69 FR 53675, September 2, 2004

A-489-812
Investigation
POI: 07/01/02-06/30/03
Public Document
GII/O4: DEJ

August 26, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Turkey

Summary

We have analyzed the comments and rebuttal comments of interested parties in the investigation of Light-Walled Rectangular Pipe and Tube (LWRPT) from Turkey for the period July 1, 2002, through June 30, 2003. As a result of our analysis, we have made changes for the final calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for this final determination.

Background

On April 13, 2004, the Department of Commerce (the Department) published the preliminary determination of the antidumping duty investigation of LWRPT from Turkey. See Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390 (April 13, 2004) (Preliminary Determination). The period of investigation (POI) is July 1, 2002 through June 30, 2003. We gave interested parties an opportunity to comment on our Preliminary Determination. On July 7, 2004, the petitioners,[1] MMZ Onur Boru Profil Uretim Sanayi Ve. Ticaret A.S. (MMZ), and Ozborsan Boru Sanayi ve Ticaret (Ozborsan) submitted case briefs. On July 12, 2004, these same parties submitted rebuttal briefs. The Department did not receive a request for a public hearing; consequently, no public hearing was held.

List of Issues

Below is the complete list of the issues in these reviews for which we received comments from interested parties:

Part I – MMZ

Comment 1: Whether the Department Should Deny MMZ's Duty Drawback Claim Because MMZ Did Not Use Imported Inputs to Produce Finished Merchandise Sold in the Home Market

Comment 2: Whether the Department Should Add Duty Drawback to MMZ's Cost of Production and Constructed Value

Comment 3 Whether the Department Should Classify Certain Bank Commissions and Letter of Credit Fees as Direct Selling Expenses Instead of Indirect Selling Expenses

Comment 4: Whether the Department Should Classify Sales Made Through the U.S. Commissioned Selling Agent as CEP Transactions

Comment 5: Whether the Department Should Collapse MMZ and Company A for Purposes of Calculating MMZ's Coil Cost

Comment 6: Whether the Department Should Find that the Transfer Price Between Company A and MMZ Was Above the Market Price

Comment 7: Whether the Upward Adjustment for Imported Coil Purchased Through

[1] The petitioners in this investigation are California Steel and Tube, Hannibal Industries, Inc., Leavitt Tube Company, LLC, Maruichi American Corporation, Northwest Pipe Company, Searing Industries, Inc., Vest Inc., and Western Tube and Conduit Corporation (collectively, the petitioners).

	Company A to the Price Paid to Home Market Suppliers in Effect Double-Counts the Duty-Drawback Adjustment to Cost of Production and Constructed Value
Comment 8:	Whether the Department Should Exclude Foreign Exchange Losses Incurred on Payables from MMZ's Computed Financial Expense
Comment 9:	Whether the Department Should Adjust MMZ's Reported Costs to Correct for the Overstatement in MMZ's Raw Material Cost Discovered During Verification

Part II – Ozborsan/Onur, Guven, and Ozdemir

Comment 10:	Whether the Department Erred in its Decision to Collapse Ozborsan/Onur, Guven, and Ozdemir Into a Single Entity
Comment 11:	Whether the Department Erred in Finding that Ozborsan/Onur Metal Failed to Provide Requested Information to the Department and in its Application of Total Adverse Facts Available

Changes in the Margin Calculations Since the Preliminary Determination

Based upon our analysis of the comments received from interested parties, for the final determination we recommend making the following changes to the margin calculations used in the Preliminary Determination of this investigation:

1. Duty Drawback Adjustment

The Department disregarded the amount of duty drawback reported by MMZ under the yield rate for coils established by the government of Turkey (GOT) and instead calculated the duty drawback using MMZ's own yield rate for steel coils. However, since MMZ does not separately track its consumption of zinc, the Department was relied upon the yield rate established by the GOT for the duty drawback on zinc. See Memorandum to the File from Drew Jackson, International Trade Compliance Analyst, "Calculation Memorandum for the Final Determination," dated August 26, 2004 (Final Sales Calculation Memorandum).

2. Reclassification of Certain Selling Expenses

Based on comments made by petitioners, we have reclassified the bank commissions and letter of credit fees as direct selling expenses, rather than indirect selling expenses, for the final determination.

See Final Sales Calculation Memorandum.

3. Revised Production Quantity for Non-Prime Products

Pursuant to a minor error reported on the first day of verification, we have revised the production quantity for non-prime products. See Final Sales Calculation Memorandum.

4. Adjustment to MMZ's Raw Material Costs

Based on comments made by MMZ, we have made an adjustment to MMZ's raw material costs to account for an overstatement in these raw material costs discovered during verification. See Memorandum from Margaret M. Pusey, Case Accountant, to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – MMZ Onur Boru Profil Uretim Sanayi ve Ticaret A.S.," dated August 26, 2004 (Final Cost Calculation Memorandum).

*5. Adjustment to MMZ's Calculated Financial Expense*s

Based on comments made by MMZ, we have made an adjustment to MMZ's calculated financial expense. Specifically, we have granted an adjustment to allow the income on certain investments to offset financial expenses because this income was found to be interest on short-term bank accounts. See Final Cost Calculation Memorandum.

*6. Adjustment to MMZ's Calculated General and Administrative Expense*s

Based upon verification findings, we have adjusted MMZ's calculated general and administrative expenses. See Final Cost Calculation Memorandum.

Discussion of the Issues

Part I – MMZ

Comment 1: Whether the Department Should Deny MMZ's Duty Drawback Claim Because MMZ Did Not Use Imported Inputs to Produce Finished Merchandise Sold in the Home Market

The petitioners argue that MMZ's claim for duty drawback should be denied because MMZ did not pay any import duties on imports of inputs used to produce subject merchandise during the POI. The petitioners note that at verification the Department found that MMZ did not pay duties on inputs of steel coil and zinc during the POI, and that it did not include duties in reported costs because of its participation in the Turkish duty drawback program.

According to the petitioners, the Court of International Trade (CIT) upheld the Department's practice of requiring payment of import duties on inputs used in producing subject merchandise sold in the home market as a prerequisite to acceptance of a claim for an adjustment to export price (EP) for duty drawback. See Petitioners' July 7, 2004, submission to the Department (Petitioners' Case Brief) at 6-7 (citing Hornos Electricos de Venezuela, S.A., v. United States, 285 F. Supp. 2d 1353 (CIT 2003) (HEVENSA)). Specifically, the CIT stated:

> Commerce has reasonably established the payment of import duties on imports used for sales in the domestic market as a necessary prerequisite for the establishment of a duty drawback claim. See, e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 Fed. Reg. 6,899, 6,909 (Feb. 11, 1998) (Payment of ... duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim). HEVENSA's failure to create a record showing the payment of duties on the importation of inputs used for domestic sales, but not for export sales, defeats its duty drawback claim.

Id. at 7. The petitioners assert that this burden remains regardless of whether the Department accepted less complete documentation in prior investigations or reviews to support an adjustment. According to the petitioners, the facts in HEVENSA are identical to those in the present case. In both instances, import duties on inputs used to produce the subject merchandise were exempted on the export of the subject merchandise. Moreover, in both cases, the respondent failed to demonstrate that import duties were paid on the inputs used to produce the merchandise sold in the home market. Citing the Notice of Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela, 67 FR 15533 (April 2, 2002) (Silicomanganese from Venezuela), and the accompanying Issues and Decisions Memorandum at Comment 6, which is the underlying antidumping proceeding at issue in HEVENSA, the petitioners state that the Department's rationale for the prerequisite is that the duty drawback "adjustment is necessary to offset import duties that are paid on inputs used in the production of merchandise sold in the home market." Id. at 9. The petitioners further claim that the objective of the duty drawback statute is to offset an imbalance that occurs when the import duty is included in the cost of the input used to produce the merchandise sold in the home market, but not included in the cost of the input used to produce export subject merchandise because that duty is rebated or exempted by reason of the export. Id. (citing Far East Machinery Co. Ltd. v. United States, 688 F. Supp. 610 (CIT 1988) (Far East Machinery I)). However, the petitioners argue that because no import duty is included in the cost of MMZ's home market product, no imbalance occurs, and therefore, no offsetting duty drawback adjustment is warranted. The petitioners claim that import duties are not included in the cost of MMZ's export products or its home market product, because MMZ did not actually pay import duties on inputs used to produce subject merchandise.

According to the petitioners, the legislative history of the duty drawback adjustment supports the Department's practice of requiring payment of import duties on inputs used in producing subject merchandise sold in the home market as a prerequisite to granting a duty drawback claim. The petitioners note that the Senate Report on the proposed bill provides that "in order that any drawback given by the country of exportation upon exportation of the merchandise shall not constitute dumping, it is necessary to add such items to the purchase price." See S. Rep. No. 16, 76 Cong., 1st Sess at 12 (1921). The petitioners note that drawback on exports to the United States may create dumping margins when the cost of the import duty is included in the cost of the input used to produce subject merchandise sold in the home market, but the import duty is not included in the cost of the input used to produce subject merchandise exported to the United States. They claim that this is because the duty is rebated or exempted upon export. The petitioners note that in Far East Machinery II, the CIT stated, "the receipt of duty drawback on goods exported to the United States, allows the seller to charge a lower price on exports that the price charged in on home market sales without practicing price discrimination." See Far East Machinery v. United States, F. Supp. 309 (CIT 1988) (Far East Machinery II) at 314. According to the petitioners, duty drawback does not create dumping when the cost of the import duty is not included in the cost of the input used to produce the subject merchandise sold in the home market, and the import duty is also not included in the cost of the input used to produce subject merchandise exported to the United States, such as in the present proceeding. The petitioners conclude that the Department should follow the practice as stated in Silicomanganese from Venezuela and deny MMZ's request for a duty drawback adjustment.

In rebuttal, MMZ contends that the petitioners' argument is contrary to law and the Department's longstanding practice. MMZ argues that the statute does not require that respondent show that it paid import duties on imported raw materials. Furthermore, MMZ notes that section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) provides that EP and constructed export price (CEP) "shall be…increased by…the amount of any import duties imposed by the country of exportation, which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States." According to MMZ, the Act does not require a respondent to demonstrate that it paid import duties on raw materials, but rather, it must show that it would have paid duties or that duties would not have been refunded on the raw materials had the finished product not been exported to the United States. Further, MMZ contends that the legislative history to the Antidumping Act of 1921 merely states that "{i}n order that *any drawback* given by the country of exportation upon exportation of the merchandise shall not constitute dumping, it is necessary also to add such items to the purchase price." Emphasis added by MMZ. MMZ notes that there was no qualification stated in the Senate Report on entitlement to this adjustment.

MMZ claims that it has demonstrated that it would have to pay import duties on the imported raw materials used to produce subject merchandise had it not exported the specified amount of that merchandise to the United States. MMZ maintains that it followed the procedures for duty drawback established by the GOT, submitted its completion report to the GOT demonstrating the export of finished product, and received approval from the GOT. Therefore, MMZ contends that it is entitled to a duty drawback adjustment under U.S. law.

MMZ notes that it could find no past cases in which the Department imposed the requirement advocated by the petitioners and cites many examples of past proceedings in which the Department had the opportunity to impose this requirement, but did not. See MMZ's July 12, 2004, submission to the Department (MMZ's Rebuttal Brief) at footnote 9. Moreover, MMZ argues that none of the CIT cases cited by the petitioners, other than HEVENSA, mention this alleged prerequisite to establishing a claim for a duty drawback adjustment. MMZ discusses the remaining CIT cases mentioned by the petitioners and notes that in none of these cases did the Department impose a prerequisite that the producer must show that it paid import duties on raw materials used to produce finished products sold in the home market. Instead, in all of the cases other than HEVENSA, the CIT upheld the Department's duty drawback analysis which includes only two requirements: (1) that the import duty and rebate are directly linked to, and dependent upon, one another, and (2) that the company claiming the adjustment can demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product.

Addressing the economic rationale for the duty drawback adjustment, MMZ notes that in a duty drawback situation, the exporting country has imposed a tariff regime against the inputs in question. MMZ contends that, in this situation, a domestic supplier of raw material can price its material very close to the world market price, plus one dollar less than the total duty cost, without facing any import competition on raw materials used in goods for sale in the home market. In light of this fact, MMZ asserts that denying the duty drawback adjustment would improperly deny an adjustment for the difference between the price of imported and locally sourced raw material, which is created by the Turkish duty on imported steel coils. MMZ further argues that regardless of whether an individual respondent paid duties on raw materials used to produce goods sold in the home market, the domestic price of goods is still influenced by a respondent's domestic competition because they may have paid import duties on raw materials. MMZ argues that Congress was aware of the tariff's effect on home market price when it elected not to establish a requirement that respondents pay duties on goods used to produce merchandise sold in that market. MMZ notes that, in the instant investigation, the Department verified that other Turkish manufacturers/importers did pay duties on imported steel coil and zinc in Turkey when those inputs are consumed in finished products intended for domestic consumption.

MMZ argues that, in HEVENSA, the CIT cited Far East Machinery II for the proposition that "{t}he purpose of the duty drawback adjustment is to prevent dumping margins from arising because the exporting country rebates import duties and taxes for raw materials used in exported merchandise." The CIT goes on to state, "{i}n other words, a duty drawback adjustment takes into account any difference in prices for home market or normal value and export sales accounted for by the fact that such import duties have been paid on inputs used to produce merchandise in the home market, but have not been paid on inputs used to make merchandise exported to the United States." See HEVENSA, 285 F. Supp. 2d at 1358. However, in making this statement, MMZ observes that the HEVENSA court made no citation to law, regulation, or legislative history. MMZ further argues that, after correctly citing the Department's two-prong test, the HEVENSA court held that the Department could reasonably impose a third requirement – that the respondent show that it actually paid duties on raw materials used to produce goods sold in the home market. However, MMZ observes that the Department has not imposed this requirement on any other respondent except for a respondent in one other case, Silicon Metal from Brazil. See MMZ's Rebuttal Brief at 12 (citing Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 63 FR 6899, 6909 (Feb. 11, 1998) (Silicon Metal from Brazil)). Moreover, MMZ argues that this requirement was not imposed in recent reviews involving various types of welded carbon steel pipe from Turkey and cold-rolled carbon steel sheet from Turkey. See MMZ's Rebuttal Brief at 13, which cites three final results of administrative reviews and two less than fair value final determinations. Thus, MMZ asserts, the HEVENSA decision is not indicative of the requirements of the law nor the Department's established practice. MMZ argues that the Department's two prong-test, within the third requirement suggested by the petitioners, is the proper policy regarding duty drawback because it acknowledges that import duty rates affect home market prices even if there are limited imports of duty-paid products at any given duty rate, and is influenced by the actions of all players in the home marketplace, rather than the actions of the sole respondent in the Department's investigation.

Department's Position:

We are not persuaded by the petitioners' arguments. Section 772(c)(1)(B) of the Act states that "the price used to establish EP and CEP shall be increased by ... (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether a duty drawback adjustment is appropriate, the Department applies a two-prong test establishing that: (1) the import duty paid and rebate payment are directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment can demonstrate that there were sufficient imports of the imported raw material to account for the drawback received on the exports of the manufactured product. The CIT has consistently found this test to be reasonable. See, e.g., Far East Machinery II. In applying this test, the Department requires that respondents provide documentary evidence to demonstrate that both prongs of the test have been satisfied.

As stated in the Preliminary Determination, MMZ has provided documentary evidence demonstrating that it has satisfied both prongs of the Department's test. The Department verified this information and found no discrepancies with the reported information. Moreover, the petitioners do not dispute that MMZ has met both prongs of the test. Instead, the petitioners argue that the Department should deny the duty drawback offset because MMZ did not pay any import duties on imports of inputs used to produce the finished products sold in the home market.

Contrary to the petitioners' assertion, the Department does not require a respondent to demonstrate that it paid import duties on raw materials used in the production of merchandise sold in the home market as a prerequisite for being granted the duty drawback adjustment. In making this argument, the petitioners seek to impose a third prong to the Department's duty drawback test, which is not required by the statute, the regulations, or past Department practice. There is no basis for the petitioners' argument that the Department should not make a duty drawback adjustment, unless it determines that the cost of products sold in the home market includes duties on imported raw materials. The only requirements of section 772(c)(1)(B) are (1) "import duties imposed," and (2) rebate, or non-collection, of those duties "by reason of the exportation of the merchandise to the United States." The statute provides for the adjustment without reference to whether products sold in the home market are made with imported raw materials. The only limitation placed on the duty drawback adjustment is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid. See Laclede Steel Co. v. United States, slip op. 94-160 (1994) (citing Far East Mach. II at 311-12). Therefore, we disagree with the petitioners that the Department should add a third prong to the test for drawback adjustments requiring that a respondent demonstrate that it paid import duties on raw materials used in the production of merchandise sold in the home market.

However, when examining a duty exemption program, where duties are foregone by the government of the exporting country contingent upon the producer exporting a specified amount of finished product, the Department may satisfy itself that the duty regime imposed by the country of exportation is valid. If a producer in the home market imports raw materials subject to an import duty, but does not participate in the duty exemption program because it has no intention of exporting the finished product, a valid duty regime would require the producer to pay the import duty. Alternatively, if the producer imported the raw material while participating in the duty exemption program, but failed to export the required quantity of finished product, a valid duty regime would require the producer to pay the import duty. If the government of the exporting country failed to collect the duties from producers under either scenario, the Department would conclude that the duty regime is not valid and deny the duty drawback adjustment. In a duty exemption program, the Department may request information from the respondent regarding whether it paid duties on inputs used in the production of finished products sold in the home market in order to determine whether a duty regime is valid. Such requests should not be confused with arguments made by the petitioners as discussed above.

In making their argument, the petitioners rely on the recent CIT decision in HEVENSA, and the underlying case Silicomanganese from Venezuela, which involves a duty exemption program. In Silicomanganese from Venezuela, the Department's primary concern was that the respondent did not provide adequate documentation to validate its claims that duties were payable absent exportation. Although the Department did state that "payment of these taxes and duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim," the Department did not intend to establish a third prong to the Department's duty drawback test. See Silicomanganese from Venezuela at Comment 6. Rather, the Department was attempting to satisfy itself that the Venezuelan duty regime was valid – that duties are, in fact, paid by producers when raw materials are imported without participation in the duty drawback program, or that duties are payable in the event the producer fails to export the specified quantity of finished merchandise. Specifically, the respondent in that case failed to provide the particular information about the duty drawback program that the Department requested in a supplemental questionnaire. In HEVENSA, the CIT affirmed the Department's denial of the duty drawback adjustment because the respondent failed to satisfy the first-prong of the duty drawback test; namely, establishing that "import duties are actually paid and rebated, and there is a sufficient link between the cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)." See HEVENSA, 285 F. Supp. 2d at 1358, citing Far East Machinery II (quoting Huffy Corp. v. United States, 632 F. Supp. 50, 53 (CIT 1986)).

The Department further notes that Silicon Metal from Brazil, the antidumping proceeding cited in both Silicomanganese from Venezuela and HEVENSA, also involved a request for additional information based on the particular facts before the Department rather than an attempt to establish a third prong to the Department's duty drawback test. See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 FR 6899 (February 11, 1998) (Silicon Metal from Brazil), and accompanying Issues and Decision Memorandum at Comment 22. In that case, which also involved a duty exemption program, the Department's primary concern was that the respondent did not provide adequate documentation to validate its claim for a duty drawback adjustment. Specifically, the Department rejected Electrosilex's claim for a drawback adjustment because "Eletrosilex failed to demonstrate on the record that it claimed and received a duty and tax drawback." See Silicon Metal from Brazil at Comment 22. The Department acknowledged Eletrosilex's claim that it paid import duties on the importation of electrodes used in producing finished products sold in the home market. However, Eletrosilex provided import declaration forms that were dated after the POR as its evidence of payment of duties on imported electrodes. Thus, the issue was not whether the respondent paid duties on imported inputs used in the production of finished goods sold in the home market, as the petitioners contend, but was instead that "Eletrosilex failed to substantiate its drawback claim by not providing appropriate payment documentation on Customs duties and IPI taxes and no payment documentation on ICMS taxes imposed on importation of electrodes used for the production of home market sales or any support documentation for the POR." Id. This closing statement establishes that the issue in Silicon Metal from Brazil was limited to whether the respondent provided adequate documentation to substantiate that it paid import duties under the Brazilian tax regime if the imported materials were not used in exports.

Furthermore, the CIT explicitly rejected the petitioners' argument that, as a prerequisite to receiving a duty drawback claim, a respondent must demonstrate the payment of duties on raw materials used to produce merchandise sold in the home market in Avesta Sheffield and Chang Tieh Industry. See Avesta Sheffield, Inc. v. United States, 838 F. Supp. 608 (CIT 1993) (Avesta Sheffield); and Chang Tieh Industry Co. Ltd., Avesta Sheffield, Inc., Bristol Metals, Inc., Damascus Tube Division, Damascus-Bishop Tube Co., Trent Tube Division of Crucible Materials Corporation, and the United Steel Workers of America (AFL-CIO/CLC) v. United States, 840 F. Supp. 141 (CIT 1993) (Chang Tieh Industry). Specifically, in Avesta Sheffield, the CIT stated, "{petitioner} argues that ITA applied the statute improperly by adjusting U.S. price without first determining the extent to which foreign market value was duty-inclusive. The statute provides for the duty drawback adjustment without reference to any finding that the home market price is reflective of duties." See Avesta Sheffield, 838 F. Supp. at 1215. In Chang Tieh Industry, the CIT stated, "{petitioner's} arguments provide no basis from which to conclude that drawback adjustments should not be made unless the

Department determines that the cost of the products sold in the home market is duty-inclusive. To require such a finding would add a new hurdle to the drawback test that is not required by the statute." See Chang Tieh Industry, 840 F. Supp. at 147.

The underlying cases in Avesta Sheffield and Chang Tieh Industry are WSSP from Korea and WSSP from Taiwan, respectively. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea, 57 FR 53693 (November 12, 1992) (WSSP from Korea) and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Taiwan, 57 FR 53705 (November 12, 1992) (WSSP from Taiwan). In these investigations, the Department found that payment of import duties on raw materials used to produce finished goods sold in the home market was not required by the Act. The Department stated in both investigations, "the statute mandates the adjustment without reference to whether products sold in the home market are made with imported raw materials ... Therefore, we disagree with the petitioners that the Department should add a third prong to the test for drawback adjustments requiring examination of the relative usage of imported materials in export and home market sales." See WSSP from Korea, 57 FR at 53694 and WSSP from Taiwan, 57 FR at 53709.

In sum, the arguments put forth by the petitioners are not persuasive. Therefore, for the final results, the Department will continue to grant MMZ a duty drawback adjustment.

Comment 2: Whether the Department Should Add Duty Drawback to MMZ's Cost of Production and Constructed Value

MMZ argues that, in the Preliminary Determination, the Department erred in increasing MMZ's cost of production (COP) by the amount of duties on imported raw materials that were exempted under Turkey's duty drawback program because these costs were never incurred by MMZ. Citing section 777(b)(3) of the Act, MMZ argues that the Department's adjustment is contrary to law. MMZ asserts that the raw materials imported under Turkey's duty drawback regime were exempted from duties (i.e., duties were not collected at the time of entry) and that, during the POI, MMZ exported the specified amount of finished goods, thereby satisfying its obligations under this program. MMZ further asserts that it does not record unpaid duties as an actual or provisional cost in the records it maintains in the ordinary course of business. Therefore, MMZ contends that the exempted duty costs are not reflected in its books and records, which are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country.

MMZ also argues that the rationale for including exempted import duties in constructed value (CV) does not apply to COP. While CV is increased by the amount of exempted duties to avoid double counting the adjustment made to EP or CEP, no double counting occurs when COP is compared to home market selling prices, which are not increased by the amount of duties exempted. MMZ asserts that the two cases cited by the Department as support for its decision do not address the question raised in this investigation. In Oil Country Tubular Goods from Korea: Final Results of

Antidumping Duty Administrative Review, 64 FR 13169 (March 17, 1999) (OCTG from Korea), MMZ claims, the Department added a duty-drawback adjustment to *third country* selling prices in order to make a comparison to duty-inclusive costs of production (emphasis in original). However, MMZ argues that OCTG from Korea did not claim that the COP should be increased by the amount of any import duties that were waived. It noted only that the costs were duty-inclusive, which could have arisen in a number of ways in the ordinary course of business. Regarding the second case, MMZ contends that the Department, in Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998) (Salmon from Chile), does not appear to address the issue raised in this case at all.

MMZ argues that the Act clearly states that the Department can only calculate MMZ's COP based on the costs contained in its books and records, provided that its costs are computed in accordance with the GAAP of Turkey. Further, MMZ asserts that there has been no claim that its failure to record exempted duties in its books runs counter to the GAAP of Turkey, or is otherwise unreasonable. Because the exempted duties are not a cost, and are not recorded in its books and records as a cost, MMZ asserts that the Department cannot include duty drawback in its COP for the purpose of the final determination.

Lastly, MMZ argues that the exempted duties should not be added to CV or for purposes of calculating the difference in merchandise adjustment (the DIFMER), because doing so would create a distortion. Specifically, MMZ argues that a distortion will arise when the duty-exempted, non-inclusive COP is compared to a duty-inclusive CV in order to calculate the DIFMER.

In rebuttal, the petitioners note that MMZ did not pay any import duties on the coil used to produce the subject merchandise exported to the United States because these duties were exempted under Turkey's duty drawback program. According to the petitioners, section 772(c)(1)(B) of the Act states that import duties must be "imposed by the country of exportation" before the Department can grant the adjustment to EP. However, in the present case, the petitioners contend that import duties were not "imposed by the country of exportation," since Turkey maintains an exemption program. Therefore, the petitioners' claim that no duty drawback adjustment to the EP is permitted under the statute.

The petitioners continue by stating that if the Department wrongly decides that import duties were imposed on merchandise, and adds duty drawback to EP, it must be consistent and add these imposed import duties to COP. The petitioners maintain that the Department's stated purpose for making a duty drawback adjustment to EP is to offset the cost of import duties included in the COP of merchandise sold in the home market. See the petitioners' July 12, 2004, submission to the Department (Petitioners' Rebuttal Brief) at 6 (citing Silicomanganese from Venezuela and Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Administrative Review, 69 FR 32492 (June 10, 2004) and the accompanying Issues and Decision Memorandum at Comment 2.) The petitioners concluded by stating that no adjustment for duty drawback should be made to EP unless an adjustment for duty drawback is also made to COP.

Department's Position:

We disagree with MMZ that raw material costs should exclude normal customs duties on inputs which are subject to duty drawback when incorporated in an exported product. As discussed above, MMZ participates in a duty exemption program where it is able to import steel coils without paying normal customs import duties as long as it satisfies the requirements of the duty drawback license. When MMZ completes a drawback license, the GOT reviews the completed license and, if the requirements have been satisfied, notifies MMZ that MMZ is no longer liable for paying the exempted duties. Although MMZ does not record customs duties as an expense in its normal books and records, the Department determined during the sales verification that, as MMZ argues, the imported coils were dutiable. Since the Department uniformly calculates a single cost of production which incorporates the cost of producing both exported and domestically sold finished products, that calculation must include the cost of duties. Because the coils were dutiable, the rebate "revenue" (i.e., the official notification from the GOT that MMZ is no longer liable for the exempted duties) and duty (i.e., the cost) should have been reflected in the company's books. Even in exemption programs, these offsetting revenues and costs should have been recorded to reflect the exemption of the duty. As the exempted duties and rebate "revenue" are real costs and revenues faced by the company, it is the Department's policy to add in the duty costs to COP even where the company does not record such costs in its normal books and records. Thus, the Department increases EP by the duties which were drawn back and increases the reported costs for the same duties.

For purposes of CV, section 773(e)(1) of the Act requires the Department to use "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise." Since the Department is directed to use actual cost for COP and CV, it must account for the duties that should have been recorded, but which were not. The import duties which would have been incurred by MMZ on imported inputs but were exempted by virtue of exportation of the finished product were not included in the books and records of MMZ, but should have been. Therefore, we increased the reported cost of raw materials to include these import duties.

Lastly, regarding the petitioners' rebuttal comment that duty drawback is not allowed under the statute in this situation because import duties were not imposed by the country of exportation, we disagree. As more fully discussed in Comment 1 above, section 772(c)(1)(B) of the Act explicitly allows duty drawback in cases where the country of export maintains a duty exemption program. Moreover, the CIT has stated that "{t}he statute provides for the duty drawback adjustment without reference to any finding that the home market price is reflective of duties." See Avesta Sheffield, 838 F. Supp. at 1215.

Comment 3: Whether the Department Should Classify Certain Bank Commissions and Letter of Credit Fees as Direct Selling Expenses Instead of Indirect

Selling Expenses

The petitioners argue that the Department found during the sales verification that certain bank commissions paid for transferring funds from Company A[2] to MMZ and fees for cashing letters of credit were incurred by MMZ on a sale-specific basis. The petitioners recommend that the Department classify these two expenses as direct selling expenses, rather than indirect selling expenses, for the final determination.

MMZ did not comment on this issue.

Department's Position:

We agree with the petitioners and have reclassified the bank commissions and letter of credit fees as direct selling expenses, rather than indirect selling expenses, for the final determination.

Comment 4: Whether the Department Should Classify Sales Made Through the U.S. Commissioned Selling Agent as CEP Transactions

The petitioners note that MMZ paid a commission to an unaffiliated selling agent for a small number of U.S. sales made during the POI. The petitioners argue that, for the final determination, the Department should classify these sales as CEP sales and deduct the commission from the starting price in calculating the CEP. According to the petitioners, these sales should be classified as CEP sales because both the intent of Congress and the plain language of the statute compel such treatment. Specifically, the petitioners contend that these sales were made for the account of the producer or exporter (i.e., MMZ) and thus are CEP sales under section 772 of the Act. The petitioners state that the statutory phrase "for the account of" refers to a principal and agent relationship. Citing Chevron, petitioners claim that the rules of statutory construction require that the Department give effect to the unambiguously expressed intent of Congress. See Petitioners' Case Brief at 15 (citing Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 843 (S.Ct. 1984) (Chevron)). The petitioners claim that the statute's use of the phrase "for the account of" is the unambiguously expressed intent of Congress that sales made for the account of a producer like MMZ must be classified as CEP transactions.

According to the petitioners, the Department recognizes that the phrase "for the account of the producer or exporter" refers to consignment sales, in which the selling agent does not take title to the subject merchandise. The petitioner cites to the preliminary results in Salmon From Chile, where the Department said, "... CEP sales were made through unaffiliated consignment brokers for the account of the producer/exporter. Consistent with past practice, for these sales we deducted from CEP

[2] MMZ has requested business proprietary treatment for the identity of this company.

commissions charged to, and other direct expenses incurred for the account of, the producer/exporter." See the Petitioners' Case Brief at 16 (citing to Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 66 FR 18431 (April 9, 2001) (Salmon from Chile), at 18443). Further, the petitioners note that the CIT ruled in Floral Trade that "the consignee does not ever take title to the flowers, and thus has nothing to sell for its own account. Rather, the unaffiliated consignee acts as {the producer's} agent." See id. at 16 (citing Floral Trade Council v. United States, 41 F. Supp. 2d 319, 335 (CIT 1999) (Floral Trade)). Thus, the petitioner argues that, in CEP sales, the U.S. agent selling the subject merchandise for the account of the producer/exporter does not have to take title to the merchandise. According to the petitioner, the fact that MMZ's U.S. selling agent does not take title to the subject merchandise cannot prevent the Department from considering these sales as CEP sales.

Additionally, the petitioners argue that the definition of "sale" used by the Court of Appeals for the Federal Circuit (CAFC) indicates that an agent does not need title to sell the subject merchandise for the account of the producer. Specifically, the petitioner notes that the CAFC has found that the term "sell" should be given its ordinary meaning, which is defined by Webster's New International Dictionary (1932) as both "an act of selling" and "a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or a sum of money, or, loosely, for any consideration." See id. at 17 (citing AK Steel Corporation v. United States, 226 F. 3d 1361, 1371 (Fed. Cir. 2002) (AK Steel) and NSK v. United States, 115 F. 3d 965, 974-75 (Fed. Cir. 1997) (NSK)). In applying its definition of sales, the CAFC held that the "seller" referred to in the CEP definition is simply one who contracts to sell and "sold" refers to the transfer of ownership or title. According to the petitioners, although MMZ's selling agent did not contract with the first unaffiliated purchaser in the United States, the U.S. agent did engage in "acts of selling," by soliciting orders for sales of subject merchandise. Therefore, the petitioners conclude that the first of the NSK court's definition of sale, i.e. "act of selling," is met in the present case. For this reason, the plain meaning of the term "sold" in section 772(b) of the Act indicates that the U.S. agent sold the subject merchandise for the account of the producer MMZ.

The petitioners also maintain that the relationship of the seller to the producer indicates that the sales at issue must be classified as CEP transactions. Specifically, the petitioners contend that the relationship of the unaffiliated commissioned U.S. selling agent to MMZ compels treatment of the sales in question as CEP sales. The petitioners claim that the language of section 772(b) of the Act, as discussed in AK Steel, indicates that CEP sales may be "for the account of the exporter" or "by a seller affiliated with the producer or the seller." Since the sales at issue in the present case were made "for the account of" the producer, MMZ, these sales must be classified as CEP sales.

Additionally, the petitioners argue that the location of the sales activity indicates that the sales in question are CEP sales. The petitioners assert that one of the principal distinctions between EP and CEP sales is the location of the selling activity. According to the petitioners, the Statement of Administrative Action (SAA) provides that the CEP is "calculated by reducing the price of the first sale by certain expenses … associated with economic activities occurring in the United States," including any commissions paid. See H.R.Rep. No. 103-316, vol. 1 at 823 (1994), reprinted in U.S.C.C.A.N., 3773, 4163. The only difference between EP and CEP sales in calculating an antidumping margin is that certain additional adjustments for economic activity occurring in the United States are made for CEP sales that are not made for EP sales. The petitioners observe that section 772(d) of the Act identifies U.S. commissions as one of these additional adjustments. Noting that the rules of statutory construction require that two parts of a statute be read so that they are not inconsistent, the petitioners claim that interpreting sales made by a commissioned U.S. selling agent for the account of MMZ as EP sales conflicts with section 772(d) of the Act, which requires the deduction of commission expenses "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States in selling the subject merchandise" from the CEP.

Additionally, the petitioners claim that CEP adjustments are warranted given the purpose of these adjustments. Citing AK Steel, the petitioners maintain that the purpose of CEP selling expense deductions is to prevent foreign producers from competing unfairly in the U.S. market by inflating U.S. price with amounts spent by the U.S. affiliate on marketing and selling the products in the U.S. According to the petitioners, the U.S. price for the sales in question was inflated to account for the sales agent's commissions. The petitioners contend that the U.S. sales agent incurred sales-related expenses that were compensated for when MMZ paid sales commissions to the agent. Accordingly, the petitioners urge the Department to deduct the commissions from U.S. price to prevent MMZ from unfairly spending funds in marketing and selling products in the United States.

The petitioners also argue that the SAA and the legislative history of the 1921 Antidumping Act indicate that Congress intended that the sales involving the expenses listed in section 772(d) of the Act be classified as CEP in order to allow for the deduction of these expenses. The petitioners note that the SAA states, "constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." See SAA at 823. Furthermore, the petitioners note that the CIT has held that the rationale for the adjustment for commissions and selling expenses was described by the Senate Finance Committee Report No. 16, 67th Cong., 1st Sess. at 12 (1921) when the Committee stated, "{i}n substance, the term 'exporter's sales price' is defined in such manner as to make the price the net amount returned to the foreign exporter." See Brother Industries, Ltd. v. United States, 540 F. Supp. 1341 (CIT 1982) (Brother). The CIT continued by stating, "...Congress made it plain that it did not want a comparison between a price in the home market and a price in the United States market..., but rather between a price in the home market and a price for export to the United States." Id. In light of these requirements, the petitioners contend that commissions should be deducted from U.S. price to approximate a net price corresponding as closely as possible to an EP between an unaffiliated exporter and importer.

The petitioners further contend that the CAFC has rejected the Department's argument that CEP sales are distinguished from EP sales by the party that sets the terms of sale. The petitioners note that the Department stated in Malleable Pipe Fitting from the PRC that it "did not find an invoice from the agent to the U.S. customer, and there is no record evidence that the agent negotiated the sales terms." See Petitioners' Case Brief at 24 (citing to Certain Malleable Iron Pipe Fittings From the People's Republic of China; Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 68 FR 61395 (October 28, 2003) (Malleable Pipe Fittings from the PRC)). However, the petitioners claim that the CAFC rejected, in AK Steel, the argument that CEP sales are distinguished from EP sales based on which party set the terms of sale, when it stated, "{i}f Congress had intended the EP versus CEP distinction to be made based on which party set the terms of the deal or on the relative importance of each party's role, it would not have written the statute to distinguish between the two categories based on the location where the sale was made and the affiliation of the party that made the sale." Id. at 25 (citing to AK Steel, 226 F. 3d at 1373). The petitioners conclude that it is sufficient, under section 772(b) of the Act, for a finding that transactions are CEP sales that the affiliate or agent of the producer or exporter is engaged in selling or other economic activities related to the subject merchandise in the United States. In the instant case, the petitioners claim that the U.S. selling agent sold the subject merchandise for the account of the producer MMZ for which it was paid a commission. Since this satisfies the statutory requirements, the Department must classify these sales as CEP transactions and deduct the commissions paid by MMZ from the starting price.

In rebuttal, MMZ argues that the particular circumstances surrounding the small number of sales in question support the finding that the sales are indeed EP sales, and that the deduction of commissions is unwarranted. Specifically, MMZ contends that the agreement for the sales in question was made between itself and the unaffiliated U.S. customer, prior to the date of importation. MMZ asserts that this is the definition of an EP sale. According to MMZ, a CEP sale normally involves a sale or resale by an affiliated company in the United States, normally after the date of importation into the United States. CEP sales do not apply to circumstances in which the first sale to an unaffiliated party is between the exporter and an unaffiliated U.S. importer and a commission is paid to an unaffiliated agent in the United States. MMZ further argues that commissioned agents generally do not make sales "for the account of" the seller because commissioned agents do not take title of the merchandise. Only the seller itself, or an affiliate of the seller which takes title to the goods, is in a position to do so.

MMZ also distinguishes between the commissioned sales in question and consignment sales. Specifically, MMZ acknowledges that consignment sellers may not have title to the merchandise, but consignment sellers locate buyers, negotiate the terms of sale, and actually invoice the sale to the first purchaser. The producer and title-holder, in such cases, may have no contact at all with the purchaser. According to MMZ, the sales in question are not consignment sales and do not involve such activities by the unaffiliated sales agent.

MMZ argues that while AK Steel and NSK stand for the proposition that someone who transfers ownership to an unrelated party for consideration is involved in a sale, the agent who received the commission for the sales in question was not empowered to take such action. Moreover, MMZ argues that AK Steel supports the classification of the sales in question as EP because the Court stated that EP sales are those in which the producer or exporter sells directly to the U.S. purchaser. Under AK Steel, MMZ argues that sales between the foreign exporter and the unaffiliated United States purchaser are clearly EP, not CEP, because of the nature of the relationship between the foreign exporter and the United States importer. MMZ asserts that, according to AK Steel, the critical distinction between an EP and a CEP sale is the location of where the sale was made. For a sale to be a CEP sale, the first sale must be made "in the United States." MMZ quotes AK Steel stating that, "{t}hus, if 'outside the United States' refers to the sale .. One of the parties to the sale or the execution of the contract must also be 'outside the United States' for an EP classification to be proper." See MMZ's Rebuttal Brief (citing AK Steel, 226 F. 3d at 1369-1370). Unlike AK Steel, MMZ contends that the contract upon which the sales were made in this case was not executed between two companies domiciled in the United States. Rather, both the contract and the invoice to the first unaffiliated purchaser in the United States were executed by MMZ. Since one party to the sale or the execution of the contract was located "outside the United States," MMZ argues that the sale is properly considered an EP sale. MMZ concluded by stating that while commissions incurred in the United States by an affiliated U.S. reseller or other entity should be deducted from the CEP pursuant to section 772(d) of the Act, this does not mean that the existence of a commission payment, by itself, can transform an EP sale into a CEP sale.

Department's Position:

We agree with MMZ that the sales in question are EP sales. Because the record indicates that all of the principal selling activities were performed outside of the United States, the sales in question are properly classified as EP sales. While, in some circumstances, a CEP sale may take place prior to the date of importation, sections 772(a) and (b) of the Act indicate that the location of the U.S. sale is the significant factor in determining whether the sale is an EP or CEP sale. See AK Steel, 226 F. 3d at 1371-1372.

Contrary to the petitioners' assertion, the particular facts surrounding the transactions in question demonstrate that the sales were made outside of the United States. Record evidence shows that the essential selling activities for the sales in question were performed by MMZ, rather than the unaffiliated U.S. commissioned sales agent. Specifically, as MMZ correctly notes in its rebuttal brief, sales documents on the record of this investigation show that the terms of sale for the transactions in question were made between the unaffiliated U.S. purchaser and MMZ prior to the date of importation from Turkey. See MMZ's Rebuttal Brief at 16; see also, Memorandum to the File from Drew Jackson, International Trade Compliance Analyst, "Light-Walled Rectangular Pipe and Tube from Turkey, Analysis of Certain U.S. Sales for Involving a Commissioned U.S. Sales Agent" (U.S. Sales Memorandum), which is dated concurrently with this memorandum. Therefore, in light of the record evidence, we must consider these transactions as sales between MMZ and the unaffiliated customer, which occurred outside of the United States. Furthermore, the Department notes that the petitioners' allegation that the U.S. sales agent incurred specific sales-related expenses is not supported by any citation of record evidence.

The Department disagrees with the petitioners' contention that the phrase "for the account of" compels treatment of the sales in question as CEP sales. The petitioners correctly state that the Department has found that the phrase "for the account of the producer or exporter" may refer to consignment sales. See Malleable Pipe Fittings from the PRC, and accompanying Issues and Decisions Memorandum at Comment 15. Importantly, however, the Department notes that it declined to classify the sales at issue in Malleable Pipe Fittings from the PRC as CEP sales because they were not consignment sales. However, the Department disagrees with the petitioners' contention that the unaffiliated sales agent in question acted "for the account of" MMZ because the record shows that MMZ performed all of the principal selling functions associated with the transaction, while the U.S. commissioned sales agent was minimally involved in the sale. See U.S. Sales Memorandum.

Finally, while the petitioners correctly state that the CEP sales are not distinguished from EP sales by the party that sets the terms of sale, the location in which the sales in question were made and the relationship of the buyer and seller support the classification of these sales as EP sales. While the AK Steel court found that the party that set the terms of the sale and the relative importance of each party's role had no bearing on the classification of sales as either EP or CEP sales, it did further state, "the location where the sale was made and the affiliation of the parties that made the sale" was the basis for distinguishing between the two types of sales. As noted above, the sales in question were made outside of the United States by MMZ to the unaffiliated U.S. customer. Accordingly, pursuant to section 772(b) of the Act, the sales in question meet the statutory definition of EP sales.

Therefore, for the final determination, we have not reclassified the sales in question as CEP sales, and accordingly, continue to apply the EP methodology for calculating the dumping margin for the sales in question.

Comment 5: Whether the Department of Commerce Should Collapse MMZ and Company A for Purposes of Calculating MMZ's Coil Cost

MMZ argues that the Department should collapse MMZ and Company A, which is an affiliated company from which MMZ purchases steel coil and through which it sells subject merchandise to unaffiliated U.S. customers, for the purposes of calculating MMZ's coil cost. According to MMZ, the nature of the relationship between MMZ and Company A, which is business proprietary, justifies collapsing the two companies or treating them as a single entity for the purposes of calculating MMZ's COP. Moreover, MMZ contends that Department precedent exists for collapsing a foreign manufacturer and its sales and purchasing affiliate. See MMZ's July 7, 2004, submission to the Department (MMZ's Case Brief) at 8 (citing Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review, 61 FR 56515 (November 1, 1996) (Pipes and Tubes from Thailand)). MMZ also claims that the Department's finding at verification justifies collapsing these two companies.

In rebuttal, the petitioners argue that collapsing MMZ and Company A for the purposes of calculating its coil cost is not warranted because the companies' relationship does not merit such treatment. The petitioners note that Company A is not a division or factory within MMZ that supplies raw materials to MMZ. Rather, Company A is a separate corporate entity that purchases raw materials and sells them to MMZ. The petitioners further note that MMZ and Company A's accounts were not combined to determine MMZ's COP.

The petitioners state that the Department has declined to collapse a producer and its affiliated raw material supplier after evaluating whether affiliated party transactions for major inputs occur at prices that are arm's-length in nature and above the supplier's COP. See Petitioners' July 12, 2004, submission to the Department (Petitioners' Rebuttal Brief at 7) (citing Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Germany, Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 38166 (July 23, 1996)). The petitioners contend that the purpose of the major input rule is to prevent the understatement of input costs when the producer purchases inputs from an affiliate, by comparing the transfer price with prices at which the product is purchased from unaffiliated parties. Citing a proprietary section of the Department's verification findings, the petitioners argue that the Department was correct in applying the major input rule to MMZ's purchases of steel coils from Company A.

The petitioners disagree with MMZ's statement that "the problem with comparing the price MMZ pays to {Company A} for imported coil with the price that MMZ pays to home market suppliers is that the home market price for coil is considerably higher than the imported coil price." The petitioners note that the COP is intended to identify the cost of producing the subject merchandise sold in the home market. In the instant case, the petitioners note that the subject merchandise sold in the home market was produced entirely from domestically produced coil. The Department's comparison of the transfer price of imported steel coil with the price of domestic coil is therefore appropriate for the purpose of determining the coil cost for the COP. The petitioners urge the Department to continue to treat MMZ and Company A as separate entities and apply the major input rule for the purpose of calculating MMZ's coil costs for the final determination.

Department's Position:

We agree with the petitioners that MMZ and Company A should not be collapsed. Neither the roles of MMZ and its affiliate, Company A, nor the Department's findings at verification support a decision that these two companies should be collapsed for the purpose of calculating MMZ's coil cost.

As an initial matter, the Department finds that collapsing MMZ and Company A into a single entity is not warranted in this case based on our practice of collapsing affiliated producers; Company A is not a producer of subject merchandise. 19 C.F.R. § 351.401(f) states that the Department will treat two or more affiliated *producers* as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. In this case, Company A is an affiliate through which MMZ purchases steel coil and sells subject merchandise to unaffiliated U.S. customers. It is undisputed that this affiliate is not a producer of subject merchandise or any other product. For this reason, the Department's regulations do not apply to the question of collapsing MMZ and Company A into a single entity for purposes of this antidumping investigation.

MMZ's argument that the Department should treat Company A and MMZ as a single entity rests on Company A's particular corporate structure, the details of which are business proprietary information. We disagree that this corporate structure compels the Department to treat MMZ and Company A as a single entity. Regardless of Company A's corporate structure, it is undisputed that Company A is affiliated with MMZ and is a legal entity separate and distinct from MMZ. When a respondent purchases a major input from an affiliated supplier, section 773(f)(3) of the Act directs the Department to evaluate whether affiliated party transactions for major inputs occur at prices that are arm's-length in nature and above the supplier's COP. Since MMZ purchased a major input from an affiliated supplier, the Department, in the Preliminary Determination, applied the major input rule to MMZ's purchases of coils from Company A. We found that in certain months the affiliated transfer prices were lower than market prices. Accordingly, where the transfer price was lower than market price, we adjusted the raw material cost upward to reflect the market price. See Memorandum from Margaret M. Pusey, Case Accountant, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – MMZ Onur Boru Profil Uretim Sanayi ve Ticaret A.S.," dated April 6, 2004 (Preliminary Cost Calculation Memorandum). Moreover, the Department confirmed during verification that our preliminary finding that certain transfer prices were below market prices was correct. See Cost Verification Report at Exhibit 26. Having determined that certain sales of steel coil from Company A to MMZ do not fairly reflect the amount usually reflected in sales of coil under consideration in the market under consideration, the Department appropriately disregarded these transactions in the Preliminary Determination, pursuant to section 773(f)(2) of the Act.

For the foregoing reasons, the Department has continued to treat MMZ and Company A as separate entities for the purposes of calculating MMZ's coil cost.

Comment 6: Whether the Department Should Find that the Transfer Price Between Company A and MMZ Was Above the Market Price

MMZ claims that if the Department does not collapse MMZ and its affiliated supplier for purposes of computing cost, then it should find that the transfer price for coils was above the market price. In the Preliminary Determination, MMZ argues, the Department incorrectly compared MMZ's transfer price with Company A to its purchases price when buying steel coils from domestic unaffiliated suppliers. MMZ argues that the transfer price it pays to Company A includes an amount for Company

A's profit[3] and therefore the transfer price is higher than the market price between Company A and the foreign unaffiliated supplier. MMZ claims that, for the final determination, the Department should change its methodology and instead compare the transfer price between MMZ and Company A to the purchase price Company A paid for the coils. MMZ argues that all of the coils it imported from Company A were entered under Turkey's duty drawback program and, since they are duty exclusive, are not comparable to the ones it purchased from domestic unaffiliated suppliers because the domestic price of coils is influenced by Turkey's tariff regime on coils. MMZ contends that the domestic unaffiliated price of coils is higher than the price paid to Company A because the high tariff on imported coils allows domestic producers to increase the domestic price of coils.

Citing the Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, 61 FR 38166 (July 23, 1996) (LNPPs from Germany), the petitioners claim that the Department should not collapse the costs of the affiliated raw material supplier with those of MMZ. The petitioners argue that the Department's comparison of the transfer price of imported coil with the price of domestic coil is appropriate because the COP is intended to identify the cost of producing the subject merchandise sold in the home market and because the subject merchandise sold in the home market was produced entirely from domestically supplied coils.

Department's Position:

We disagree with the respondent. In accordance with section 773(f)(2) of the Act, the Department must compare the affiliated transaction prices with prices "of merchandise under consideration in the *market under consideration*." Emphasis added. This section of the Act instructs the Department to compare MMZ's transfer price from Company A with a market price from Turkey. We disagree that the Department should accept that the transfer price reflects a market price because it includes an amount for Company A's profit. Accordingly, we compared MMZ's purchase prices from unaffiliated domestic suppliers to the transfer price with Company A, which we increased to include the duty cost. Despite the claim that the transfer price included an amount for Company A's profit, our comparison showed that in certain months the transfer price was below the market price from domestic unaffiliated suppliers.

We disagree that the Department cannot compare the transfer prices to the domestic unaffiliated prices of coil simply because the domestically supplied coils are not imported. There is no provision in the statute that requires the Department to make sure that the products are produced in the same market when comparing the transfer price to market price. The steel coils are the same product regardless of where they are sourced. Therefore, for the final determination, we continue to compare

[3] We note that in its briefs MMZ has claimed proprietary treatment for the fact that the transfer price includes an amount for profit. However, this fact is available in the public domain (see Cost Verification Report page 22). Therefore, we are not treating this as a proprietary item.

MMZ's transfer price to the market price of coils sourced from unaffiliated domestic suppliers. We have also continued to adjust the reported material costs to reflect the higher of the market price or the transfer price. In addition, because Company A is providing steel coils as well as services related to the acquisition of the coils, we considered that the selling, general, and administrative expenses of Company A must be included in the transfer price. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea, 64 FR 73196, 73208 (December 29, 1999).

Comment 7: Whether the Upward Adjustment for Imported Coil Purchased Through Company A to the Price Paid to Home Market Suppliers in Effect Double-Counts the Duty-Drawback Adjustment to Cost of Production and Constructed Value

MMZ suggests that the Department should adjust the imported coil costs for the higher of the purchase price of domestic coils or duty drawback for the final determination. MMZ contends that increasing the affiliated supplier cost by the excluded duty drawback and also increasing the imported coil costs to reflect the higher market price required by section 773(f)(2) of the Act results in double counting because these adjustments are addressing the same difference. According to MMZ, the domestic price for steel coils is higher then the offshore price due to the high Turkish import duty on this product.

Petitioners did not comment on this issue.

Department's Position:

The Department disagrees with MMZ that the duty drawback adjustment was double counted in the Preliminary Determination. In order to calculate the adjustment to the cost of raw materials for the import duties, we divided the cost of imported raw materials by the total raw material costs from all sources, and then multiplied this ratio by the tariff rate applied by the GOT to imports of steel coils. In other words, we added the duty drawback to only the imported raw material costs. For the major input adjustment, we first adjusted the transfer price of the steel coil from the affiliated supplier to include the duty drawback before making the comparison to the unaffiliated market price. We then applied the difference between the market price and the duty-inclusive transfer price in the months when the market price was higher. As such, we adjusted only selected months of the imported raw materials by the additional percentage not the difference attributable to the duty. Section 772(c)(1)(B) of the Act requires the Department to increase the EP or CEP by the amount of duty drawback, (i.e., any import duties imposed by the country of exportation on imported inputs which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States). The import duties incurred on imported coils were not included in the reported costs and, therefore, we must increase the transfer price to include the duty drawback.

Comment 8: Whether the Department Should Exclude Foreign Exchange Losses Incurred on Payables from MMZ's Computed Financial Expense

MMZ contends that the Department double-counted the step-up in raw material costs required by its replacement cost methodology through including the foreign exchange losses (i.e., *kur farki* in Turkish) incurred on accounts payable in the Preliminary Determination financial expense calculation. MMZ claims that the majority of the foreign exchange losses it incurred relate to purchases of coil, zinc, machine oil, zinc chemicals, and fuel oil - inputs which were valued at replacement costs. In support of its position, MMZ cites Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey, 67 FR 62126 (October 3, 2002) (Cold-Rolled from Turkey).

MMZ again cites Cold-Rolled from Turkey, claiming that its letter of credit expenses and import financial expenses relate to delays in payments for imported raw materials and are equivalent to the price variation charges on current month raw material purchases which are paid for in a future month (i.e., *vade farki* in Turkish) that the Department excludes from the cost calculation.

MMZ contends the income from investments which it used as an offset to financial expenses is not dividend income as claimed by the petitioners but is interest income from bank accounts. MMZ notes that its detailed balance sheet shows that during the POI, MMZ did not hold any stocks in any other corporations. Therefore, MMZ continues to claim the interest income offset should be allowed for the final determination.

In rebuttal, the petitioners state that the Department correctly included the net foreign exchange gains and losses in the financial expense calculation for the Preliminary Determination. In addition, the petitioners assert that the interest expense and charges on letters of credit, and the import finance charges should be included in the financial expense calculation because they relate to the general operation of MMZ. The petitioners argue that MMZ's claimed offset to interest expense for income on investments should be excluded.

The petitioners refute MMZ's claim that its foreign exchange losses on accounts payable should not be included in financial expenses citing to Honey from Argentina: Final Results of Antidumping Administrative Review, 69 FR 30283 (May 27, 2004) and the accompanying Issues and Decision Memorandum at comment 6 that notes the Department's current practice is to include the *net* foreign exchange gains and losses in the financial expense calculation. The petitioners further contend that MMZ has not demonstrated that its foreign exchange gains and losses relate primarily to purchases of raw materials.

Department's Position:

We agree with the petitioners that the net foreign exchange gains and losses (i.e., inclusive of the *kur farki*) should be included in the financial expense calculation for MMZ. The use of the replacement cost methodology to value raw materials in cases involving high inflation economies and the inclusion of exchange rate gains and losses are two distinct and separate issues. However, we agree with MMZ that the income on investments should be allowed as an offset to financial expenses because it represents interest on short-term bank accounts even though the title of the account implies that it may be dividend income from stock investments.

In the cases cited by MMZ, the Department excluded the *kur farki* (i.e., exchange gains and losses on accounts payable) from the net interest expense calculation. However, after further evaluation and analysis we have determined that the economic factors of this case are different then Certain Steel Concrete Reinforced Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001) and the accompanying Issues and Decision Memorandum at Comments 18 and 27 with respect to exchange rate gains and losses. Although inflation may account for a portion of the change in the exchange rate between Turkish lira and U.S. dollars over time, it is not the only factor. As articulated in Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; Final Determination of Sales at Less Than Fair Value, 64 FR 38756 (July 19, 1999) and Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927 (March 16, 1999), the Department is not obligated to accept methodology simply because it was accepted in a prior review.

In Turkey, companies record the exchange gains and losses on imported raw material purchases (i.e., *kur farki*) separately from the increase in the amount of local currency needed to satisfy a foreign denominated debt which is caused by the devaluation of the local currency (i.e., the *vade farki*). The difference in exchange rates between the Turkish lire and foreign currencies gives rise to the exchange gains and losses (i.e., the *kur farki*) while the difference in the inflation rate from month to month gives rise to the *vade farki.* Both of these costs must be accounted for in the Department's dumping analysis. The Department's replacement cost methodology for raw materials accounts for the change in inflation from month to month (i.e. the *vade farki*) incurred and recorded by MMZ. However, the replacement cost methodology does not account for the change in exchange rates (i.e., the *kur farki*). Because the exchange rate difference (i.e., the *kur farki*) is not accounted for in the Department's replacement cost methodology it is necessary to include these costs in the financial expense calculation.

When an economy experiences high inflation, the value of the country's currency is rapidly deteriorating, resulting in each unit of local currency having substantially less real value as time passes. Consequently, a greater nominal amount of the currency is required to purchase a product at a later point in time than was needed at an earlier point in time. Even if real costs remain constant, because of the decline in the currency's value, the price of the inputs used to produce the product under investigation would be expressed at a higher nominal value at the end of the POI than at the beginning. Similarly, the price to home market customers purchasing the same domestic like product will be expressed at a higher nominal value at the end of the POI than at the beginning of the POI. See Import

Administration Antidumping Manual, Chapter 8 (January 22, 1998), which defines high inflation and the adjustments necessary to value raw material costs.

To assure that we are appropriately matching the prices and the costs, we make our price-to-price, price-to-CV, and price-to-COP comparisons over shorter time periods so that the high inflation experienced in the economy will not distort the dumping analysis. For example, when inflation exceeds 25 percent in a year, we limit our averaging of exporting country sales to sales that occur within the same month as the U.S. sale to which they will be compared. For COP and CV, we compute a monthly cost based on the nominal monthly amounts incurred and index them for inflation to the end of the POI in order to calculate an annual average cost in a constant currency. We calculate the average cost for the POI and deflate the average cost to each month in which a sale occurred. Thus, home market (or third country) sales, U.S. sales, and costs are stated in a currency of approximately the same value when they are compared to each other.

When a company makes purchases which are denominated in a foreign currency and pays for it at a later date (i.e., accounts payable) it incurs either a foreign exchange gain or loss on the payable. Foreign exchange rate gains and losses arise due to the differences between the foreign exchange rates at the time of acquisition (i.e., recorded in the company's accounting records as a payable in the home market currency at the foreign exchange rate on the date of the purchase) and the time of payment (i.e., when payment is made by the company for the purchase based on the terms of the invoice). Because there is a period of time from recording the invoice until the payment is made, a foreign exchange difference will occur.

The Department's high inflation methodology for raw materials accounts for the increase in local currency needed to satisfy a debt (i.e., relates to inventory turnover) but it does not account for the foreign exchange differences incurred because of delays in payment of the foreign denominated payables (i.e., relates to accounts payable turnover). Therefore, the Department included the net foreign exchange rate gains and losses (inclusive of *kur farki*) in the financial expense ratio for the final determination.

The Department disagrees with MMZ that the interest expense and charges on letters of credit are comparable to the *vade farki* and should be excluded in the financial expense calculation. *Vade farki* arises due to the change in inflation from month to month. Company officials explained at verification that the particular account in question included letter of credit interest charges and service charges related to the purchase of raw materials (see, Verification Report on the Cost of Production and Constructed Value Data Submitted by MMZ Onur Boru Profil Uretim Sanayi ve Ticaret A.S., Section VI.B., dated June 30, 2004). MMZ did not post these expenses to a *vade farki* account. These are costs to obtain and maintain credit and are appropriately classified as financial expenses for the dumping analysis.

On the other hand, the Department agrees with MMZ that the income on investments should be allowed as an offset to financial expenses because it is interest on short-term bank accounts even though the title of the account implies that it may be dividend income from stock investments. We are therefore treating interest income in this manner for purpose of our calculations.

Comment 9: Whether the Department Should Adjust MMZ's Reported Costs to Correct for the Overstatement in MMZ's Raw Material Cost Discovered During Verification

MMZ contends that, for the final determination, the Department should adjust the reported costs for the overstatement found during verification. Additionally, MMZ asserts the Department can adjust for the overstatement in first quality merchandise variable overhead (VOH), fixed overhead (FOH), and direct labor (DIRMAT) without having the throughput rates for each product.

The petitioner did not comment on this issue.

Department's Position:

The Department agrees with MMZ and we have adjusted the reported costs for the overstatement.

Part II – Ozborsan/Onur, Guven, and Ozdemir

Comment 10: Whether The Department Erred In Its Decision To Collapse Ozborsan/Onur, Guven, and Ozdemir Into A Single Entity

Ozborsan and its sister company, Onur Metal (hereafter, Ozborsan/Onur), argue that the Department erred in its collapsing analysis when it preliminarily determined to collapse Ozborsan/Onur, Guven and Ozdemir into a single entity. See Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Whether to Collapse Certain Turkish Pipe and Tube Producers Into A Single Entity," dated April 6, 2004 (Collapsing Memorandum). Specifically, Ozborsan/Onur argues that the Department erred in its finding that there is a significant potential for manipulation of price or production.

Ozborsan/Onur notes that the test for collapsing requires three separate findings: (1) that the companies at issue are affiliated; (2) that the companies have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) that the companies are sufficiently intertwined as to permit the significant possibility of price or production manipulation. See Ozborsan/Onur's July 7, 2004, Case Brief (Ozborsan/Onur Case Brief) at 12 (citing Allied Tube and Conduit Corp. v. United States, 127 F. Supp. 2d 207, 215 (CIT 2000) (Allied Tube)).

Ozborsan/Onur states that it reported to the Department that the owner of Ozborsan has two brothers, one who owns Guven and the other who owns Ozdemir, and that all three companies produce pipe and tube in Turkey. Ozborsan/Onur claims that the Department incorrectly found Ozborsan/Onur, Guven, and Ozdemir affiliated pursuant to section 771(33)(A) of the Act, which provides that members of a family are affiliated, and section 771(33)(F) of the Act, which provides that parties that share direct or indirect control are affiliated. According to Ozborsan/Onur, there is no factual reason to find that the three companies, which operate separately and independent of one another, are commonly controlled by the family that holds shares in them. Ozborsan/Onur argues that each brother controls only the company in which he holds shares because there is no cross ownership between the brothers in each other's companies.

Ozborsan/Onur argues that the Department's determination that all three companies are affiliated via a family relationship relies on Ferro Union. See Ozborsan/Onur's Case Brief at 5 (citing Ferro Union v. United States, 44 F. Supp. 2d 1310 (CIT 1999) (Ferro Union)). However, Ozborsan/Onur contends that the CIT's discussion of family groupings in Ferro Union is not dispositive on the issue of collapsing because the Court did not discuss (1) whether the producers had production facilities for similar or identical products or (2) whether there was the significant potential for the possibility of price or production manipulation. While Ozborsan/Onur does not dispute that all three companies have comparable production facilities for the production of similar products, Ozborsan/Onur argues that there is insufficient evidence to support a finding of price or production manipulation. See Ozborsan/Onur's Case Brief at 5.

Citing the Department's three-pronged test as explained by the CIT in New World Pasta, Ozborsan/Onur argues that the Department's alleged conclusion that the three companies have intertwined operations is not supported by record evidence. See id. at 6 (citing New World Pasta Co. v. United States, No. 03-00105, 2004 WL 392881 (CIT March 2004) (New World Pasta)). Id. Ozborsan/Onur contends that the intertwined operations analysis examines three factors: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transaction between affiliated producers. Ozborsan/Onur asserts that the Department impermissibly relied on its finding of affiliation by common family control to support its determination that the three companies should be collapsed.

With respect to common ownership, Ozborsan/Onur claims that the Department's basis for finding that this criterion is satisfied, because of the family's significant ownership in the three companies, is nothing more than a restatement of the Department's basis for finding common control and affiliation. According to Ozborsan/Onur, the CIT held in New World Pasta that "the evidence required to justify a collapsing determination goes beyond that which is necessary to find common control." See Ozborsan/Onur's Case Brief at 7 (citing to New World Pasta at 222). According to the

CIT, the Department, in its collapsing memorandum in the investigation underlying New World Pasta, stated, "even were the factor of common ownership satisfied, the two parties should not be collapsed because common ownership would be based entirely on the finding of affiliation by common control." Ozborsan/Onur asserts that under such circumstances, which are the same that exist in the instant investigation, the CIT concluded that "even were the subfactor of common ownership satisfied, it alone could not justify collapse; Commerce would still need to review the other two subfactors." Thus, Ozborsan/Onur concludes that the Department's decision to collapse the three companies is not supported by any finding of common ownership.

Regarding the second subfactor, the extent to which managerial employees or directors of one firm sit on the board of directors of an affiliated firm, Ozborsan/Onur argues that the Department incorrectly relied on its affiliation analysis of common control to claim that this subfactor is satisfied. According to Ozborsan/Onur, this approach ignores the intent of the language of this part of the regulations which focuses on whether individuals in one firm hold positions or influence in another firm. Ozborsan/Onur notes that there is no overlap of managerial employees at the three companies and there are no shareholders in common between the three companies. In New World Pasta, where the affiliation was based on the fact that major shareholders in both companies were family members, the Department found for purposes of its collapsing analysis that the two affiliated companies had no interlocking board members or common shareholders and thus, the second subfactor was not satisfied. Since the facts of the instant record are similar to those in New World Pasta, Ozborsan/Onur concludes that the Department cannot find that the second subfactor is satisfied because these three companies have no overlapping employees or shareholders.

The third subfactor is whether the operations of the affiliated companies are closely intertwined, such as through sharing sales information, involvement in production and pricing decisions, sharing facilities or employees, or significant transactions between the affiliated producers. In the Preliminary Determination, Ozborsan/Onur notes that even though the Department found no evidence that Ozborsan/Onur and the other two companies share marketing or sales information, production facilities or employees, or that there were any commercial transactions between Ozborsan/Onur and either Guven or Ozdemir, the Department nevertheless decided to collapse the three companies into a single entity. Despite the lack of commercial transactions, Ozborsan/Onur claims that the Department based its decision that there exists a significant potential for price or production manipulation on the fact that Ozborsan/Onur occasionally swaps coils and transportation services with one of the other two companies. According to Ozborsan/Onur, these swaps occurred only in a few instances and were even exchanges of inputs or services. Ozborsan/Onur argues that these swaps were not "significant transactions," and there was no sharing of sales data or any other information that could have permitted price or production manipulation by these companies. Ozborsan/Onur concludes that there is no record support for the Department's conclusion that Ozborsan/Onur's operations are intertwined with Guven and/or Ozdemir.

Ozborsan/Onur contends that the CIT has held that "Commerce does not collapse related parties except where there is a strong possibility of price manipulation." See Ozborsan/Onur's Case Brief at 11 (citing to FAG Kugelfischer Georg Schafer KGaA, et. al., v. United States, 932 F. Supp. 315, 323 (CIT 1996)). Furthermore, Ozborsan/Onur states that the Department has itself argued in Allied Tube that "both Commerce's regulations and this Court's precedent precludes an affirmative collapsing determination unless the potential for price or production manipulation is significant." Id. In the instant case, Ozborsan/Onur argues that none of the factors considered by the Department suggest the slightest possibility, let alone the "significant potential," that Ozborasan/Onur could or would manipulate prices or production in coordination with Guven or Ozdemir. The Department cannot assume or infer – simply on the basis of a family relationship among owners of separate and discrete companies – that there is the potential for manipulation of prices or production. Ozborsan/Onur argues that if the mere fact of a family relationship was sufficient to collapse two or more companies, the Department would not be required to consider any other factors.

In rebuttal to the arguments made by Ozborsan/Onur, the petitioners contend that the Department acted reasonably and within its statutory authority in its decision to collapse the three companies into a single entity. According to the petitioner, the Department conducted a thorough inquiry and acquired all obtainable or accessible information on the necessary factors for its collapsing analysis. In light of the information it gathered, the petitioners claim that the Department came to the proper conclusion, that collapsing Ozborsan/Onur, Guven, and Ozdemir into a single entity was warranted in this case.

The petitioners also argue that the record evidence supports the Department's decision to collapse the three companies. Specifically, the petitioners claim that the three respondents have production facilities that are equipped to manufacture similar or identical products that would not require substantial retooling of their facilities in order to change manufacturing priorities. Regarding the Department's decision that the three companies are affiliated, the petitioners note that section 771(33)(A) of the Act provides that affiliation occurs within a family, between its members, blood or marriage relations, and their descendants. Given that the owners and operators of these companies are brothers, and that their level of ownership is significant, the petitioners argue that the Department correctly found these companies to be affiliated. The petitioners continue by noting that there exists management overlap between the three companies because family members hold senior management positions in each company. The petitioners also observe that although the Department's collapsing analysis also includes several other factors, the Department is not statutorily mandated to consider all of them when making its determination. Citing proprietary information contained in the Collapsing Memorandum, the petitioner identifies the specific evidence cited by the Department as the basis of its determination to collapse these companies. In sum, the petitioner argues that the Department was correct in its conclusion to collapse based upon the record evidence that the family controls the three companies, transactions took place between the companies, and that they share similar production facilities.

In rebuttal to the petitioners' arguments, Ozborsan/Onur argues that past cases, including those cited by the Department in the Collapsing Memorandum, demonstrate that the Department incorrectly collapsed the three companies in the instant investigation. Ozborsan/Onur contends that, in Collated Roofing Nails, the Department based its decision to collapse two producers into a single entity because the companies were managed by the same individual, shared certain employees, and transferred sales orders to each other for completion. See Ozborsan/Onur's Rebuttal Brief at 4 (citing Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51,427 (October 1992) (Collated Roofing Nails from Taiwan)). Furthermore, in Steel Pipes and Tubes from Thailand, Ozborsan/Onur asserts that the Department did not collapse two Thai producers even though members of the family served on the board of directors and held management positions in each company. In that case, Ozborsan/Onur observes that the Department concluded that the record evidence did not support a finding of significant potential for manipulation of pricing or production because it did not consider the finding of family "ownership and control, by itself, as a sufficient basis to collapse these affiliates." See Ozborsan/Onur's Rebuttal Brief at 5 (citing Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 1998) (Steel Pipes and Tubes from Thailand)). The Department determined not to collapse the three companies, "consistent with the Department's practice of not collapsing producers solely on the basis of affiliation." See Steel Pipes and Tubes from Thailand at 55583. In Stainless Steel Wire Rod from India, the Department collapsed two producers because family members served on each company's board of directors, there was significant cross share holdings of stock in both companies by certain family members, the administrative offices of the common corporate parent provided each producer with "group-wide functions to include human resources, shipping, and coordination of production decisions," and one producer was the sole supplier of unfinished wire rods to the other producer. See Ozborsan/Onur's Rebuttal Brief at 8 (citing Antidumping Duty Administrative Review of Stainless Steel Wire Rod from India: Collapsing of Viraj Alloys, Ltd., and VSL Wires, Ltd. (December 12, 2003), at 2). Lastly, in Rebar from Korea, Ozborsan/Onur argues that the Department's collapsing analysis depended on the fact that both companies had senior managers that had previously managed the other company, both companies sold a small amount of rebar to each other in the home market, and both companies used the same affiliated transportation company for certain home market sales. See Ozborsan/Onur's Rebuttal Brief at 9 (citing 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) (Rebar from Korea) and accompanying Issues and Decision Memorandum at Comment 1)).

After reviewing the facts surrounding past collapsing determinations, Ozboran/Onur concludes that these past cases clearly establish that the Department incorrectly applied its collapsing analysis in the instant investigation. In the past cases where the Department did collapse two or more producers into a single entity there was record evidence indicating that the producers in question shared current or former managers, had overlap in employees, sold each other's subject merchandise or raw materials, or shared sales information. In the instant investigation, Ozborsan/Onur claims that the three companies have none of the above-listed items. In fact, Ozborsan/Onur asserts that the Department's collapsing analysis in the instant investigation is based solely on the family relationship between these companies that serves as the basis for finding affiliation. Ozborsan/Onur maintains that affiliation alone is not sufficient to establish that independent companies should be collapsed and treated as a single entity. As there is no evidence to support the Department's conclusion that Ozborsan/Onur's operations are intertwined with those of Guven or Ozdemir, Ozborsan/Onur argues that the Department should reverse its decision for the final determination.

Department's Position:

We agree with the petitioners that it is appropriate to collapse the three companies here. When considering whether to collapse two or more companies into a single entity for the purposes of an antidumping investigation or administrative review, 19 C.F.R. § 351.401(f) states that the Department will treat two or more affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Department may consider include: (A) the level of common ownership; (B) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (C) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers.

In examining these factors as they pertain to a significant potential for manipulation, we consider both actual manipulation in the past and the possibility of future manipulation. See Preamble, Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27346 (May 19, 1997). The preamble underscores the importance of considering the possibility of future manipulation: "a standard based on the potential for manipulation focuses on what may transpire in the future." Id. We have, therefore, examined all three factors in light not only of actual manipulation during the POI but also with respect to the possibility of future manipulation.

In our April 6, 2004, decision to collapse Ozborsan/Onur, Guven, and Ozdemir into a single entity for the purposes of this investigation, we found that (1) Ozborsan/Onur, Guven, and Ozdemir are affiliated; (2) a shift in production would not require substantial retooling (if any); and (3) there is a significant potential for price or production manipulation due to, among other factors, evidence of significant common ownership and management overlap by senior managers who (a) have a significant influence over the production and sales decisions of these companies and (b) belong to the same family. Based on this analysis, we found that the record evidence weighs in favor of collapsing Ozborsan/Onur, Guven, and Ozdemir for the purposes of this investigative determination.

We disagree with Ozborsan/Onur's contention that members of the family in question do not have the ability or incentive to coordinate their actions in order to direct Ozborsan/Onur, Guven, and Ozdemir to act in concert with each other. It is undisputed that this family is the largest shareholder in all three companies. Each brother is the largest shareholder in his company. See the Collapsing Memorandum at 6 for a breakdown of the family's ownership in each company, which is proprietary information. Besides being the largest shareholders, the family also holds senior leadership positions at Ozborsan/Onur, Guven, and Ozdemir.

Specifically, the family occupies significant positions both on the board of directors and in senior management at Guven, Ozborsan/Onur, and Ozdemir. For example, one brother is a member of the Board of Directors of Ozborsan and is identified as Ozborsan's "Head of Company." The second brother is the President of Guven and his son is the General Manager of Guven. Two of the responsibilities performed by the son of the second brother are "strategic/economic planning" and "procurement/sourcing" services. See Collapsing Memorandum at 6. The president of Guven is presumably the highest person of authority since Guven is a "Limited Company" and does not have a board of directors. The third brother is the founder and Managing Director of Ozdemir. According to Ozdemir, the third brother has "full authorization ... to establish prices, selling and general expenses and production costs." See Collapsing Memorandum at 6. In addition, "{the third brother} has full control and is the decision-maker." Id. at 6. As noted above, the Department can interpret a "family" as a control "person" for purposes of the Act and controlling business entities. In this context, the family in question is the "person" jointly managing Guven, Ozborsan/Onur, and Ozdemir. The fact that the family is the largest shareholder in all three companies, combined with the fact that each brother holds senior leadership positions in each company, clearly shows that the family has the ability and financial incentive to coordinate their actions in order to direct Ozborsan/Onur, Guven, and Ozdemir to act in concert with each other. As mentioned above, the Department is not required to find that the three companies have acted in concert. Rather, the Department is concerned with the potential for the three companies to act in concert or out of common interests.

Regarding the intertwining of operations, the Department found there were intertwined transactions between Guven, Ozborsan/Onur, and Ozdemir which resulted in: (a) a proprietary statement concerning sales and purchases of hot-rolled and cold-rolled coils made by Ozborsan/Onur, (b) Ozborsan/Onur and one of the other companies swapped different sized steel coils when one of the companies was in need of a particular size of coil, (c) Ozborsan/Onur and one of the other companies occasionally used each other's trucks for transporting finished products and/or raw materials to and from the port and their respective factories; (d) Guven sold a significant quantity of subject and non-subject tubes to one of the other companies; (e) one of the other companies sold a significant quantity of subject and non-subject tubes to Guven; and (f) Guven sold a significant quantity of hot-rolled coils to one of the other companies.[4] See Collapsing Memorandum at 7-9. We disagree with

[4] In the Collapsing Memorandum, the Department included an additional factor in our analysis of whether these companies have intertwined operations. In its second supplemental Section A questionnaire response, Guven reported that it purchased galvanized pipes from a company with a name identical to one of the other two companies at issue. A later submission by one of the other companies claimed that Guven was actually referring to another Turkish producer that is unaffiliated with any of the three companies at issue, but happens to have a similar name. For this reason, the Department has not included Guven's purchase of galvanized pipes from this unaffiliated company in our analysis for the final determination.

Ozborsan/Onur's characterization of these intertwined operations as "minimal."

In making a decision to collapse two or more producers for antidumping purposes, the Department considers the totality of circumstances of the situation and may place more reliance on some factors than other factors. As indicated above, 19 C.F.R. § 351.401 outlines some of the factors that may be considered in making the collapsing decision. Not all of these factors may be present in every situation where there is a significant potential to manipulate price or production. Based on the totality of the circumstances discussed above, the Department continues to find that these circumstances indicate that there is a significant potential to manipulate the production and pricing of the subject merchandise in this case.

Based on the preceding discussion, we conclude that the three affiliated producers are sufficiently related so as to warrant treatment as a single enterprise, and that collapsing these entities may prevent evasion of the antidumping duty order. See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42853, 42853 (August 19, 1996). Applying the criteria of our collapsing inquiry as set forth above, we continue to find (1) Ozborsan/Onur, Guven, and Ozdemir are affiliated under section 771(33)(A) and (F) of the Act, (2) a shift in production would not require substantial retooling (if any), and (3) there is a significant potential for price or production manipulation due to, among other factors, evidence of significant common ownership and management overlap by senior managers who have a significant influence over the production and sales decisions of all companies, belong to the same family. Based on this analysis, we have determined that the totality of the record evidence weighs in favor of collapsing all three companies for the purposes of this investigation.

Comment 11: Whether the Department Erred in Finding that Ozborsan/Onur Failed to Provide Requested Information to the Department and in its Application of Total Adverse Facts Available

Ozborsan/Onur argues that in the Preliminary Determination, the Department based its decision to apply total adverse facts available (AFA) on five reasons. First, Ozborsan/Onur argues that, contrary to the Department's preliminary findings, Osborsan did indeed provide the Department with the requested information needed to complete its calculations. Ozborsan/Onur contends that it informed the Department that its accounting records did not allow it to report costs on a CONNUM-specific basis. Rather, Ozborsan/Onur asserts, it was able to report aggregate costs for producing all of its products, and it provided this information to the Department in a timely manner. In response to a second Department request to report costs on a CONNUM-specific basis using a reasonable allocation methodology, Ozborsan/Onur reported separate costs for subject merchandise made from hot-rolled and cold-rolled coils. Ozborsan/Onur further argues that shortly before the release of the Preliminary Determination, it responded to the Department's request for a reconciliation of costs based on CONNUM-specific COP and CV figures. In this response, Ozborsan/Onur reiterated that it does not track the costs of specific products.

Second, Ozborsan/Onur argues that, contrary to the Department's assertion, Ozborsan/Onur did provide an explanation as to why it was unable to determine the cost difference between products. Ozborsan/Onur contends that it explained to the Department that although it does not track product-specific costs, it does segregate aggregate costs between LWRPT produced from hot-rolled and cold-rolled coils. Ozborsan/Onur points out that the differentiation between products made from hot-rolled rather than cold-rolled steel had no effect on the Department's ability to perform necessary calculations because all of the U.S. sales during the POI consisted of subject merchandise produced from one of these inputs only.

Third, Ozborsan/Onur contends that, despite the Department's claims to the contrary, it did provide the Department with the requested reconciliations of total costs in its financial statement to total costs reported to the Department, total production quantities to sales quantities, and depreciation expense based on revalued fixed asset values. Ozborsan/Onur provides a list the reconciliations it submitted to the Department and notes that it was unable to provide the reconciliation of costs reported on the company's financial statement to its cost accounting system because it did not maintain a cost accounting system. Furthermore, Ozborsan/Onur argues that another respondent, MMZ, in this investigation was given the opportunity to submit additional factual submissions and reconciliations following the Department's Preliminary Determination, but that Ozborsan/Onur was afforded no such opportunity. Ozborsan/Onur argues that because of the Department's application of total AFA in the Preliminary Determination, it informed Ozborsan/Onur that it would not conduct verification, which made any further reconciliations moot. Therefore, Ozborsan/Onur contends, it was prevented from participating fully in the proceeding because the Department wrongfully determined to collapse Ozborsan/Onur, Guven, and Ozdemir, and apply total AFA to the collapsed entity.

Fourth, Ozborsan/Onur contends that the Department was incorrect in its assertion that Ozborsan and Onur failed to provide separate cost files which reconcile to each company's financial accounting system. Specifically, Ozborsan/Onur asserts that it explained to the Department that almost all of both company's production costs are recorded only on Ozborsan's books and records. Ozborsan/Onur argues that it is able to report labor costs for the two companies on a separate basis because Onur does track its labor costs in its own books and records. Ozborsan/Onur observes that it provided separate labor costs to the Department as requested. Fifth, and lastly, Ozborsan/Onur claims that, contrary to the Department's assertion, it did provide a calculation of general and administrative (G&A) expenses and financial expense ratios based on the fiscal year that most closely coincides with the POI to the Department in a supplemental questionnaire response.

The petitioners argue in their case brief that the Department properly applied total AFA to the collapsed entity consisting of Guven, Ozborsan/Onur, and Ozdemir. The petitioners reiterate the list of deficiencies identified by the Department in the Preliminary Determination. Based upon these deficiencies, the petitioners assert that the Department properly concluded that the information submitted by respondents Guven, Ozborsan/Onur, and Ozdemir was not provided in a form which is amenable to the calculation of dumping margins. According to the petitioners, the deficiencies in the data submitted by the respondents made their responses unverifiable. Given the inadequacies of the responses, the petitioners contend that the Department correctly forewent verification of these companies. The petitioners conclude that the Department has no basis other than the facts otherwise available upon which to derive the margins for these respondents in making the final determination.

Ozborsan/Onur rebuts the petitioners' arguments by claiming that other than repeating the language used by the Department in the Preliminary Determination, the petitioners provide no further elaboration of their unsupported view that Ozborsan/Onur's responses were inadequate, incomplete or otherwise so deficient that the Department was unable to calculate a dumping margin. Further, Ozborsan/Onur claims that the records shows that it met its burden of providing the Department with requested information by the established deadlines. Ozborsan/Onur provides a detailed discussion of its timely responses to the Department's original and supplemental questionnaires, noting the number of pages and exhibits in each submission. Based on the voluminous responses it provided to the Department's questions, Ozborsan/Onur contends that the Department has the information necessary to perform its margin calculation. Ozborsan/Onur further claims that the Department could have asked Ozborsan/Onur for any additional information needed, as the Department did with the respondent, MMZ. Ozborsan/Onur notes that the Department issued four supplemental section D questionnaires to MMZ, while it issued only one supplemental questionnaire to Ozborsan/Onur. Additionally, Ozborsan/Onur asserts that it could have provided the Department with supplemental information, but that the Department's decision to collapse the three companies without verifying their responses rendered moot the need to supply any additional information.

In rebuttal to the arguments made by Ozborsan/Onur, the petitioners maintain that the Department's application of total AFA to the collapsed entity was appropriate and within its statutory discretion. According to the petitioners, the Department clearly articulated its reasons for applying total AFA because the companies of the collapsed entity filed untimely and incomplete responses to the Department's questionnaires unlike MMZ who filed its submissions within the temporal restrictions established by the Department. The petitioners argue that the failure of Ozdemir to respond completely and in a timely manner, as well as the inconsistent responses filed by Ozborsan/Onur and Guven, left a gap in the investigatory record that had to be filled by the Department using AFA. Consequently, the petitioners conclude that the use of AFA is in accord with the Department's statutory authority and is appropriate under the circumstances.

Department's Position:

We disagree with Ozborsan/Onur. For the Preliminary Determination we determined, based on the record, that Ozboran/Onur did not act to the best of its ability to cooperate in this investigation. See Preliminary Determination. A complete explanation of the selection, corroboration, and application of AFA can be found in the Preliminary Determination, 69 FR at 19393-19396. We continue to find, based on the record evidence and pursuant to the statutory requirements of the Act, that Ozborsan/Onur did not cooperate to the best of its ability, and that the application of AFA to

Ozborsan/Onur is warranted in this investigation.

Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also Statement of Administrative Action (SAA) accompanying the URAA, H. Rep. No. 103-316 at 870 (1994).

The evidence on the record of this investigation establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margin for Ozborsan/Onur's U.S. sales of subject merchandise because this respondent refused to provide requested information regarding its COP. In its questionnaire and supplemental responses, Ozborsan/Onur refused to provide the following requested information, all of which is necessary to complete the Department's calculations: (1) product-specific costs by CONNUM; (2) an explanation why the company was unable to determine the cost differences between products, or an explanation of why the company believes that the differences are insignificant enough that there is no cost difference between products; (3) a reconciliation of the total costs in the financial statements to the total costs reported to the Department; (4) separate cost files for Ozborsan and Onur which reconcile to each company's financial accounting system; (5) a reconciliation of the production quantities to the sales quantities; (6) depreciation expenses based on the revaluated fixed asset values; and (7) calculation of G&A and financial expense ratios based on the fiscal year that most closely coincides with the period of investigation. In addition, Ozborsan/Onur stated that it "swapped" hot-rolled coils with one of the other companies. Ozborsan/Onur claims that no records are kept of such swaps, and Ozborsan/Onur was unable to quantify these transactions.

As a result of Ozborsan/Onur's failure to provide the above requested information, the Department is unable to use the reported cost of manufacturing data to test home market sales to determine whether the sales prices can form the basis for the calculation of normal value (NV). Additionally, because of the noted omissions, the cost data cannot be used for DIFMER purposes or for calculating CV.

In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870; Borden, Inc. v. United States, 4 F. Supp. 2d 1221 (CIT 1998); Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302 (CIT 1999). The CAFC, in Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown." Id. To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997).

The record shows that Ozborsan/Onur failed to cooperate to the best of its ability, within the meaning of section 776(b) of the Act. In reviewing Ozborsan/Onur's responses, the Department finds that Ozborsan/Onur provided information so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. First, Ozborsan/Onur claims it does not track CONNUM-specific costs in its normal books and records. The Department requested CONNUM-specific cost in the initial section D questionnaire and the first section D supplemental questionnaire. In section II.A.3. of the original section D the Department requests:

> {i}f a physical characteristic identified by the Department is not tracked by the company's normal cost accounting system, calculate the appropriate cost differences for that physical characteristic, using a reasonable method based on available company records (e.g., production records, engineering statistics). The starting point for any such calculation must be the product specific costs as recorded in your normal cost accounting system. If there is a physical characteristic not tracked by the company for which the company believes that there is an insignificant cost difference between products, identify the particular physical characteristic, quantify, and explain your reasons for not reporting a cost difference.

Ozborsan/Onur simply stated that it did not use a cost accounting system.

Therefore, the Department informed Ozborsan/Onur in its section D supplemental questionnaire, dated February 27, 2004, at question 3, that because of the significant variation in the physical characteristics of products produced by Ozborsan/Onur, the Department does not consider one broad-based average cost to be reasonable for purposes of calculating the COP and CV and that in situations where the normal accounting records do not allocate product-specific costs to the level of detail required by the Department, we require that the respondent allocate costs to specific products using any reasonable means available. Ozborsan/Onur responded by stating that the only distinction in costs it could provide was the use of hot-rolled or cold-rolled coils because the raw material input used is different for the desired end product wall thickness. Ozborsan/Onur stated that for a desired wall thickness of less than 1.5 millimeters (mm), (i.e., Department physical characteristic wall thickness A through E) they use cold-rolled coils and if the desired wall thickness is greater than 2.0 mm (i.e., Department physical characteristic wall thickness G through M) they use hot-rolled coils as the raw material input. For any product with a desired wall thickness between 1.5 mm and 2.0 mm (i.e., Department physical characteristic wall thickness F) either cold-rolled or hot-rolled coils may be used for the raw material input. Ozborsan/Onur went on to say that if a customer requests a certain type of raw material input then they will produce the end product using the requested raw material input regardless of the desired wall thickness. While hot-rolled and cold-rolled coils may account for some differences in cost, Ozborsan/Onur did not provide the cost differences for production machine processing time or conversion costs resulting from different wall thicknesses in products produced from hot-rolled and cold-rolled coils.

The Department noted in its supplemental section D questionnaire, at question 3, that Ozborsan/Onur also failed to report cost differences for the Department's other physical characteristic categories: painted/primed, outside perimeter, wall thickness, or shape. The differences in these physical characteristics result in different production costs. Regardless of whether a respondent normally calculates costs for the different physical characteristics identified by the Department, it must calculate different costs for the Department because the production costs are compared to the price commanded for the different products.

Second, Ozborsan/Onur claims it notified the Department as to why it could not report CONNUM-specific costs. This statement is not entirely true. In the antidumping questionnaire for investigation, the Department defined seven physical characteristics. These characteristics are as follows: (1) steel type (i.e., hot or cold rolled); (2) galvanized (i.e., galvanized, other metallic coating, and non-metallic, not galvanized or coated); (3) painted/primed (i.e., painted, primed but not painted, and not painted); (4) outside perimeter (i.e., A through L ranging from 2" or less to 16" or less but not greater than 14"); (5) wall thickness (i.e., A through M ranging from .035" or less to less then .156" but greater than .148"); (6) shape (i.e., square or other rectangular); and (7) finish (i.e., plain, beveled, and other).

In its initial section D questionnaire response, Ozborsan/Onur reported that it produced subject merchandise from both hot-rolled and cold-rolled coil that was not galvanized and not coated, was either painted or not painted, with an outside perimeter of various dimensions, with a wall thickness of various sizes, and was either square or rectangular. We noted in our analysis of Ozborsan/Onur's submissions that there were various products produced for five of the seven physical characteristics categories defined by the Department. See Supplemental Section D Questionnaire at question 3. Therefore, Ozborsan should have provided a separate cost for products having these physical characteristics.

In its supplemental section D response, Ozborsan/Onur stated that, based on company records, the only physical characteristic for which Ozborsan/Onur can differentiate its costs was wall thickness, because the wall thickness determines whether hot-rolled coils or cold-rolled coils are used for the raw material input. Ozborsan/Onur provided a new cost database which separated monthly production costs for hot-rolled coils and cold-rolled coils. However, Ozborsan still failed to provide CONNUM-specific costs accounting for the other physical differences (e.g., painted or not painted). From the information reported in its section D response and supplemental response, the Department determined that paint was a significant percentage of total POI production costs. Regardless of whether Ozborsan/Onur notified us that its was reporting only hot-rolled and cold-rolled cost differences, the Department required in the section D supplemental questionnaire that Ozborsan/Onur report separate costs for the other physical characteristics or quantify why these other physical characteristics costs were immaterial.

Third, Ozborsan/Onur claimed it did provide the requested reconciliations. Again, this statement is not completely accurate. In section III.B. of the section D questionnaire the Department requested the standard reconciliations. In its response dated January 13, 2004, Ozborsan/Onur said that this information is being prepared and will be provided to the Department as soon as it is completed. Through this statement, Ozborsan/Onur granted itself an extension of the deadline for submitting the requested reconciliations. Moreover, in the greater than four weeks that followed before the Department issued its supplemental section D questionnaire, Ozborsan/Onur failed to provide the information it claimed it would.

In its supplemental section D questionnaire, at question 23, the Department requested, "in addition to the reconciliations requested in questions III.B.1- 4, provide a reconciliation of Ozborsan's and Onur Metal's 2002 and 2003 financial statements to the respective December 31, 2002 and December 31, 2003 trial balances. The reconciliation should show which accounts in the trial balance make up each number reported in the financial statements. If any adjusting entries are made for financial statement purposes but are not entered into the trial balance, show the entries and explain the reason for the entry." The due date for submitting the requested reconciliations was March 16, 2004. Ozborsan/Onur stated in its supplemental response, dated March 17, 2004, that both companies were working on the reconciliations for 2002 and that the December 31, 2003, trial balances would not be available until April 2004.

On March 29, 2004, Ozborsan/Onur submitted to the Department a response that included partial reconciliations. It included a reconciliation for Ozborsan's and Onur's general production costs and labor for the POI as reported in the section D database to cost of goods sold. They did not provide a reconciliation of the financial statements to the general ledger or trail balance, fiscal year cost of goods sold on the audited financial statements to the financial accounting system, total fiscal year costs from the financial accounting system to the POI costs from the financial accounting system, nor a reconciliation of the total POI conversion costs to the total of the per-unit conversion costs.

It is imperative that the Department have the requested reconciliations on the record prior to the cost verification. Ozborsan/Onur was unwilling to provide the Department with CONNUM-specific costs which are the basis for determining if all production costs were reported and if the reported production costs were properly allocated between subject and non-subject merchandise.

Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (i.e., the cost data can be reasonably allocated to subject merchandise). In determining if the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company. Before assessing the reasonableness of a respondent's cost allocation methodology, however, the Department must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available. The Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products. Ozborsan/Onur did not provide the Department with the required reconciliations. Therefore, we could not satisfy ourselves that Ozborsan/Onur accounted for all costs before allocating them to individual products. See Notice of Final Results of Antidumping Administrative Review; Certain Cut-to Length Carbon Steel Plate From Mexico, 64 FR 76 (January 4, 1999) and accompanying Issues and Decision Memorandum at Comment 1.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. In this case, the cost information submitted by Ozborsan/Onur fails to satisfy section 782(e)(2) and (3) of the Act. Ozborsan/Onur failed to report the requested cost reconciliations. Without these reconciliations, the Department cannot determine whether the aggregate amount of the reported costs captures all costs incurred by Ozborsan/Onur in producing the subject merchandise during the POI. Without being able to determine whether all costs have been reported, the Department cannot verify that the reported costs were accurate and complete. Furthermore, the reported costs cannot be used as a basis for reaching the applicable determination. The Department conducts its margin calculations on a CONNUM-specific basis, thereby requiring respondents to submit their costs accordingly. In this case, contrary to section 782(e)(3) of the Act, Ozborsan/Onur failed to report its costs in a manner useable for reaching the applicable determination; i.e., Ozborsan/Onur failed to report CONNUM-specific costs. For these reasons, the Department has declined to use Ozborsan/Onur's reported costs.

Fourth, Ozborsan/Onur claimed it was denied equal opportunity since MMZ was given additional opportunity to clarify its responses. This is not the case. In its section D response and first section D supplemental response, MMZ submitted information that was verifiable as required by section 782(e) of the Act and needed only minor clarification, as opposed to Ozborsan/Onur, which submitted a non-responsive response. Ozborsan/Onur, on the other hand, provided only one average cost for hot-rolled products and one average cost for cold-rolled products. MMZ's first supplemental response, however, contained CONNUN-specific costs which it reconciled to its records. Ozborsan/Onur, on the other hand, did not provide CONNUM-specific costs, did not quantify or explain why the cost differences not reported to the Department were immaterial, did not provide the requested reconciliations, and did not provide the company-specific separate cost files. Ozborsan/Onur was given two opportunities by the Department to submit the requested information or to provide reasonable allocation methodologies, and never ever met these threshold responses.

Finally, Ozborsan/Onur claimed it provided separate cost files. This statement is also not accurate. In question 3.a of the section D supplemental questionnaire, the Department stated:

> it is imperative that you submit new COP/CV databases (one for Ozborsan and one for Onur), that include a unique cost for each control number ("CONNUM") as defined by the physical characteristics listed in the Department's model match criteria at Appendix V of the questionnaire, for each month. If Ozborsan's and Onur Metal's accounting records do not track cost differences for certain physical characteristics, you should use some reasonable method based on company records (e.g., engineering studies) for

allocating costs to products on a CONNUM-specific basis.

Ozborsan/Onur submitted in its response to this supplemental questionnaire a new cost database that separated monthly production costs for hot-rolled and cold-rolled coils but did not report costs separately for each product. Ozborsan/Onur failed to provide CONNUM-specific costs and separate costs for Ozborsan and Onur, as requested by the Department. The request for separate data sets for each producer is necessary because it allows the Department to verify each individual producer through matching the reported company-specific data to that company's books and records.

Ozborsan and Onur maintain separate financial statements in the ordinary course of business and submitted the 2003 Income Statement for each company to the Department. Also, it appears that Ozborsan invoices Onur for factory expenses but no explanation on how these fees are calculated was provided. From analyzing the information provided on the record it would be necessary for Ozborsan to provide separate cost files for Ozborsan and Onur, information that was within its control.

In the Preliminary Determination, the Department collapsed Ozborsan/Onur into a single entity with Guven and Ozdemir. Even if Ozborsan/Onur had provided full and complete responses to the Department's antidumping duty questionnaire and supplemental questionnaires, we note that Guven and Ozdemir failed to provide requested information and also received total AFA. See Preliminary Determination 69 FR at 19393-19394. In determining whether a collapsed entity cooperated to the best of its ability, the Department reviews all components that constitute the collapsed entity. In the current case, even if Ozborsan/Onur had provided complete and accurate responses, the remaining two components of the collapsed entity did not. Therefore, in this hypothetical situation, the Department would have continued to apply total AFA to the collapsed entity, including Ozborsan/Onur.

The information requested cannot be obtained elsewhere. Without this critical information, the Department cannot accurately determine the dumping margin for Ozborsan/Onur. Ozborsan/Onur's failure to provide information to the Department in its original or supplemental questionnaire response that could not be obtained elsewhere demonstrates a pattern of unresponsiveness that supports our determination that Ozborsan/Onur failed to cooperate to the best of its ability with the Department's requests for information. Despite the Department's directions in the questionnaires and the letters granting extensions, Ozborsan/Onur did not provide the information requested by the Department, made no effort to explain any difficulties it was having in supplying the information, and did not propose an alternate form of submitting the information. Therefore, in selecting from among the facts otherwise available, the use of inferences adverse to Ozborsan/Onur is appropriate.

Pursuant to section 776(b) of the Act, the Department is basing Ozborsan/Onur's margin on AFA for purposes of the final determination. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Accordingly, in selecting AFA with respect to Guven, Ozborsan/Onur, and Ozdemir, we have applied the margin rate of 34.89

percent, which is the highest estimated dumping margin set forth in the notice of initiation. See Notice of Initiation of Antidumping Investigations: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey, 68 FR 57667 (October 6, 2003).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 C.F.R. § 351.308(d); see also SAA at 870.

To assess the reliability of the petition margin for the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for the Preliminary Determination. Also, we examined evidence supporting the calculations in the petition to determine the probative value of the margins in the petition for use as AFA for the preliminary determination. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the EP and NV calculations on which the margins in the petition were based. See Memorandum from Paige Rivas, International Trade Analyst, to Tom Futtner, Acting Director, Office 4, "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates," dated April 6, 2004.

As noted in the Preliminary Determination, the calculation of CV in the petition contains an amount of zero for profit because the Turkish producer relied upon for the calculation of the financial ratios reported a loss in its financial statements. We stated in the Preliminary Determination that we would consider adding profit to CV for the final determination in the event we are able to identify a publicly available amount for profit. Since that time, we have been unable to locate a publicly available amount for profit, nor has any interested party placed a publicly available amount for profit on the record. As there is no publicly available amount for profit, we were unable to add profit to CV.

As fully discussed in the Preliminary Determination, the Department corroborated EP by comparing the U.S. market price quotes from the petition with official U.S. import statistics and

found the prices used by the petitioners to be reliable. For purposes of corroborating CV, we compared the cost data submitted in the petition to information submitted by MMZ. Specifically, we compared net CV for one CONNUM for MMZ to the CV used to calculate the highest margin the petition. This CONNUM is identified in Exhibit C2 of MMZ's March 24, 2004, submission as containing production quantities that are comparable to the product with the highest margin in the petition. We found the CV used by the petitioners to be reliable. Therefore, based on our efforts, described fully in the Preliminary Determination, to corroborate information contained in the petition, and in accordance with section 776(c) of the Act, we consider the highest margin in the petition to be corroborated to the extent practicable for purposes of this final determination.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins in the Federal Register.

Agree ____________ Disagree_______________ Let's Discuss___________

____

James J. Jochum
Assistant Secretary
for Import Administration

____

Date