unearned credit finance income. Because the Assan Single Entity included the expense of the same nature in the financial expenses (*i.e.*, unearned credit finance expense), the “unearned credit finance income” was also included as an offset to the financial expenses.³³⁶
- It is Commerce’s practice to offset financial expenses by short-term interest income generated from a company’s working capital (*i.e.*, cash and cash equivalents). Also, while the income does not have to relate specifically to production of subject merchandise, the interest income should be related to the ordinary operations of the firm.³³⁷
- The “unearned credit finance income” offset is distinguishable from the interest income earned from the long-term assets at issue in *Frozen Warmwater Shrimp Thailand* and *SSSS in Coils Mexico*.³³⁸
- The Assan Single Entity demonstrated that the deposits generating the “unearned credit finance income” were held in less than a year. As such, Commerce should not make any

³³⁴ See Petitioners’ Case Brief at 61-62.

³³⁵ *Id.* at 62; see also *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying IDM at Comment 7 (*Frozen Warmwater Shrimp Thailand*); and *Stainless-Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 70 FR 3677 (January 26, 2005), and accompanying IDM at Comment 11 (*SSSS in Coils Mexico*).

³³⁶ See Assan Single Entity’s Rebuttal Brief at 33-34.

³³⁷ *Id.* at 34-35; see also *Frozen Warmwater Shrimp Thailand* at Comment 7; and *SSSS in Coils Mexico* at Comment 11.

³³⁸ See Assan Single Entity’s Rebuttal Brief at 35-36.

changes to the Assan Single Entity's calculation of its financial expense ratio for the final determination.³³⁹

Commerce's Position: We disagree with the Assan Single Entity. It explained that, under IFRS rules, the interest portion in prices for sales and purchases are classified as interest income and expenses and the Assan Single Entity included both income and expenses in calculation of its the financial expense ratio (*i.e.*, unearned credit finance income and unearned credit finance expenses). Commerce has a longstanding practice of disallowing an offset to a respondent's financial expenses for interest income attributable to trade receivables because they are related to sales transactions and prices.³⁴⁰ The "unearned credit finance expense" relates to Assan's interest costs on purchases, which are unrelated to trade receivables. Accordingly, for the final determination, Commerce disallowed the "unearned credit finance income" and excluded it from the calculation of Assan Single Entity's financial expense ratio.

V. RECOMMENDATION

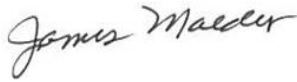
Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register* and will notify the International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

Agree

Disagree

9/16/2021

X



Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

³³⁹ *Id.* at 36; see also *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21391 (April 10, 2020), and accompanying IDM at Comment 2.

³⁴⁰ See *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 73729 (December 13, 2005), and accompanying IDM at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000), and accompanying IDM at Comment 8; and *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2902 (January 18, 2006), and accompanying IDM at Comment 9.