

*Maverick Tube Corporation et al v. United States*  
**Consol. Court No. 14-00244, Slip Op. 15-107 (CIT September 24, 2015)**

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**Summary**

The Department of Commerce (the Department) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) issued on September 24, 2015, in *Maverick Tube Corporation et al v. United States*, Consol. Court No. 14-00244, Slip Op. 15-107 (CIT 2015) (*Remand Opinion and Order*) and the Court's order dated October 8, 2015. This final remand concerns the final determination in the antidumping duty (AD) investigation of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey), concerning the period of investigation (POI), July 1, 2012, through June 30, 2013.<sup>1</sup>

In the *Remand Order*, the Court directed the Department to reconsider the constructed value (CV) profit rate calculation used in the dumping margin analysis for Çayirova Boru Sanayi ve Ticaret A.Ş. and its affiliated exporter Yücel Boru İthalat-İhracat ve Pazarlama A.Ş. (collectively, Yücel). Specifically, the Court instructed the Department to reconsider the entire issue of CV profit pursuant to section 773(e)(2)(B) of the Tariff Act of 1930, as amended (the Act) and consider, in light of the Court's opinion: 1) whether Yücel's non-OCTG products are within the same general category of products as subject merchandise pursuant to section 773(e)(2)(B)(i) of the Act; 2) whether the Department can rely on a ranged profit margin based on the home market sales of the

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<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum (Final Decision Memo) (collectively, *Final Determination*).

other mandatory respondent, Borusan Manesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret A.S. (collectively, Borusan) pursuant to section 773(e)(2)(B)(ii) of the Act; and 3) if the Department continues to calculate CV profit pursuant to section 773(e)(2)(B)(iii) of the Act, either apply a profit cap or explain why the data on the record cannot be used to calculate a “facts available” profit cap under section 773(e)(2)(B)(iii) of the Act. In accordance with the *Remand Opinion and Order*, the Department reconsidered its calculation of CV profit for Yücel as discussed below.

Also in the *Remand Opinion and Order*, the Court granted the Department a remand to reconsider our duty drawback adjustment for Yücel in its entirety, *i.e.*, 1) whether we should have granted Yücel any duty drawback adjustment, 2) whether we should have accounted for Yücel’s duty drawback adjustment in its CV, and 3) Yücel’s claim that we did not grant its duty drawback adjustment to all of its U.S. sales of subject merchandise.

Pursuant to the *Remand Opinion and Order*, the Department reconsidered its calculation of Yücel’s CV profit and decision to grant a duty drawback adjustment for Yücel’s sales of OCTG to the United States as discussed below.

Although the Department did not solicit comments prior to issuance of the draft results of redetermination, on October 28, 2015, Yücel filed comments concerning the remand ordered by the Court.<sup>2</sup>

We released our draft results of redetermination to interested parties on December 16, 2015 (Draft Remand), indicating that parties should submit comments in response to the Draft Remand with respect to issues they believed were relevant for the final results of redetermination, and received comments from Yücel and the petitioners<sup>3</sup> on December 29, 2015.

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<sup>2</sup> See Yücel’s letter to the Secretary of Commerce regarding “OCTG from Turkey; Yücel/Çayırova remand comments” dated October 28, 2015.

<sup>3</sup> Maverick Tube Corporation (Maverick) and United States Steel Corporation (U.S. Steel) (collectively, the

## Discussion

### I. Constructed Value Profit for Yücel

#### A. Background

In the *Preliminary Determination*, the Department calculated CV profit for Yücel under section 773(e)(2)(B)(i) of the Act using the company's home market sales of non-OCTG pipe products.<sup>4</sup> For the *Final Determination*, the Department recalculated CV profit for Yücel under section 773(e)(2)(B)(iii) of the Act using the 2012 audited consolidated financial statements of Tenaris S.A. (Tenaris).<sup>5</sup> The Department explained that because Yücel did not have a viable home or third country market during the POI, the Department was unable to calculate CV profit using the preferred method under section 773(e)(2)(A) of the Act.<sup>6</sup> When the preferred method is unavailable, section 773(e)(2)(B) of the Act establishes three alternatives for determining CV profit. They are:

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review...for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i))...for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized...for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount

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petitioners).

<sup>4</sup> See *Certain Oil Country Tubular Goods from the Republic of the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 10484 (February 25, 2014) and accompanying Decision Memorandum (Preliminary Decision Memo) at 24 (collectively, *Preliminary Determination*).

<sup>5</sup> See Final Decision Memo at Comment 3; see also Memorandum to Neal Halper, Director, Office of Accounting "Constructed Value Calculation Adjustments for the Final Determination – Cayirova Boru Sanayi ve Ticaret A.S." dated July 10, 2014.

<sup>6</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act as reprinted in 1994 U.S.C.C.A.N. at 4177, (SAA) at 840 ("where the method described in section 773(e)(2)(A) cannot be used...because there are no home market sales of the foreign like product...").

normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise {(i.e., the “profit cap”)}

Section 773(e)(2)(B) of the Act does not establish a hierarchy or preference among these alternative methods.<sup>7</sup>

Despite using Yücel’s non-OCTG sales in the *Preliminary Determination*, the Department concluded that it could not rely on alternative (i), i.e., profit for the same general category of products as subject merchandise, for the *Final Determination* because Yücel’s non-OCTG products sold in the home market were not in the same general category as OCTG. The Department also ruled out alternative (ii), i.e., profit for other exporters or producers subject to the investigation, as an option because of concerns associated with revealing business proprietary information of the other respondent subject to the investigation, Borusan. Therefore, the Department relied on the available alternative under subsection (iii) i.e., any other reasonable method, to determine the appropriate data to use to calculate CV profit for Yücel.

While the specific language of both the preferred and alternative methods appears to show a preference that the profit and selling expenses reflect (1) production and sales in the foreign country<sup>8</sup> and (2) the foreign like product, i.e., the merchandise under consideration,<sup>9</sup> in the instant case, the record lacked information which reflected both of these factors for use under subsection (iii). Consequently, the Department sought to determine which surrogate data source most closely fulfilled the aim of the statute. We explained that, because OCTG is a specialized premium product, “it is more compliant with the statute to calculate profit using a company that mainly sells either the identical product or, alternatively, merchandise in the same general category

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<sup>7</sup> *Id.*

<sup>8</sup> See sections 773(e)(2)(A) and 773(e)(2)(B)(i) and (ii) of the Act.

<sup>9</sup> See sections 773(e)(2)(A) and 773(e)(2)(B)(ii) of the Act.

of products.”<sup>10</sup> Accordingly, because we did not have the financial statements of an OCTG producer who primarily produced and sold OCTG in Turkey, we used the 2012 consolidated financial statements of Tenaris to calculate CV profit pursuant to section 773(e)(2)(B)(iii) of the Act (*i.e.*, any other reasonable method). In doing so, we explained that, because Tenaris is an OCTG producer that sells a broad range of OCTG in virtually every market in which OCTG is sold, its average profit experience was representative of OCTG sales across a broad range of geographic markets and that, because its sales were of OCTG primarily, the profit more precisely reflected the profit on subject merchandise.<sup>11</sup> Finally, we explained that, because we did not have home market data for other exporters and producers in Turkey of the same general category of merchandise, we were unable to calculate a profit cap.<sup>12</sup>

The Court held that the Department’s use of the Tenaris financial statements without a profit cap as the best information available for calculating CV profit is unsupported by substantial evidence.<sup>13</sup> The Court stated that, “even when the record evidence is deficient for the purposes of calculating the profit cap, Commerce must attempt to calculate a profit cap based on the facts otherwise available, and it may dispense with the profit cap entirely only if it provides an adequate explanation as to why the available data would render any cap based on facts available unrepresentative or inaccurate.”<sup>14</sup> The Court directed the Department to either “apply a profit cap or provide an adequate explanation as to why data on the record cannot be used to calculate a facts available cap... {and} provide explanation beyond BPI concerns for failing to use a cap based on ranged data from Borusan’s home market sales” if the Department continues to calculate CV profit

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<sup>10</sup> See Final Decision Memo at Comment 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Remand Opinion and Order*, Slip Op. 15-107 at 30.

<sup>14</sup> *Id.*, at 32.

pursuant to section 773(e)(2)(B)(iii) of the Act.<sup>15</sup> Similarly, the Court directed the Department to provide a justification beyond business proprietary information (BPI) concerns for not using a ranged version of the other respondent's data to compute the CV profit cap.<sup>16</sup>

Additionally, while the Court did not rule on the issue of whether Yücel's non-OCTG pipe products are in the same general category of merchandise, the Court directed the Department to reexamine the issue. Specifically, concerning the Department's analysis of Yücel's non-OCTG pipe products vis-à-vis OCTG pipe products, the Court stated that "Commerce's reliance on the specific market conditions in the construction industry and oil and gas industry during the POI is misplaced" and reasoned that the Department's analysis should not focus on temporal factors which could result in a product being classified as being within the same general category of merchandise one year, yet not the next.<sup>17</sup> Additionally, the Court stated that our discussion of testing and certification requirements indicated that the Department "may have improperly limited the same general category of merchandise to foreign like product {,}"<sup>18</sup> and that "in the past, the Department has relied on sales of non-OCTG pipes to calculate CV profit for OCTG products."<sup>19</sup> Accordingly, the Court directed the Department to "either omit these considerations from its analysis or provide an adequate explanation as to why these are appropriate factors for it to consider in determining which products fall within the same general category of products as OCTG."<sup>20</sup> Finally, the Court indicated that "{b}ecause the object of calculating CV profit appears to be to approximate the experience a respondent would have if it had home market sales of a foreign like product, reference to some standard OCTG and non-OCTG pipe {as opposed to

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<sup>15</sup> *Id.*, at 34.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, at 34-35.

<sup>18</sup> *Id.*, at 35.

<sup>19</sup> *Id.*, at 35 n. 16.

<sup>20</sup> *Id.*, at 36.

Yücel's specific OCTG and non-OTCTG} may be insufficient{.}"<sup>21</sup>

## **B. Analysis**

As discussed below, for purposes of this final remand, the Department has recalculated Yücel's CV profit pursuant to section 773(e)(2)(B)(ii) of the Act using Borusan's information.<sup>22</sup> Notwithstanding our redetermination to calculate profit pursuant to section 773(e)(2)(B)(ii) of the Act rather than 773(e)(2)(B)(iii), as was done in the *Final Determination*, pursuant to the Court's opinion and order, we have included further discussion of the remaining statutory alternatives in light of the record evidence as appropriate.

### *1. The Department has recalculated Yücel's CV profit and selling expenses pursuant to section 773(e)(2)(B)(ii) of the Act.*

Although, for the reasons explained below, the Department has determined, in these circumstances, that an attempt at publicly ranging Borusan's calculated profit margin might be perceived as an arbitrary determination of CV profit for Yücel, the Department has determined that we can use differing components of Borusan's business proprietary home market financial information for subject merchandise as the data source to calculate Yücel's CV profit and selling expenses pursuant to section 773(e)(2)(B)(ii) of the Act.<sup>23</sup> While the Department recognizes that this approach requires revising both the CV profit and CV selling expense rates for Yücel<sup>24</sup> and, in their place, using a single aggregate rate derived from Borusan's profit and selling expense rates, the use of such an aggregate figure allows the Department to both protect Borusan's BPI while at the same time rely on data derived from home market sales of subject merchandise. Specifically,

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<sup>21</sup> *Id.*

<sup>22</sup> As explained in more detail below, in order not to reveal Borusan's business proprietary profit rate, in redetermining Yücel's CV profit rate the Department used Borusan's profit and selling expense rates in its calculations and, accordingly, also recalculated Yücel's CV selling expense rate for purposes of this remand redetermination.

<sup>23</sup> The Department notes that this approach follows the methodology first applied in the less-than-fair-value investigation of certain steel nails from the Republic of Korea. *See Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>24</sup> For the *Final Determination*, the Department used Yücel's selling expenses pertaining to non-OCTG pipe products to calculate CV selling expenses. *See* Final Decision Memo at Comment 2.

the use of a single aggregate figure which represents both CV profit and selling expenses prevents Yücel from discerning the portion attributable to each individual component (*i.e.*, selling expenses versus profit) and thus protects Borusan's BPI. Additionally, we have determined that the use of Borusan's business proprietary home market financial information most closely simulates the preferred method of calculating CV profit – and selling expenses – because it reflects the actual experience of a company subject to the investigation as it pertains to the production and sales of OCTG in Turkey. Because these data require business proprietary treatment, see Memorandum to the File “Analysis Memorandum for Final Results of Redetermination (Consol. Court No. 14-00244) Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-Ihracat ve Pazarlama A.Ş., in the Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey” dated concurrently with this final remand (Yücel Final Remand Analysis Memo), for the Department's CV profit and selling expense calculation for Yücel based on Borusan's data.

Regarding the Court's direction to provide a justification beyond BPI concerns for not using a ranged version of Borusan's, the other respondent's, data to compute a CV profit cap under alternative (iii), we first note that in this final remand, we are relying on Borusan's data to redetermine Yücel's CV profit rate pursuant to section 773(e)(2)(B)(ii) of the Act, which does not impose a profit cap requirement. Nevertheless, we provide the explanation requested by the Court. As an initial matter, a ranged version of Borusan's profit data are not currently on the record. Thus, the Department could be in the position of selecting a rate that differs by 10 percent above or below the proprietary CV rate of Borusan. We determine that, in the circumstances presented by the facts and analysis in this remand, an attempt at publicly ranging the data might be perceived as an arbitrary determination of Yücel's CV profit rate. A profit cap calculated in such a manner might be considered unfair because it could result in applying two

different profit rates to two different respondents even though the data source would be the same (*i.e.*, here Borusan’s data).

2. *Under section 773(e)(2)(B)(i) of the Act, Yücel’s non-OCTG pipe products are not in the same general category of merchandise as OCTG.*

While the Department’s determination to calculate CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act in this redetermination effectively renders a discussion regarding the same general category of merchandise under section 773(e)(2)(B)(i) moot, the Department is addressing this issue pursuant to the Court’s instructions regarding the Department’s determination with respect to the same general category in the *Final Determination*.<sup>25</sup>

Specifically, the Court was concerned with certain aspects of the Department’s reasoning regarding the same general category of product: (1) the relevance of the difference in demand in the oil exploration and construction markets in light of the temporary nature of such a factor, (2) by focusing on certain testing and certification requirements the Department may have improperly limited the same general category of merchandise to foreign like product, (3) that in the past, the Department has relied on sales of non-OCTG pipes to calculate CV profit for OCTG products, and (4) the Department should compare Yücel’s specific OCTG and non-OCTG products as opposed to OCTG products generally in making the “same general category of product determination.”

First, we agree with the Court that the differing temporal market conditions of the construction and oil and gas exploration industries are not in and of themselves the determining factor for making a “same general category of products” determination. As such, we did not rest our conclusion of what constitutes the general category of products on temporary market conditions that may potentially change with the passage of time, but merely intended to point out that the existing market conditions further exacerbated the bottom-line impact of the dissimilarities

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<sup>25</sup> See *Remand Opinion and Order*, Slip Op. 15-107 at 34.

between these industries.<sup>26</sup> The Department’s analysis of the differing market demands between the oil and gas exploration industry vis-à-vis the construction industry demonstrates that having products sold and used in the same industry (*i.e.*, the oil and gas exploration industry) can be an important factor for determining whether products are in the same general category of merchandise because profit rates can vary significantly across industries.<sup>27</sup>

Second, regarding the Department’s emphasis on the rigorous testing requirements and quality standards for OCTG, this was not an implication that no other pipe products are in the same general category as OCTG. Rather, the Department was distinguishing line and standard pipe, which we do not consider to be in the same general category of products, from OCTG by demonstrating that only products intended for “down hole” applications (*e.g.*, non-scope OCTG, stainless products, drill pipes) would be within the same general category of merchandise. Specifically, we explained that, because OCTG is used for “down hole” operations in vertical wells, OCTG pipes are subjected to external collapse pressures, internal pressures, and tension strength requirements whereas standard and line pipes are primarily intended for the conveyance of fluids and gases.<sup>28</sup> It was within the context of comparing the product uses and characteristics of OCTG and non-OCTG standard and line pipes that the Department discussed the reasons for the differing testing and certification requirements and explained that OCTG is subjected to greater destructive and non-destructive testing requirements.<sup>29</sup> Those products that undergo more rigorous testing often reflect premium high-end products, which command higher prices and

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<sup>26</sup> See Final Decision Memo at Comment 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* We also explained that, because OCTG casing is used as structural support in an oil well, OCTG casing must be strong enough to resist pressures from both within and outside of the well. Additionally, we explained that OCTG casing must have sufficient joint strength to support its own weight and threading sufficient to resist well pressures. Finally, we explained that, due to the nature of its use, OCTG tubes must have sufficient tension strength to carry its own weight, the weight of tubing string (*i.e.*, the series of pipes attached together and forming the entire string), and any oil within the tubing.

<sup>29</sup> *Id.*

profits.<sup>30</sup> Finally, it was after analyzing the testing and certification requirements in light of the OCTG's uses and characteristics that the Department was able to identify other products (*e.g.*, non-scope OCTG such as stainless OCTG products and drill pipes) with the same fundamental characteristics which would be considered as being within the same general category of merchandise. For instance, in examining whether non-OCTG pipe products are in the same general category as the OCTG under investigation the Department might consider whether such products are subject to similar testing and quality standards, such as non-scope OCTG such as stainless steel OCTG products and drill pipes. Thus, by discussing testing and certification requirements the Department did not intend to limit its same general category of merchandise analysis to only those products which would be considered part of the foreign like product.

Third, while we used profit from the respondent's tubular division in one administrative review for *OCTG from Mexico*, we did so pursuant to section 773(e)(2)(B)(iii) of the Act and, contrary to this case, there was no discussion or meaningful analysis as to what products were included in the tubular division and no interested party contested the source used to calculate CV profit.<sup>31</sup> Likewise, in *OCTG from Korea*, where the Department calculated CV profit and selling expenses pursuant to section 773(e)(2)(B)(ii) of the Act, the issue raised by the interested parties was not the source used to calculate CV profit, but rather, how the CV profit ratio was applied in

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<sup>30</sup> See Maverick's letter to the Secretary of Commerce regarding "Oil Country Tubular Goods from the Republic of Turkey: Submission of Factual Information to Rebut, Clarify, or Correct the Financial Statements Placed on the Record by the Department" dated May 19, 2014, at Exhibit Q of Attachment 2, and, *Specification for Casting and Tubing – API SPECIFICATION 5CT*, Ninth Edition (July 2011), Effective Date: January 1, 2012, Copyright American Petroleum Institute. See excerpts placed on the record in the petitioners' rebuttal comments on product characteristics and product matching dated August 12, 2013. See also, *Steel Products Manual – Carbon Steel Pipe, Structural Tubing, Line Pipe, Oil Country Tubular Goods* (April 1982), Published by the American Iron and Steel Institute.

<sup>31</sup> See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods, from Mexico*, 71 FR 27676, 27678 (May 12, 2006), unchanged in *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico*, 71 FR 54614 (September 18, 2006).

the margin analysis.<sup>32</sup> Accordingly, the case did not contain a detailed analysis of products in the same general category of merchandise.

Finally, we understand Yücel's contention that we did not consider its specific type of non-OCTG. We disagree. The Department, in the *Final Determination*, believed the record information for CV profit sources lacked useable data to determine CV profit pursuant to section 773(e)(2)(B)(i) or (ii) of the Act because the data that could be used publicly did not reflect both (1) production and sales in the foreign country or (2) the foreign like product, *i.e.*, the merchandise under consideration. Consequently, the Department determined which surrogate data source most closely fulfilled the aim of the statute under subsection (iii). We explained that because OCTG is a specialized premium product, "it is more compliant with the statute to calculate profit using a company that mainly sells either the identical product or, alternatively, merchandise in the same general category of products." In assessing whether a given product was in the same general category of products as the subject merchandise for purposes of calculating CV profit, we evaluated the products in question from both a production and sales perspective, as profit is a function of both cost and price. Through our analysis of differences in physical characteristics of products, differences in production processes, quality, testing and certification requirements, products use, and the market conditions associated with the industries and customers who purchase and use the different products, we determined that Yücel's non-OCTG products did not represent the same general category of products as OCTG.

3. *The Department must either apply a profit cap or explain why the data on the record cannot be used to calculate a "facts available" profit cap under section 773(e)(2)(B)(iii) of the Act.*

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<sup>32</sup> See *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods, Other than Drill Pipe, from Korea*, 73 FR 14439 (March 18, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

The Court held that “if Commerce continues to calculate CV profit pursuant to alternative (iii), Commerce must either apply a profit cap or provide an adequate explanation as to why data on the record cannot be used to calculate a facts available profit cap.”<sup>33</sup> As discussed above, the Department’s determination to calculate CV profit under section 773(e)(2)(B)(ii) of the Act in this final remand renders a discussion regarding the profit cap under section 773(e)(2)(B)(iii) moot.

### **Post-Draft Remand Comments**

#### **Comment 1: Use of Borusan’s BPI in Determining Yücel’s CV Profit and Selling Expense**

U.S. Steel argues that the Department’s use of Borusan’s BPI to calculate Yücel’s CV profit under section 773(e)(2)(B)(ii) of the Act is contrary to the Department’s longstanding practice and court precedent. Additionally, U.S. Steel and Maverick argue that the Department’s decision also creates a significant likelihood of exposing Borusan’s BPI. U.S. Steel argues that the Department’s longstanding position has been that, in proceedings where there is only one respondent with home-market sales data, it is unable to use that respondent’s data to calculate CV profit and selling expenses for the remaining respondent because doing so would reveal BPI.<sup>34</sup> U.S. Steel argues that the U.S. Court of Appeals for the Federal Circuit (CAFC) has reviewed the Department’s decision that it could not use a single respondent’s BPI CV profit rate as the CV profit rate for another respondent under section 773(e)(2)(B)(ii) of the Act because of the Department’s obligation to protect BPI. Moreover, U.S. Steel asserts that the CAFC noted that the option of calculating CV profit under section 773(e)(2)(B)(ii) of the Act would have been

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<sup>33</sup> *Remand Opinion and Order*, Slip Op. 15-107 at 34.

<sup>34</sup> *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 76 FR 67688, 67700 (November 2, 2011) (“Because Mabe is the only other respondent with viable home market sales, the Department cannot calculate profit under alternative (ii) because doing so would reveal the business-proprietary nature of the information”) unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 26.

available if there had been “sufficient data from one or more additional respondents.”<sup>35</sup> Similarly, U.S. Steel argues that the CIT has held that “Commerce reasonably determined that relying on {the one other respondent’s} profit information was not an available alternative” because doing so would reveal the other respondent’s BPI.<sup>36</sup>

Moreover, U.S. Steel argues that the Department adhered to this longstanding, court-approved practice in its original determination in this case,<sup>37</sup> and that it is a well-settled principle that an agency cannot abandon a longstanding practice unless the agency provides a satisfactory explanation for the change.<sup>38</sup> U.S. Steel argues that the CAFC has held that the Department’s obligation to explain changes in practice applies to changes in how the Department calculates constructed value.<sup>39</sup> U.S. Steel asserts that the Department did not meet its obligation because it neither provided an adequate explanation for its change in practice nor explained how the Department will safeguard BPI. Maverick argues that the Department did not provide notice of its proposed change in practice or an opportunity to comment.

U.S. Steel explains that, under 19 CFR 351.224(a), parties have a right to review the Department’s margin calculations. U.S. Steel argues that, while the Department’s intention might be to protect BPI by using a single combined rate which reflects the sum of Borusan’s CV profit and selling expenses, Yücel could discern the information if it reviews the margin calculations. Moreover, U.S. Steel argues that the Department has explained previously that, even if a respondent does not receive direct access to its margin calculations which contain the BPI of another respondent, the respondent could possibly reverse engineer the calculations to ascertain the

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<sup>35</sup> See *Atar S.r.L. v. United States*, 730 F.3d 1320, 1327 (CAFC 2013).

<sup>36</sup> See *Thai Plastic Bags Industry Co. v. United States*, 904 F. Supp. 2d 1326, 1335 (CIT 2011). See also *Geum Poonh Corp. v. United States*, 163 F. Supp. 2d 669, 672 (CIT 2001).

<sup>37</sup> Final Decision Memo at Comment 3.

<sup>38</sup> See *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983).

<sup>39</sup> See *SKF USA v. United States*, 630 F.3d 1365, 1373-75 (CAFC 2011).

BPI because it would know its final margin calculation as well as its own information.<sup>40</sup>

Maverick also argues that Yücel has access to its own BPI information and can simply back out its information from Borusan's, thereby disclosing Borusan's BPI to Yücel.

Maverick argues that it is not aware of any other instance where the Department added together two pieces of BPI to create a public figure. Maverick asserts that the Department's decision destroys the necessary principle that information derived from BPI is BPI. Moreover, Maverick argues that the Department would not have any authority to prevent any party from disclosing all data by unilaterally adding two pieces of data together and disclosing the sum. For this reason, Maverick argues that the Department should withdraw the combined CV profit and selling expense figure from the public domain.

Yücel did not comment with respect to the Department's use of Borusan's data to calculate Yücel's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act.

Department's Position: We have continued to calculate Yücel's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act. Specifically, we have continued to use a single aggregate figure derived from Borusan's calculated CV profit and selling expense rates. Our decision follows the methodology recently and first adopted in the less than fair value investigation of certain steel nails from the Republic of Korea.<sup>41</sup> Moreover, as we explained in the Draft Remand, our approach adequately protects Borusan's BPI and most closely simulates the statutorily preferred method of calculating CV profit and selling expenses because it reflects the actual experience of a company subject to the investigation as it pertains to the production and

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<sup>40</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 4 (*Thai Bags LTFV*).

<sup>41</sup> See *Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 4 (*Steel Nails from the Republic of Korea*) (explaining that "we used differing components of Jinheung Steel's business proprietary home market financial information as the data source to calculate Daejin's CV profit and selling expense.")

sales of OCTG in Turkey.<sup>42</sup> Accordingly, we disagree with U.S. Steel and Maverick that our decision represents the abandonment of a longstanding practice for which the Department failed to provide a satisfactory explanation for its decision. We additionally disagree with Maverick that the Department has provided no notice or opportunity for parties to comment on this change in practice. Rather, parties in this remand have availed themselves of such an opportunity.

While U.S. Steel is correct that both the CAFC and CIT have upheld the Department's previous decisions that it could not calculate CV profit and/or selling expenses under section 773(e)(2)(B)(ii) of the Act in proceedings in which there is only one respondent with viable home market sales data, those decisions did not involve the methodology followed in the Draft Remand. Indeed, the previous decisions by the CAFC and CIT, rather than representing a requirement that the Department proceed under section 773(e)(2)(B)(iii) of the Act (*i.e.*, "any other reasonable method") in proceedings where there is only one respondent with viable home-market sales data, recognized the Department's concern that using that respondent's data would or could expose the respondent's BPI. In the instant case, consistent with *Steel Nails from the Republic of Korea*, we determined a method in the Draft Remand to calculate CV profit and selling expenses using one respondent's data without risking the exposure of that respondent's BPI.

U.S. Steel and Maverick mistakenly conclude that the use of an aggregate figure representing both CV profit and selling expenses leads to an erosion of BPI protections. As explained in the Draft Remand, the use of an aggregate figure which represents both CV profit and selling expenses prevents Yücel from discerning the portion attributable to each individual component and thus protects Borusan's BPI. While U.S. Steel is correct that 19 CFR 351.224(a) gives a respondent the right to review its own margin calculations, the CIT has stated that "the antidumping statute does not give a respondent an unqualified right to know all of the information

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<sup>42</sup> See Draft Remand at 7-8.

from which the respondent's margin will be derived."<sup>43</sup> In this case, we find that U.S. Steel's concerns about Yücel not being able to review the individual components of CV profit and selling expenses used in the margin calculations are outweighed by the facts that Yücel is able to review its margin calculations which include the aggregate figure for CV profit and selling expenses used in its calculations and using an aggregate figure allows the Department to hew closely to the statutorily preferred method of calculating CV profit and selling expenses in a manner that reflects the actual experience of a company subject to investigation while at the same time protecting Borusan's BPI.<sup>44</sup>

Moreover, while the Department has expressed concern in the past that the use of an aggregate figure representing both CV profit and selling expenses could create a risk that the respondent could examine the publicly ranged data submitted by the other respondent during the course of the review and somehow discern the CV profit figure based on the ranged selling expense data,<sup>45</sup> we have re-evaluated the calculations and concluded that this concern is not present in this proceeding. Specifically, although the ranged selling expense figures are reported in the respondent's (Borusan's) responses to sections B and C of the questionnaire, the Department calculates CV profit and selling expense rates, using a subset of the respondent's home-market sales, by dividing the reported amounts by the respondent's calculated average total cost of

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<sup>43</sup> See *SKF USA, Inc. v. United States*, 2012 Ct. Intl. Trade LEXIS 98; Slip. Op. 2012-94 (July 18, 2012) at 8.

<sup>44</sup> Yücel does not have the ability to determine the individual components of the aggregate figure as the calculation of the aggregate figure is only released to parties bound by an administrative protective order (APO). In the Draft Remand, the Department indicated in its release of Yücel's revised calculations that Borusan's BPI appeared in the draft remand analysis memorandum for Yücel. See Yücel Draft Remand Analysis Memo at attachment entitled "Revised Constructed Value Selling Expense and Profit Calculation" (in which we state "{t}his Attachment Contains the Business Proprietary Information of Borusan Mannesmann Boru Sanayi ve Ticaret and Borusan Istikbal Ticaret"). Thus, parties subject to the APO were on notice that not all of the information in the calculations belonged to Yücel, and, pursuant to the terms of the APO, were required to act accordingly.

<sup>45</sup> See *Thai Bags LTFV* and accompanying Issues and Decision Memorandum at Comment 4 (*Thai Bags LTFV*) (declining to use a combined CV selling expense and profit rate because "{w}hile the amount that Universal could ascertain would be TPBG's amount for the combined selling expenses and profit, given the small amount of TPBG's selling expenses based on the ranged public data, it may be possible for Universal to discern TPBG's proprietary profit data.").

production. This calculation was done in this proceeding to determine Borusan's CV profit and selling expense rates.<sup>46</sup> Accordingly, because of the manner in which CV profit and selling expenses are calculated, a respondent such as Yücel cannot ascertain Borusan's profit ratio by simply subtracting the ranged selling expense rates. Quite simply, there is no way for Yücel to determine the portion of the aggregate figure attributable to Borusan's CV profit and the portion attributable to Borusan's CV selling expenses.

We also note that Borusan itself has not raised any objection to the use of its information in the Draft Remand. Nevertheless, to further mask Borusan's BPI, we have taken additional steps in this final remand. Specifically, rather than separately identifying Borusan's CV profit and selling expense ratios in some of the relevant documentation pertaining to Yücel's revised calculations,<sup>47</sup> the aggregate figure representing the combination of Borusan's CV profit and selling expense ratios now appears in all relevant documentation, including the memo, margin-calculation program, log, and output of the Yücel Final Remand Analysis Memo.<sup>48</sup>

**Comment 2: Whether it is Otherwise Appropriate to Use Borusan's Profit/Sales Information**

Maverick argues that it is inappropriate for the Department to use Borusan's profit and selling expense ratios to calculate Yücel's CV because Borusan's home-market sales do not reflect legitimate sales and were outside the ordinary course of trade. Specifically, Maverick argues that record evidence indicates that Borusan's home-market sales were "overruns" (excess production material) and were of second quality which do not qualify as API-grade OCTG. Maverick also argues that, although the Department discounted the different end uses for Borusan's home-market

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<sup>46</sup> See Memorandum to the File "Certain Oil Country Tubular Goods from the Republic of Turkey - Final Determination Analysis Memorandum for Borusan Mannesmann Boru Sanayi ve Ticaret and Borusan Istikbal Ticaret" dated July 10, 2014, and attached comparison-market program, log and output (APO Version).

<sup>47</sup> As discussed in *supra* note 41 and accompanying text, parties subject to the APO were on notice that Borusan's BPI was contained in the relevant documentation.

<sup>48</sup> For more details on this change, see Yücel Final Remand Analysis Memo.

sales and other sales as determinative of whether a product is within the scope of the Order in the *Final Determination*,<sup>49</sup> the characteristics of the products Borusan sold in Turkey were incongruent with the demands of the Turkish oil/gas industry and market. Maverick continues, for use in oil/gas applications in Turkey, the pipe must first be finished, which requires threading and coupling; Borusan indicated that its pipe was not threaded. In addition, Maverick argues, Borusan itself admitted that the pipe may have been used in geothermal applications, which, Maverick argues, is a distinct market with different customers. Therefore, Maverick argues, use of these sales would defeat the purpose of the CV profit statute by using significantly different profit margins which are not reflective of what Yücel's profits would be if it could sell OCTG in Turkey. Maverick further argues that the nature of Borusan's home-market sales were irregular and pursuant to unusual, customer-friendly terms. Therefore, Maverick argues, due to these concerns, the Department should not base Yücel's profit/sales ratios on such abnormal sales.

U.S. Steel reiterates points made during the investigation that Borusan did not have a viable home market in Turkey during the period of investigation and Borusan's sales were made outside the ordinary course of trade.<sup>50</sup> Nonetheless, U.S. Steel acknowledges that such issues have been rejected by the Department in the *Final Determination*, and the CIT affirmed that determination.

Department's Position: With respect to whether Borusan's home market was viable, its home-market sales were legitimate and in the ordinary course of trade, the Department examined these issues, and the arguments raised herein in the *Final Determination* in the context of determining whether to rely on Borusan's home-market sales for purposes of determining its normal value, and rejected each argument. In particular, the Department found that Borusan's home market was viable because it exceeds the five percent home-market viability threshold,

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<sup>49</sup> Final Decision Memo at Comment 4.

<sup>50</sup> *Id.*, at 14.

satisfying the statutory and regulatory threshold of home-market viability on a volume basis, that its home-market sales are legitimate sales of prime merchandise identical to that sold in the United States within that scope regardless of the application (geothermal or oil and gas) for which they are sold/purchased, and that the fact pattern in this case does not reveal any unusual characteristics that would lead us to the conclusion that such sales were outside the ordinary course of trade.<sup>51</sup> The Court affirmed the Department's decisions in the *Final Determination* on each of these points holding that the Department's decision to rely on Borusan's home-market sales for purposes of determining Borusan's normal value is supported by substantial evidence and in accordance with law.<sup>52</sup> Although the Department and the Court analyzed these issues in the context of whether Borusan's home-market sales were reliable for purposes of determining Borusan's normal value, we find that the Department's findings on these issues are settled, and are not subject to remand, and, therefore, apply equally to claims that Borusan's home-market sales cannot be relied upon for purposes of determining Yücel's CV profit pursuant to section 773(e)(2)(B)(ii) of the Act.

**Comment 3: Whether the Department Must Rely on the Use of the Tenaris Financial Statements**

Maverick argues that the Department has no viable alternative other than the use of the Tenaris financial statements to calculate CV profit for Yücel. Maverick argues that, for the same reasons the Department cannot use Borusan's BPI to calculate CV profit, it cannot use Borusan's BPI to calculate a profit cap for use under section 773(e)(2)(B)(iii). Additionally, Maverick argues that the Department cannot use publicly ranged figures for Borusan's CV profit because the publicly ranged figures are not on the record of the proceeding and the Department's regulations require that publicly ranged figures be submitted by the party who submitted the BPI. Maverick also argues that the figures in question, namely Borusan's calculated CV profit and selling expense

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<sup>51</sup> *Id.*, at 34-35.

<sup>52</sup> *See Remand Opinion and Order*, Slip Op. 15-107 at 9-14.

rates, were not submitted by Borusan and, instead, were derived from Borusan's submitted data. Maverick explains that there is no mechanism to force Borusan to submit ranged figures in this proceeding. Finally, Maverick argues that Yücel did not submit any information on the record of this proceeding which could be used to calculate the profit on home market sales of merchandise in the same category. For the above reasons, both U.S. Steel and Maverick argue that the Department should return to the use of Tenaris's publicly available financial statements to calculate CV profit.

Yücel did not comment with respect to the Department's use of Tenaris' data under alternative 773(e)(2)(B)(iii) of the Act.

Department's Position: As explained above, we continue to find it appropriate to calculate Yücel's CV profit and selling expenses using Borusan's data pursuant to section 773(e)(2)(B)(ii) of the Act. Specifically, we find that we have sufficient data on the record to calculate CV profit and selling expenses using one respondent's (Borusan's) data, such data most closely simulates the statutorily preferred method of calculating CV profit and selling expenses because it reflects the actual experience of a company subject to the investigation as it pertains to the production and sales of OCTG in Turkey, and the use of an aggregate figure representing Borusan's CV profit and selling expenses protects Borusan's BPI. Therefore, we find there is no need to use Tenaris' data under section 773(e)(2)(B)(iii) of the Act.

## **II. Duty Drawback for Yücel**

### **A. Background**

In the *Preliminary Determination*, we granted Yücel's request for a duty drawback adjustment, pursuant to section 772(c)(1)(B) of the Act, preliminarily determining that Yücel had demonstrated that it met the requirements of the statute and the Department's two-prong test, *i.e.*, 1) that the import duty paid and the rebate payment are directly linked to, and dependent upon, one

another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise. At the time, however, we stated that we would continue to examine the company's eligibility for its claimed duty drawback adjustment for the *Final Determination*.<sup>53</sup>

In the *Final Determination*, we continued to grant a duty drawback adjustment to Yücel, in part. In particular, as in previous antidumping proceedings involving Turkey, the Department found that a company would be eligible for a duty drawback adjustment on its U.S. sales of subject merchandise under the statute and the Department's two-prong test if the company was able to demonstrate that it satisfied the requirements of the Turkish duty drawback regime, *i.e.*, the Inward Processing Regime (IPR), by providing its inward processing certifications (DIIBs).<sup>54</sup> Under the IPR, to receive an exemption from import duties and taxes, a company is required to open a DIIB reflecting the: 1) projected quantities of imports under an 8-digit Harmonized Tariff Schedule (HTS) classification for which the company is seeking an exemption; and 2) projected quantities of exports under an 8-digit HTS classification which would incorporate the exempted imports.<sup>55</sup> The Turkish system allows any merchandise which falls within the same 8-digit HTS classification to be substitutable.<sup>56</sup> Thus, there would not necessarily be a link between: 1) the inputs on which the company claims an exemption; and 2) the exports, so long as the inputs that are used in the production of the exports fall within the same 8-digit HTS classification as the inputs for which the company claimed the exemption.<sup>57</sup>

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<sup>53</sup> See *Preliminary Determination* at 19-20.

<sup>54</sup> See Final Decision Memo at Comment 1.

<sup>55</sup> *Id.* See also Yücel's November 25, 2013, section C response to the Department's antidumping duty questionnaire (Yücel CQR) at 30-32 and Exhibit 4.

<sup>56</sup> See Final Decision Memo at Comment 1. See also Yücel CQR at 30-32 and Exhibit 4; Yücel's December 28, 2013, response to the Department's supplemental questionnaire (Yücel SQR) at 31-34.

<sup>57</sup> See Yücel CQR at 30-32; Yücel SQR at 31-34.

In the *Final Determination*, we considered the petitioners’ argument that the imported hot-rolled coil, for which Yücel claimed a duty drawback, cannot be used in the production of subject merchandise, because it must be API-5CT grade hot-rolled coil. Additionally, the petitioners argued that Yücel explicitly stated that it domestically-sourced all coil suitable for use in its production of OCTG, and yet it applied a duty drawback adjustment to every U.S. sale based on its imports of hot-rolled coil not suitable for use in the production of OCTG.<sup>58</sup>

In responding to this argument, we stated that “there is no indication that the IPR requires subject imports must be actually consumed in the production of, or even possess the technical specifications necessary to produce, reported exports.”<sup>59</sup> Thus, the Department found that because Yücel “demonstrated that the Turkish Government approved and maintained DIIBs through the IPR which documented exports of OCTG to the United States,... {Yücel had} participated in the IPR for purposes of considering their entitlement to duty drawback adjustments.”<sup>60</sup>

However, in the *Final Determination*, after further examination of the record, we determined that Yücel was entitled to a duty drawback adjustment for only a subset of its sales of OCTG to the United States. Specifically, we compared the total quantity of Yücel’s exports of OCTG, as reported in its U.S. sales database, to the projected quantity of all pipe products in Yücel’s DIIBs and found that only a portion of Yücel’s exports of OCTG was reflected in the DIIBs’ projected quantity of exports under the HTS classification 73.06.29.00, which was identified by the Turkish government as OCTG.<sup>61</sup> Meanwhile, the remaining portion of the total quantity of Yücel’s exports of OCTG was reflected in the DIIBs’ projected quantity of exports

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<sup>58</sup> See Final Decision Memo at Comment 1.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* See also Memorandum to the File “Certain Oil Country Tubular Goods from the Republic of Turkey – Final Determination Analysis Memorandum for Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.” dated July 10, 2014; Yücel SQR at 31-34.

under HTS classification 73.06.19.10, which was identified by the Turkish government as line pipe. To adjust for only the import duties exempted based on the volume of exports of OCTG to the United States Yücel reported to the Turkish government in the DIIBs and for which exemptions were claimed under the IPR, we limited Yücel's duty drawback adjustment to reflect only the quantity of exports of OCTG to the United States reflected in the DIIBs' projected quantity of exports under HTS 73.06.29.00.<sup>62</sup>

Finally, in response to arguments that we should adjust Yücel's CV to account for duty drawback, the record established that Yücel did not incur any exempted duties with respect to duty drawback in its production of OCTG. In particular, the company demonstrated that the (only) hot-rolled steel coils that were suitable for consumption in the production of its OCTG exported to the United States were purchased from domestic sources.<sup>63</sup> Because the coils used in the production of Yücel's OCTG were not subject to the exempted import duties, the Department's practice to add exempted duties to a company's costs was not applied.

Before the CIT, parties challenged several aspects of the Department's duty drawback determination with respect to Yücel, including whether we should have granted Yücel any duty drawback adjustment, whether we should have made a corresponding adjustment to Yücel's CV, and whether we should have granted the company's additional requested adjustment on sales identified in its DIIBs as non-OCTG. The Court granted our request for a voluntary remand to reconsider these issues.

## **B. Analysis**

Section 772(c)(1)(B) of the Act provides that export price (EP), or constructed export price

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<sup>62</sup> See Final Decision Memo at Comment 1.

<sup>63</sup> *Id.* See also Yücel's November 25, 2013, section D response to the Department's antidumping duty questionnaire (Yücel DQR) at 22; and Yücel's January 21, 2014, response to the Department's supplemental section D questionnaire (Yücel SDQR) at 22 (where Yücel states "The only supplier from whom {Yücel} bought coils suitable for OCTG was Erdemir" (Ereğli Demir ve Çelik Fabrikaları), which is a Turkish steel producer).

(CEP), shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In other words, as found by the CAFC, “if a foreign country would normally impose an import duty on an input used to manufacture the subject merchandise, but offers a rebate or exemption from the duty if the input is exported to the United States, then Commerce will increase EP to account for the rebated or unpaid import duty {.}”<sup>64</sup>

As discussed above, upon further review of the record evidence, we find that, as acknowledged by Yücel, the inputs for which Yücel received an exemption were not suitable for, and therefore could not have been used in its production of, subject merchandise which was exported to the United States.<sup>65</sup> According to Yücel, the only hot-rolled steel coils that were suitable for consumption in the production of its OCTG exported to the United States were purchased from domestic sources.<sup>66</sup>

After reconsidering this record evidence, and with reflection upon the opinion of the CAFC in *Saha Thai Steel*, we find that the duty drawback provision is not intended to account for such situations in which the input for which a company claims duty drawback could not have been used in the production of subject merchandise. We note that the antidumping statute generally provides a mechanism to examine prices and costs associated with subject merchandise (or foreign like product).<sup>67</sup> To this end, the law and the Department’s practice is to try to account for and isolate those costs and expenses associated with the production and sale of the subject merchandise

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<sup>64</sup> See *Saha Thai Steel Pipe (Public) Company Ltd. v. United States*, 635 F.3d 1335, 1338 (CAFC 2011) (*Saha Thai Steel*).

<sup>65</sup> See Yücel SDQR at 22 (where Yücel states “The only supplier from whom {Yücel} bought coils suitable for OCTG was Erdemir” (Ereğli Demir ve Çelik Fabrikaları), which is a Turkish steel producer).

<sup>66</sup> *Id.* See also Yücel DQR at 22.

<sup>67</sup> See generally section 772(a) (defining export price as “the price at which the subject merchandise is first sold...”); section 773(a) (providing for the determination of the normal value of the subject merchandise which is generally based on the price at which the foreign like product is sold); section 773(e) (providing for the determination of a constructed value for normal value based on costs associated with the production and sale of the foreign like product).

(and foreign like product) in order to make the U.S. price and normal value price comparison.<sup>68</sup>

Thus, adjusting the export price, or constructed export price, for an expense that is not associated with the production of subject merchandise, that is, for an input which cannot be used in the production of subject merchandise, is contrary to statutory goal of accounting for subject merchandise-related items. Indeed, the CAFC recognized in its decision in *Saha Thai Steel* that “if a foreign country would normally impose an import duty on an *input used to manufacture* the subject merchandise, but offers a rebate or exemption from the duty if the input is exported to the United States, then Commerce will increase {export price} to account for the rebated or unpaid import duty,”<sup>69</sup> which indicates that the duty drawback adjustment applies to inputs that can be used in the production of subject merchandise. Thus, we find that, as a threshold matter, under such facts as these, it is inappropriate to grant Yücel’s requested duty drawback adjustment.

We note that this is not a pronouncement on the Turkish duty drawback system as a whole. As discussed above, the Turkish duty drawback system does not require a link between: 1) the inputs on which the company claims an exemption; and 2) the exports, so long as the inputs that are used in the production of the exports fall within the same 8-digit HTS classification as the inputs for which the company claimed the exemption. Rather, this determination is limited to these unique facts – *i.e.*, that Yücel’s inputs at issue are not capable of being used in the production of subject merchandise – which has rarely been faced by the Department in prior antidumping proceedings involving Turkey,<sup>70</sup> and, indeed, were not facts raised by the situation of the other respondent, Borusan, for whom the Department granted a duty drawback adjustment.

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<sup>68</sup> See generally section 772(c) (providing for various adjustments to the export price related to subject merchandise); section 773(a)(6) (providing for various adjustments to the normal value of subject merchandise). See also 19 CFR 351.401 (“In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will use a price that is net of any price adjustment, as defined in §351.102(b), *that is reasonably attributable to the subject merchandise or the foreign like product* (whichever is applicable).”) (emphasis added)

<sup>69</sup> *Saha Thai Steel*, 635 F.3d at 1338 (emphasis added).

<sup>70</sup> See discussion in Comment 7 below.

This is also not a change in the Department’s long-standing two-prong approach to granting a duty drawback adjustment, *i.e.*: 1) that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise. We recognize that the two-prong test has historically been viewed as follows. With respect to the first prong, the Department analyzes “whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of {or exemption from} import duties.”<sup>71</sup> With respect to the second prong, the respondent is required “to show that it has imported a sufficient amount of raw materials (upon which it has paid import duties) to account for the exports, based on which it is claiming rebates {or exemptions}.”<sup>72</sup> In other words, the first prong is concerned with the overall duty drawback program in the foreign country in question, while the second prong is concerned with whether a particular respondent has demonstrated that the raw material imports are sufficient to account for the drawback received on the export of merchandise at issue. We also recognize that, in at least one prior case, with respect to the second prong, the Department sought to apply a “requirement that the imported raw materials ‘must have been appropriate for incorporation into the exported subject merchandise.’”<sup>73</sup>

That being said, we do not believe that the threshold inquiry which we have discussed above is inconsistent with the two-prong analysis. Rather than apply a requirement similar to that

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<sup>71</sup> *Far East Machinery Co. v. United States*, 699 F. Supp. 309, 311 (1988) (*FEMCO II*); *see also Far East Machinery Co. v. United States*, 688 F. Supp. 610, 612 (Ct. Int’l Trade 1988) (*FEMCO I*) (“The focus of the first part of this test, establishing a link between an import duty and a rebate, is on the drawback program itself, and requires a showing that entitlement to rebates is dependent upon the payment of duties.”)

<sup>72</sup> *FEMCO II*, 669 F. Supp. at 311; *see also FEMCO I*, 688 F. Supp. at 612 (“The second part of the test, demonstrating sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product, is by its very terms concerned with the specific application of the drawback program to the firm claiming an adjustment.”)

<sup>73</sup> *FEMCO I*, 688 F. Supp. at 612 (citing *Certain Circular Welded Steel Pipes and Tubes from Taiwan*, 51 FR 43946, 43947 (December 5, 1986)).

discussed in *Certain Circular Welded Steel Pipes and Tubes from Taiwan* in its analysis of the second prong, instead, the Department finds it reasonable to consider, as a threshold matter, whether the statute was designed to account for situations in which the claimed duty drawback adjustment is for certain inputs which are not suitable for use in the production of subject merchandise. As discussed above, because Yücel has shown that the inputs for which it received the exemption from import duties could not have been used in the production of subject merchandise, we find that it is not appropriate under the statute to grant Yücel a duty drawback adjustment and, therefore, do not reach or apply the two-prong analysis.

In light of the above finding, we are denying the entirety of Yücel's claimed duty drawback adjustment. Thus, this renders moot the remaining issues for which the CIT granted a voluntary remand, *i.e.*, whether we should have made an adjustment to Yücel's CV to account for the adjustment to its EP, and whether we should have granted the company's additional requested adjustment on sales identified in its DIIBs as non-OCTG.

#### **Post-Draft Remand Comments**

##### **Comment 4: Whether the Department's Reconsideration of Yücel's Duty Drawback Adjustment Exceeds the Scope of the *Remand Opinion and Order***

Yücel argues that the Department's reconsideration of Yücel's duty drawback adjustment *ab initio* exceeds the scope of the remand as instructed by the Court. Specifically, Yücel argues that the Department's remand request related to certain aspects of its duty drawback decision between the preliminary and final determinations for which no opportunity was given to interested parties to comment, and the Court's instructions were only for the Department to afford Yücel the opportunity to provide evidence and argument as to how differences between the Turkish HTS and the U.S. HTS are such that Yücel reported its exports of OCTG to Turkish Customs under a Turkish tariff heading that the Department believes is not suitable for OCTG. The Court's

instructions to the Department, Yücel argues, were *not* that the duty drawback issue be reopened *ab initio*, or that the Department revisit its decision that the principle of “equivalent goods” in the Turkish drawback legislation obviates any requirement that the grade(s) of coils imported be suitable for production of the grade(s) of pipe exported as subject merchandise. Therefore, Yücel argues, the Department should correct these errors for the final results of redetermination.

The petitioners did not comment with respect to the scope of the remand.

Department Position: We disagree with Yücel that the scope of the remand was limited to the issue of how differences in the Turkish and U.S. HTS categories had an impact on Yücel’s claimed duty drawback adjustment.

Prior to the issuance of the *Remand Opinion and Order*, the Department sought a voluntary remand “to permit Commerce to undertake further consideration of its determination to grant the duty drawback adjustments for Borusan and Yücel, as well as its determination to grant the adjustment for the KKDF tax, a corresponding adjustment to the respondents’ costs of production, and the calculation of the adjustment to a subset of Yücel’s U.S. sales.”<sup>74</sup>

In the *Remand Opinion and Order*, the Court partially denied the Department’s request for a voluntary remand.<sup>75</sup> In particular, the Court sustained Commerce’s determination to grant a duty drawback adjustment and calculation with respect to Borusan, finding that Commerce’s determination was supported by substantial evidence and in accordance with law.<sup>76</sup> Additionally, with respect to the petitioners’ claim that the KKDF tax is not an import duty, the Court held that “Commerce’s interpretation including KKDF as an exempted import duty is reasonable and thus sustained.”<sup>77</sup> The Court considered Commerce’s request for a “general reconsideration of the

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<sup>74</sup> Defendant’s Response in Opposition to Motions for Judgment Upon the Administrative Record, Consol. Court No. 14-00244, Docket No. 59 (June 18, 2015) at 54.

<sup>75</sup> See *Remand Opinion and Order*, Slip Op. 15-107 at 25-26, 37-38.

<sup>76</sup> *Id.* at 24-25.

<sup>77</sup> *Id.* at 24, note 12.

drawback issue because another aspect of the issue is remanded,” but did not grant the request.<sup>78</sup>

However, the Court noted that “{o}ut of an abundance of caution, . . . the court allows the government a brief amount of time to tell the court what error it might have made in this general regard to support its remand request.”<sup>79</sup>

The Court also explicitly stated that it was granting Commerce’s request for a voluntary remand to reconsider an issue raised by Yücel with respect to whether and to what extent an adjustment should be made for a subset of Yücel’s U.S. sales because of inconsistencies between the Turkish and U.S. customs classifications.<sup>80</sup>

In light of the *Remand Opinion and Order* and the Court’s invitation to further clarify the Department’s request for a voluntary remand on the duty drawback issues, the United States explained that it understood:

that the Court has granted Commerce’s request for a remand to reconsider the issue raised by Yücel regarding whether and to what extent an adjustment should be made for a subset of Yücel’s U.S. sales because of inconsistencies between the Turkish and U.S. customs classifications.<sup>81</sup>

The United States additionally sought clarification concerning whether the scope of the remand encompassed:

the remaining Yücel-related duty drawback issues raised by petitioners (*i.e.*, whether the adjustment should have been granted and whether there should have been a corresponding adjustment to Yücel’s cost of production. . . ).<sup>82</sup>

The Court subsequently issued an order indicating that:

As there is already clearly a partial remand on drawback based on Yücel’s challenge, the court finds it appropriate at this time to allow Commerce the opportunity to decide the drawback issue as to Yücel according to its normal established methodologies based on the particular facts that apply to Yücel. Thus

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<sup>78</sup> *Id.* at 25.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 25-26.

<sup>81</sup> See Defendant’s Response to the Court’s September 24, 2015 Opinion and Order and Motion for Clarification, Consol. Court No. 14-00244, Docket No. 94 (October 6, 2015).

<sup>82</sup> *Id.* at 3-4 (internal citations omitted).

the court orders Commerce to consider drawback adjustment to Yücel's export price and whether adjustments to cost of production are needed. It would be inconsistent with determinations in this and other matters and inappropriate at this juncture to reject the adjustment because the Turkish drawback system as a whole is wanting.<sup>83</sup>

Thus, in light of the Court's instructions, the Department proceeded in the Draft Remand to consider three Yücel-related duty drawback issues: 1) whether we should have granted Yücel any duty drawback adjustment; 2) whether we should have accounted for Yücel's duty drawback adjustment in its CV; and 3) Yücel's claim that we did not grant its duty drawback adjustment to all of its U.S. sales of subject merchandise.

Contrary to Yücel's argument, the Department was not limited to the third issue, which further related to the differences between the Turkish and U.S. HTS categories. Rather, the Department sought clarification, and received the same from the Court, that all three relevant issues could be considered upon remand. As discussed above, because the Department has found, in light of the facts presented here, that Yücel's duty drawback adjustment is unwarranted in its entirety, the remaining issues for which the Court granted a voluntary remand, *i.e.*, whether we should have made an adjustment to Yücel's CV, and whether we should have granted the company's additional requested adjustment on sales identified in its DIIBs as non-OCTG, are rendered moot.

We also disagree with Yücel that the Department was required by the Court to afford Yücel an opportunity to provide evidence as to how differences between the Turkish HTS and the U.S. HTS are such that Yücel reported its exports of OCTG to Turkish Customs under a Turkish tariff heading that the Department believes is not suitable for OCTG. We understand that in the *Remand Opinion and Order*, the Court indicated that "Commerce apparently now wishes to

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<sup>83</sup> See Order, Consol. Court No. 14-00244, Docket No. 96 (October 8, 2015) (Clarification Order).

consider additional evidence.”<sup>84</sup> However, we disagree with Yücel that this statement by the Court resulted in a requirement that the Department actually seek such additional evidence beyond what was available on the record. Moreover, in light of the Court’s clarification that the Department could reconsider *all* Yücel-related duty drawback issues, we disagree that the Department was required to reopen the record and accept the evidence which Yücel wishes to submit on this single issue.

**Comment 5: Whether the Department’s Reconsideration of Yücel’s Duty Drawback Adjustment is Inconsistent with its Treatment of Borusan in the Underlying Investigation**

Yücel argues that the Department is precluded from changing its criteria for granting a duty drawback adjustment in such a way that Yücel’s claim for such an adjustment would be treated differently from that of Borusan’s.<sup>85</sup> Specifically, Yücel argues that the Department found in the *Final Determination* that both Borusan and Yücel satisfied the importation requirement of the duty drawback criteria, having imported coils that fell within the same 8-digit HTS heading as the coils for which exemption from import duties was claimed, just as it has repeatedly found in Turkey’s drawback regime, including the doctrine of equivalent goods, is consistent with U.S. duty drawback requirements.<sup>86</sup> Yücel further argues that in the *Remand Opinion and Order* the Court found that no error had been made with respect to Borusan’s requested duty drawback adjustment,<sup>87</sup> and, in response to the *Remand Opinion and Order*, the Department indicated that it was satisfied there was no misallocation and that Borusan was entitled to the claimed adjustment.<sup>88</sup> Therefore, Yücel argues, the Department cannot now apply a rule or interpretation requiring that the imported coils were of a specification appropriate for producing the exported products, when it

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<sup>84</sup> *Remand Opinion and Order*, Slip Op. 15-107 at 26.

<sup>85</sup> Yücel cites to *JKEKT Corp. v. United States*, 675 F. Supp. 2d 1206, 1240 (CIT 2009) (which stated that it would be “impermissibly arbitrary” for the Department to treat similarly situated respondents differently).

<sup>86</sup> Yücel cites to Final Decision Memo at 15.

<sup>87</sup> See *Remand Opinion and Order*, Slip Op. 15-107 at 25.

<sup>88</sup> See Defendant’s Response to the Court’s September 24, 2015 Opinion and Order and Motion for Clarification, Consol. Court No. 14-00244, Docket No. 94 (October 6, 2015).

applied no such rule to Borusan.

The petitioners did not comment on whether the Department treated Borusan and Yücel differently with respect to duty drawback.

Department Position: The Department disagrees with Yücel's arguments. In the *Final Determination*, we found that the requirements under the IPR via DIIB documentation, if met by Turkish companies, satisfied the statute with respect to duty drawback adjustments under U.S. law.<sup>89</sup> We further found that each respondent demonstrated that it sufficiently met the requirements of the IPR to be entitled to exemptions on import-related duties and taxes based on exports, including exports of OCTG to the United States.<sup>90</sup> In the *Remand Opinion and Order*, the Court found no errors in our decision to grant a duty drawback adjustment for Borusan and how we calculated the adjustment.<sup>91</sup> We further clarified for the Court that we did not wish to reconsider these points.<sup>92</sup> Thus, issues related to Borusan's duty drawback adjustment are not within the scope of this remand.

As discussed above, on remand, the Department has further considered the unique factual premise presented by Yücel's request for a duty drawback adjustment, which, as established above, is appropriately within the scope of this remand. In particular, the record demonstrates, and Yücel does not contest, that the inputs for which Yücel received an exemption were not suitable for, and therefore could not have been used in its production of, subject merchandise which was exported to the United States.<sup>93</sup> According to Yücel, the only hot-rolled steel coils that were suitable for consumption in the production of its OCTG exported to the United States were

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<sup>89</sup> See Final Decision Memo at Comment 1.

<sup>90</sup> *Id.*

<sup>91</sup> See *Remand Opinion and Order*, Slip Op. 15-107 at 24-25.

<sup>92</sup> See Defendant's Response to the Court's September 24, 2015 Opinion and Order and Motion for Clarification, Consol. Court No. 14-00244, Docket No. 94 (October 6, 2015).

<sup>93</sup> See Yücel SDQR at 22 (where Yücel states "The only supplier from whom {Yücel} bought coils suitable for OCTG was Erdemir" (Ereğli Demir ve Çelik Fabrikaları), which is a Turkish steel producer).

purchased from domestic sources.<sup>94</sup> In light of these unique facts, which have seldom been faced by the Department, for purposes of this remand, the Department established a threshold inquiry of whether the statute was designed to account for adjustments on inputs which are not suitable for use in the production of subject merchandise.

We note that, as discussed above, no issues related to Borusan's request for a duty drawback adjustment are within the scope of the remand. Therefore, the Department did not apply this threshold inquiry to Borusan. At the same time, we note that the record reflects that Borusan's request for a duty drawback adjustment did not present these same facts, *i.e.*, the imported coils for which Borusan claimed exemption from import duties could have been used in the production of OCTG.<sup>95</sup>

Therefore, we disagree with Yücel's argument that, because we have already affirmed our treatment of Borusan's claimed duty drawback adjustment, we cannot arrive at a different conclusion for Yücel under remand based on a different factual scenario, or that, because we have arrived at a different conclusion, we have necessarily treated the respondents differently. This is not the case. The facts for Yücel are decidedly different from that of Borusan, *i.e.*, the imported coils for which Yücel claimed exemption from import duties could not have been used in the production of OCTG. It is this record evidence which has compelled us under remand to reconsider Yücel's request for a duty drawback adjustment and establish a threshold inquiry of whether, when presented with such facts, a respondent is entitled to such an adjustment pursuant to section 772(c)(1)(B) of the Act. Furthermore, we note that these differences between Borusan's

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<sup>94</sup> *Id.* See also Yücel DQR at 22.

<sup>95</sup> See, *e.g.*, Borusan's Letter to the Secretary of Commerce regarding "Oil Country Tubular Goods from Turkey, Case No. A-489-816, Sections B and C Supplemental Questionnaire Response" dated January 7, 2014, at 31-32 and Exhibit C-39 (APO Version) (demonstrating that Borusan's claims for duty drawback related only to raw material imports which were actually consumed, and, therefore, were suitable for use in the production of subject merchandise). As discussed below in Comment 6, contrary to the petitioners' argument, although Borusan happened to demonstrate that its raw material inputs were actually consumed in the production of subject merchandise, the Department is not requiring parties to make this same demonstration for purposes of the threshold inquiry, which remains whether the inputs in question are suitable for use in the production of subject merchandise.

and Yücel’s claimed duty drawback adjustments demonstrates that the Department has not taken steps in this remand to change its long-standing acceptance of the Turkish duty drawback regime; rather, the Department has found that, as a threshold matter, the statute is not designed to account for duty drawback adjustments for certain inputs which are not suitable for use in the production of subject merchandise.

Based on the above, and in light of the scope of the remand at issue, we believe that it is reasonable to conclude that we may arrive at a different decision for Yücel than we did for Borusan in this remand.

**Comment 6: Whether the Department Properly Relied Upon *Saha Thai Steel***

Yücel argues that the precedent the Department cites for its interpretation of the statute, *Saha Thai Steel*, does not support the Department’s conclusion because *Saha Thai Steel* did not address whether the specification and grade of the imported goods must be technically appropriate for their use as an input in the production of exported subject merchandise.<sup>96</sup> Rather, Yücel argues, what was at issue was whether the drawback adjustment could be applied when the respondent never made a cash payment of import duties. Therefore, the Department’s reliance on *Saha Thai Steel* is misplaced, and, in fact, has never been construed by the Department in this manner.

Yücel further argues that the Department thoroughly considered and rejected Maverick’s reliance on *Saha Thai Steel* as a controlling precedent to attack Yücel’s entitlement to a duty drawback adjustment on the basis of the doctrine of equivalent goods in the original investigation arguing that the Department should apply a test of “fungibility” or “commercial interchangeability” rather than equivalence at an eight-digit HTS level in assessing whether the imports were suitable for granting a drawback adjustment under U.S. antidumping law. Yücel

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<sup>96</sup> *Saha Thai Steel*, 635 F.3d at 1338.

argues that the doctrine of equivalent goods in the Turkish IPR, which operates on an eight-digit HTS level and pursuant to which all hot-rolled coils are equivalent goods for drawback purposes, does not require that Yücel show that it imported hot-rolled coils suitable for the production of OCTG in order to be entitled to the duty drawback adjustment. This was the criterion that the Department applied to both respondents in the investigation and, Yücel argues, it is in no way controverted by *Saha Thai Steel*. Moreover, Yücel argues that the Department did not seek remand on this issue, and the Court did not grant a remand on this issue. Therefore, Yücel argues, the Department may not change legal theories midstream, particularly when doing so results in disparate treatment as between two similarly situated respondents.

Maverick argues that, other than *Saha Thai Steel* cited by the Department, there are many additional court decisions indicating that the inputs must be used in the manufacture of subject merchandise, such as *Wheatland Tube Co. v. United States*, 30 CIT 42, 60 (2006), *Mittal Steel USA, Inc. v. United States*, 31 CIT 1395, 1413 (2007), *Allied Tube & Conduit Corp. v. United States*, 29 CIT at 502, 506 (2005), and *Hornos Electricos de Venezuela v. United States*, 27 CIT 1522, 1525 (2003). Moreover, Maverick argues, citing to *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 17951 (April 20, 2009) and accompanying issues and decision memorandum at Comment 3, that the Department has also used the fact that respondents showed that the inputs in question were consumed in the production process of subject merchandise to support its granting of a duty drawback adjustment. Therefore, Maverick concludes, a key requirement of the duty drawback adjustment under U.S. law relates to the usage of duty-exempt imported raw materials to produce the subject merchandise.

Department's Position: We disagree with Yücel that *Saha Thai Steel* does not support the Department's conclusion. It is true that the issue on which the Court ruled was not specifically

focused on whether the specification and grade of the imported goods must be technically appropriate for their use as an input in the production of exported subject merchandise. However, the Court referenced the inherent requirement that, for the Department to be obligated under the statute to grant a duty drawback adjustment, the imported goods must at least be useable in the production of subject merchandise, when it stated “if a foreign country would normally impose an import duty on an *input used to manufacture* the subject merchandise, but offers a rebate or exemption from the duty if the input is exported to the United States, then Commerce will increase {export price} to account for the rebated or unpaid import duty,”<sup>97</sup> And as we stated in the Draft Remand, after reconsidering record evidence, and with reflection upon the opinion of the CAFC in *Saha Thai Steel*, we find that the duty drawback provision is not intended to account for such situations in which the input for which a company claims duty drawback could not have been used in the production of subject merchandise.

The Department does not agree with Maverick that the inputs for which exemption from import duties are claimed *must be used* in the manufacture of subject merchandise and is a requirement for entitlement to a duty drawback adjustment. However, the Department agrees that for the application of section 772(c)(1)(B) of the Act, there must be a relationship between such inputs and exports of subject merchandise, such that the inputs of a type that *could have been used* in the production of subject merchandise, because this more closely follows the statutory purpose of examining prices and costs associated with subject merchandise and foreign like product.

**Comment 7: Whether the Department’s Reconsideration of Yücel’s Duty Drawback Adjustment is Inconsistent With Established Practice and Court Precedent**

Yücel argues that the Department’s “threshold” consideration – whether the articles imported could actually have been used in the production of the precise articles exported – is a

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<sup>97</sup> *Saha Thai Steel*, 635 F.3d at 1338 (emphasis added).

substantive criterion, inconsistent with established practice, and was expressly rejected in *Far East Machinery Co. v. United States*, 12 C.I.T. 972, 699 F. Supp. 309, 312 (1988) (*Femco*), where the Court approved the Department's determination to grant a duty drawback adjustment, even though the imported inputs could not have been used to produce the exported subject merchandise.

Maverick argues that the Department correctly rejected Yücel's claim for a duty drawback adjustment by finding that it was not appropriate to grant the duty drawback adjustment or, as a threshold matter, to consider its two-prong analysis, because the exempted import duties on which Yücel based its duty drawback calculation did not relate to imports that were used in the production of subject merchandise.

Department's Position: As explained above, the Department finds it reasonable to adopt a new threshold inquiry, for purposes of this remand, of whether the inputs at issue could have been used in the production of subject merchandise. As discussed above, in at least one prior case, *Certain Circular Welded Steel Pipes and Tubes from Taiwan*, at issue in *FEMCO I* and *II*, the Department sought to impose a similar requirement under the second prong of its two-prong analysis that "the imported raw materials 'must have been appropriate for incorporation into the exported subject merchandise.'"<sup>98</sup> The Department ultimately found that the respondent had demonstrated that it "imported a sufficient quantity of coil of the correct specification during the appropriate period to make the pipe which was exported, and for which pipe duties were refunded."<sup>99</sup> As discussed above, we do not believe that the threshold inquiry which we have established here in this remand is inconsistent with the two-prong analysis and, as indicated by *FEMCO I and II*, the Department has applied similar considerations in a prior case. However, rather than apply a requirement similar to that discussed in *Certain Circular Welded Steel Pipes*

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<sup>98</sup> *FEMCO I*, 688 F. Supp. at 612 (citing *Certain Circular Welded Steel Pipes and Tubes from Taiwan*, 51 FR 43946, 43947 (December 5, 1986)).

<sup>99</sup> *FEMCO II*, 699 F. Supp. at 312.

*and Tubes from Taiwan* in its analysis of the second prong, instead, the Department finds it reasonable to consider, as a threshold matter, whether the statute was designed to account for situations in which the claimed adjustment is for certain inputs which are not suitable for use in the production of subject merchandise. As discussed above, because Yücel has shown that the inputs for which it received the exemption from import duties could not have been used in the production of subject merchandise, we find that it is not appropriate under the statute to grant Yücel a duty drawback adjustment. In short, the Department finds that there is no reason to reach or apply the two-prong analysis.

We also disagree with Yücel that the Department's reconsideration of Yücel's claim for a duty drawback adjustment is inconsistent with *FEMCO II*. In *FEMCO II*, parties challenged a somewhat related issue of whether, under the first prong of the two-prong analysis, "the linkage requirement in the Taiwanese system is so broad as to render it a nullity in relation to the United States trade laws."<sup>100</sup> The Court found that it "cannot hold that ITA erred in finding the linkage requirement satisfied by a system which allows some latitude in matching of specifications of imports and exports, in an industry where various sizes and types of pipe are made by the same manufacturers."<sup>101</sup> Thus, the Court did not have before it the immediate question here, whether the Department may impose a threshold inquiry, before applying the two-prong analysis, of whether it is appropriate to grant a duty drawback adjustment for inputs that could not have been used in the production of subject merchandise.

Moreover, as discussed above, this is not a pronouncement on the Turkish duty drawback system as a whole, *i.e.*, the Department is not examining the question at issue in *FEMCO II* of whether the duty drawback system at issue is so broad as to render it a nullity in relation to U.S.

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<sup>100</sup> *Id.*, at 313.

<sup>101</sup> *Id.*

trade laws. Rather, this determination is limited to these unique facts – *i.e.*, that Yücel’s inputs at issue are not capable of being used in the production of subject merchandise, and the Department’s finding that the statute was not intended to grant adjustments under such facts as these.

**Final Results of Redetermination Pursuant to the *Remand Order***

In accordance with the *Remand Order*, the Department has reconsidered its calculation of Yücel’s CV profit and its decision to grant a duty drawback adjustment for Yücel. Based on its analysis, the Department: 1) recalculated Yücel’s CV profit by replacing Yücel’s CV profit and CV selling expenses with an aggregate figure representing Borusan’s calculated CV profit and selling expenses, pursuant to section 773(e)(2)(B)(ii) of the Act; and 2) denied a duty drawback adjustment in its entirety for Yücel in its margin calculation. The weighted-average dumping margin for Yücel for the POI, July 1, 2012, through August 1, 2013, for certain oil country tubular goods from the Republic of Turkey was 35.86 percent in the *Final Determination*. The weighted-average dumping margin for Yücel resulting from the Department’s modified calculations pursuant to this remand is 13.59 percent.<sup>102</sup>

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
Date

<sup>102</sup> See Yücel Final Remand Analysis Memo.