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Investigation  
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August 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less than Fair Value Investigation of Certain  
Hot-Rolled Steel Flat Products from Brazil

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## I. SUMMARY

The Department of Commerce (the Department) determines that certain hot-rolled steel flat products (hot-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015.

We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondent, Companhia Siderurgica Nacional (CSN). The other mandatory respondent Usinas Siderurgicas de Minas Gerais S.A. (Usiminas) will continue to receive facts available with an adverse inference for the reasons outlined in the Department's *Preliminary Determination*.<sup>1</sup> The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

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<sup>1</sup> See *Certain Hot-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 15235 (March 22, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum at the section, "Application of Facts Available and Adverse Inferences."



- Comment 1: Duty Drawback
- Comment 2: Inventory Carrying Costs
- Comment 3: Credit Revenue
- Comment 4: Model Match
- Comment 5: Calculation of CSN LLC's G&A Expense Ratio
- Comment 6: Whether to Use a Consolidated or Non-Consolidated Financial Expense Ratio
- Comment 7: The Market Value for Affiliated Energy Inputs
- Comment 8: Whether to Include Certain Expenses Recorded Directly to Cost of Goods Sold (COGS)

## **II. BACKGROUND**

On March 22, 2016, the Department published its preliminary determination of sales at LTFV in the antidumping duty investigation of certain hot-rolled steel flat products from Brazil.<sup>2</sup> The Department conducted sales and cost verifications of CSN.

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from the petitioners<sup>3</sup> and CSN in June 2016.<sup>4</sup> Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, the weighted-average dumping margins determined in this final determination differ from those in the *Preliminary Determination*.

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.<sup>5</sup> No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

We have conducted this investigation in accordance with section 735(a) of the Act.

## **III. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are certain hot-rolled steel flat products from Brazil. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of the *Federal Register* notice.

## **IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART**

On December 9, 2015, the Department issued its preliminary critical circumstances determination.<sup>6</sup> The Department preliminarily determined that critical circumstances exist for

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<sup>2</sup> *See Preliminary Determination*.

<sup>3</sup> AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LCC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners). SSAB Enterprises, LLC and Steel Dynamics, Inc., submitted case and rebuttal briefs on behalf of all of the petitioners.

<sup>4</sup> *See* SSAB Enterprises, LLC, and Steel Dynamics, Inc.'s case brief dated June 17, 2016 (Petitioners' Brief); CSN's case brief dated June 17, 2016 (CSN Brief); SSAB Enterprises, LCC and Steel Dynamics, Inc.'s rebuttal brief dated June 22, 2016 (Petitioners' Rebuttal Brief); CSN's rebuttal brief dated June 22, 2016 (CSN Rebuttal Brief).

<sup>5</sup> *See Preliminary Determination*, Issues and Decision Memorandum at "Scope of the Investigation."

<sup>6</sup> *See* "Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan,

CSN and Usiminas, but do not exist for all other producers/exporters.<sup>7</sup> The Department afforded all parties an opportunity to comment on, and submit factual information to rebut, clarify, or correct the Department's findings in the *Preliminary Determination of Critical Circumstances*; no party raised the issue of critical circumstances for this final determination.

On October 28, 2015, the Department requested respondents to report their monthly quantity and value data for subject merchandise shipped to the United States beginning with August 2014, through the last day of the month of the publication of the *Preliminary Determination*.<sup>8</sup> As such, respondents reported all relevant shipment data available at the time and updated the data with more recent monthly totals as they became available during the proceeding. In the *Preliminary Critical Circumstances Determination*, the Department set a comparison period prior to the filing month of the Petition (*i.e.*, the Department determined that by June 2015, importers, exporters or producers had reason to believe that a proceeding involving hot-rolled steel was likely; this finding was not challenged by parties for this final determination<sup>9</sup>). As a result, because the Department must use equivalent base and comparison periods in its analysis of whether imports were massive, the post-knowledge comparison period is then the 10-month period including and subsequent to June 2015 (*i.e.*, June 2015-March 2016).

For the final determination, with respect to CSN, at verification, CSN notified the Department of an error in its reported quantity and value data for February 2016. The Department confirmed the validity of CSN's correction at verification and requested that CSN submit revised quantity and value data,<sup>10</sup> which CSN submitted on April 26, 2016.<sup>11</sup> After analyzing the revised data, pursuant to the same methodology used in the *Preliminary Determination of Critical Circumstances*, we find that CSN's shipments of merchandise under consideration during the comparison period increased by less than 15 percent over the respective imports in the base period. As such, we find that critical circumstances do not exist for CSN for the final determination.<sup>12</sup>

With respect to Usiminas, as discussed in the *Preliminary Determination*,<sup>13</sup> Usiminas did not cooperate with this investigation; therefore, the Department determines that the use of facts

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and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Determinations of Critical Circumstances," 80 FR 76444 (December 9, 2015) (*Preliminary Determination of Critical Circumstances*).

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

<sup>8</sup> See the Department's letters to CSN and Usiminas, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat products from Brazil: Request for Monthly Quantity and Value Shipment Data," dated October 28, 2015.

<sup>9</sup> See *Preliminary Determination of Critical Circumstances* at 6-8.

<sup>10</sup> See Memoranda to the File: "Certain Hot-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderurgica Nacional," dated May 20, 2016, at 9-10 (Sales Verification Report).

<sup>11</sup> See CSN's submission to the record "Certain Hot-Rolled Steel Flat Products from Brazil: Revised February 2016 Quantity and Value Shipment Data," April 26, 2016.

<sup>12</sup> For the calculations used in the critical circumstances analysis, see the Memorandum to the File "Final Determination in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Transmission of Calculations for the Final Determination of Critical Circumstances to the File" dated concurrently with this memorandum.

<sup>13</sup> See Preliminary Decision Memorandum at 8.

available with an adverse inference is warranted. Accordingly, we determine that there were massive imports of subject merchandise from Usiminas, pursuant to our practice.<sup>14</sup>

With respect to the non-individually examined companies receiving the all-others rate, as noted in the *Preliminary Determination of Critical Circumstances*, in order to determine whether the companies included in the all others rate have massive imports, it is the Department's practice to rely upon Global Trade Atlas (GTA) import statistics specific to hot-rolled steel, less the mandatory respondents' reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive. Because Usiminas did not cooperate with this investigation, the Department was unable to verify the data provided by Usiminas; thus, for the final determination of critical circumstances for the non-individually examined companies receiving the all-others rate, the Department relied upon the GTA data, less CSN's reported shipment data. This data demonstrates that, for the comparison period, there was an increase in imports of less than 15 percent over the base period, and thus, we continue to find for the final determination, for the non-individually examined companies receiving the all-others rate, that critical circumstances do not exist.

## V. MARGIN CALCULATIONS

For CSN, the Department calculated constructed export price (CEP) and normal value (NV) using the methodology described in the *Preliminary Determination*.<sup>15</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>16</sup>

1. We incorporated all verification-related corrections from the home-market and CEP sales verifications.
2. We excluded insurance expense incurred by CSN from our NV price calculation.
3. We revised the short-term interest rate in our recalculation of inventory carrying cost.
4. We adjusted CSN's total cost of manufacturing to include the steel plant administrative costs, the steel plant stock and cost adjustments, and a portion of the corporate expenses that were excluded from the reported costs.

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<sup>14</sup> See *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value. and Preliminary Affirmative Determinations of Critical Circumstances. in Part*, 79 FR 29423 (May 22, 2014) and accompanying Preliminary Decision Memorandum at 11-16, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

<sup>15</sup> See *Preliminary Determination*.

<sup>16</sup> See Memoranda to the File: Sales Verification Report; "Certain Hot-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderurgica Nacional LLC USA," dated June 2, 2016; Verification of the Further Manufacturing Response of Companhia Siderurgica Nacional S.A. in the Antidumping Duty Investigation of Hot-Rolled Steel Flat Products from Brazil," dated June 3, 2016 (FMG Cost Verification); and, "Verification of the Cost of Production Response of Companhia Siderurgica Nacional S.A. in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil," dated June 8, 2016 (CSN Cost Verification Report).

5. We revised the cost of yield losses experienced during the further processing that is performed at Prada<sup>17</sup> and at subcontractors to reflect the adjustments identified in number 4 above and the affiliated input adjustment 2 from the Preliminary Cost Calculation Memorandum.<sup>18</sup>
6. We adjusted CSN's general and administrative (G&A) expense ratio denominator to exclude transportation and port expenses.
7. We revised the cost of yield losses experienced during the further processing that is performed in the United States to reflect the adjustments identified in number 4 above and from the affiliated input adjustment 2 in the Preliminary Cost Calculation Memorandum.
8. We revised the total further manufacturing cost field (FURCOM) to include the painting cost field (FURPAINT).
9. We revised the denominator of the further manufacturing G&A expense ratio to include CSN LLC USA's (CSN LLC) total cost of goods sold adjusted for company-wide scrap sales and excluding the gain on fixed asset sales, freight out costs, and packing costs.
10. We applied the reported consolidated financial expense rate to the revised cost data field FURCOM exclusive of the portion of the yield loss that was related to the affiliated input adjustment 2 from the Preliminary Cost Calculation Memorandum.

## **VI. COMPARISONS TO FAIR VALUE**

In the *Preliminary Determination*, the Department applied a differential pricing analysis for determining whether application of the average-to-transaction method is appropriate to calculate CSN's weighted-average dumping margin, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act. For CSN, we preliminarily applied the average-to-average (A-to-A) method for all U.S. sales to calculate the weighted-average dumping margins. For this final determination, based on results of the differential pricing analysis, we are continuing to apply the A-to-A method to CSN's U.S. sales.

For CSN, based on the results of the differential pricing analysis, the Department finds that 92.69 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>19</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the

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<sup>17</sup> The record indicates that Companhia Metalurgica Prada (Prada) is CSN's affiliated home-market resale customer.

<sup>18</sup> See Memorandum to Neal M. Halper, Director, Office of Accounting, from Heidi K Schriefer, Lead Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Companhia Siderurgica Nacional" dated March 14, 2016 (Preliminary Cost Calculation Memorandum).

<sup>19</sup> See Memorandum to the File from Peter Zukowski, "Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination Analysis Memorandum for Companhia Siderugica Nacional" dated August 4, 2016 (CSN Final Analysis Memorandum) at margin program output.

average-to-transaction method to all U.S. sales. Thus, for this final determination, the Department is applying the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for CSN.

As indicated above, we based Usiminas' margin on total adverse facts available (AFA).<sup>20</sup> We did not receive any comments from Usiminas or from any other party on this matter.

## VII. DISCUSSION OF ISSUES

### **Comment 1: Duty Drawback**

CSN argues that it qualifies for a duty drawback adjustment because the drawback it received passes the Department's two-prong test. CSN contends that the Department verified that CSN's reported adjustment was based solely on the exemption of duties CSN received on imported (as opposed to domestically-sourced) inputs and that CSN did not request an adjustment for duties and taxes exempted on domestically sourced inputs. Specifically, CSN asserts that the Department verified how CSN links its claimed duty drawback adjustment to actual U.S. sales. CSN contends that the SISCOMEX system (which governs CSN's drawback program), the *Ato Concessorio* (a license granted by the Government of Brazil (GOB) as part of its drawback program), import declarations, invoices, and export declarations, provide the required linkage between imported raw materials and exports to the United States.

CSN argues that the Department should grant CSN the full amount of its reported duty drawback adjustment for the final determination. CSN argues further that, consistent with the Department's recent precedent, the duty drawback adjustment in this investigation should include Brazilian value-added taxes (VATs) (COFINS, ICMS, and PIS<sup>21</sup>) because those taxes function as import duties that are paid on goods that enter Brazil and are computed as a percentage of the customs value of imported goods. CSN contends that the Department's should not rely on *Silicon Metal from Brazil* to determine whether the Brazilian VATs should be removed from CSN's drawback adjustment because that methodology has been superseded by the Department's approach in *Welded Carbon Pipe From Turkey (2011-2012)*,<sup>22</sup> in which the Department takes a more functional approach to determine what constitutes an import duty. CSN argues that since these taxes are calculated as a percentage of the imported goods' customs value and are due at entry, the taxes meet the Department's functional approach of determining an import duty. Additionally, CSN contends that even though these taxes are also applied to, and rebated on, domestic purchases, the Department determined in *Welded Carbon Pipe From*

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<sup>20</sup> See *Preliminary Determination*.

<sup>21</sup> The Social Integration Program tax (PIS); the Social Security Financial Contribution (COFINS); the Tax Over Goods Transit, Interstate and Intercity Transportation and Communications (ICMS). See CSN's questionnaire response (QR) at B-26 and B-27.

<sup>22</sup> See CSN Brief at 5 (citing *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 79665, December 31, 2013, and accompanying Issues and Decision Memorandum, at Comment 4 (*Welded Carbon Pipe From Turkey (2011-2012)*)).

*Turkey (2013-2014)*<sup>23</sup> that the taxes would still be eligible for a drawback adjustment because the taxes function like an import duty.

CSN asserts that if the Department does not grant CSN a duty drawback adjustment on other VATs, it still should grant an adjustment for ICMS taxes on imported material. According to CSN, Brazil's drawback regulations do not provide a tax exemption for ICMS on domestically-sourced inputs and the ICMS is a type of import-dependent tax consistently accepted by the Department as the basis for a drawback adjustment.

With regard to the *Adicional de Frete para Renovação da Marinha Mercante* (or Additional Freight for the Renovation of the Merchant Marine - AFRMM) tax, CSN asserts that while the AFRMM is imposed upon unloading operations, this tax operates almost exclusively on imports. CSN claims that the Department verified that CSN is able to isolate the freight expense paid only on raw material imported to calculate the AFRMM suspension that qualifies for duty drawback adjustment. Citing *Stainless Steel Sheet and Strip from Mexico* and the Department's decision to grant a duty drawback adjustment for a paper processing fee in that case, CSN asserts that the AFRMM tax is the type of import-related tax that has been consistently accepted by the Department as the basis for a duty drawback adjustment in past proceedings.<sup>24</sup>

CSN argues that if its drawback adjustment is denied by the Department, no additional duties or taxes should be added to CSN's cost of production (COP). CSN claims that, with the exception of the AFRMM, none of the other taxes claimed as part of its drawback adjustment are recorded in the inventory value of its raw materials and are not included in CSN's reported costs.

The petitioners argue that CSN has not demonstrated that it qualifies for a duty drawback adjustment. The petitioners contend that the first prong of the Department's two-prong test is satisfied only if the respondent is able to link specific duty-exempt eligible imports to specific exports to the United States on an entry-by-entry basis.

The petitioners contend that CSN fails the second prong of the two-prong test, as well, because CSN did not demonstrate that it imported sufficient quantities of inputs as required by the test.

In addition to employing the two-prong test, the petitioners argue that the Department should also evaluate the nature of the underlying amounts that comprise CSN's claimed adjustment. The petitioners contend that CSN has claimed an adjustment for taxes and fees that should not qualify for a duty drawback adjustment of import duties. Citing *Silicon Metal from Brazil*,<sup>25</sup> the petitioners contend that the Department has determined that VATs are not "import duties" and, therefore, do not qualify for a duty drawback adjustment under section 772(c)(1)(B) of the Act.

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<sup>23</sup> See CSN Brief at 6 (citing *Welded Carbon Steel Standard Pipe and Tube Products From Turkey*, Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 76674, December 10, 2015, and accompanying Issues and Decision Memorandum, at Comment 2 (*Welded Pipe from Turkey (2013-2014)*)).

<sup>24</sup> See CSN Brief at 7 (citing *Stainless Steel Sheet and Strip from Mexico*, 69 FR 6259, February, 10, 2004, and accompanying Issues and Decision Memorandum at Comment 9 (*Stainless Steel Sheet and Strip from Mexico*)).

<sup>25</sup> See Petitioners' Rebuttal Brief at 1-2 (citing *Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225, December 17, 2002, and accompanying Issues and Decision Memorandum (*Silicon Metal from Brazil*)).

The petitioners argue in rebuttal that the cases CSN cites as superseding *Silicon Metal from Brazil* did not cover Brazilian VATs, but involved decisions about whether particular taxes in Turkey were import duties. Additionally, the petitioners claim that *Silicon Metal from Brazil* notes that the Department previously allowed a respondent to include Brazilian VATs in a duty drawback adjustment, but the CIT reversed that decision. In response to CSN's argument that the Department should grant a drawback adjustment to ICMS even if it denies an adjustment for the other VATs, the petitioners argue in their rebuttal that the Department should continue to reject an adjustment for ICMS tax because it is still a VAT.

With regard to the AFRMM tax, the petitioners argue that the AFRMM tax is levied upon unloading operations and not on imports.

The petitioners contend that it is the Department's practice to make a corresponding adjustment to COP when it grants a duty drawback adjustment.

#### Department's Position:

As discussed in the *Preliminary Determination*, section 772(c)(1)(B) of the Act states that CEP shall be increased by "the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States." Consistent with *Certain Cold-Rolled Steel from Brazil*,<sup>26</sup> with respect to AFRMM tax, we find that this tax constitutes an import duty the exemption of which entitles CSN to an adjustment, in accordance with section 772(c)(1)(B) of the Act. We also find, with respect to the COFINS, ICMS, and PIS taxes, that these taxes are not import duties within the meaning of section 772(c)(1)(B) of the Act.

We disagree with the petitioners that the AFRMM tax is not an import duty and, therefore, is not eligible for a duty drawback adjustment. In *Carbon and Certain Alloy Steel Wire Rod from Brazil*, the Department found that the AFRMM "meets the definition of an import duty."<sup>27</sup> The Department found that the AFRMM operates like an "importation tax," similar to the processing fees that the Department also approved for a drawback adjustment in *Stainless Steel Sheet and Strip from Mexico*.<sup>28</sup> As the Department learned at verification, the AFRMM is exempted on raw materials unloaded at Brazilian ports covered by CSN's *Ato Concessorio* and the exemption is realized upon the exportation of the goods manufactured and covered by CSN's *Ato Concessorio*.<sup>29</sup> As described below, CSN is able to link the imported inputs covered by the *Ato Concessorio* to its covered exports to the United States. In our second sections A-D supplemental questionnaire, we requested that CSN report a duty drawback adjustment that included only AFRMM in the reported variable DUTYDRAWAU, and we verified these amounts at verification.<sup>30</sup>

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<sup>26</sup> See *Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 49946, July 29, 2016, (*Certain Cold-Rolled Steel from Brazil*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>27</sup> See *Carbon and Certain Alloy Steel Wire Rod from Brazil*, 70 FR 28271, May 17, 2005, and accompanying Issues and Decision Memorandum at Comment 2 (May 9, 2005) (*Carbon and Certain Alloy Steel Wire Rod from Brazil*).

<sup>28</sup> *Id.*

<sup>29</sup> See Sales Verification Report at 16-18.

<sup>30</sup> *Id.*

We disagree with the petitioners' argument that the AFRMM does not qualify for a duty drawback adjustment because the AFRMM tax is levied upon unloading operations and not on imports and, therefore, it is not a tax on imports and is not import-dependent. In *Welded Carbon Pipe From Turkey (2013-2014)*, the Department granted a drawback adjustment for the KKDF tax determining that it operated as an import duty despite the petitioners' arguments the KKDF tax should not qualify because it is levied on financial transactions and not on the goods and services used to make the product. The Department determined that because "the respondents demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export contingent" and, thus, the KKDF taxes "function like import duties."<sup>31</sup>

The AFRMM tax is similar to the KKDF tax in that AFRMM includes various rates that apply in specific circumstances, including rates that are imposed on purely domestic transactions. Similar to the KKDF, the AFRMM legislation separately stipulates these different rates and their conditions, including a 25 percent tax that is applied only to unloading of imported inputs.<sup>32</sup>

Additionally, similar to the KKDF tax, the suspension of the AFRMM tax is also import-dependent and export contingent. Article 15 of the AFRMM legislation states that the AFRMM tax is suspended on raw materials that are imported under special customs regimes and remains suspended until it is determined that the imports no longer comply with the special customs regime.<sup>33</sup> Specifically, Article 15 of the AFRMM legislation states that, "The payment of the AFRMM incident on the freight charges on the transport of goods subject to special customs procedure shall be suspended until the date of registration of the import declaration that start the dispatch to the corresponding consumption."<sup>34</sup> Thus, we find that AFRMM is import-dependent because suspension of the AFRMM tax only applies to imports and not to unloading of domestic shipments. As described in the verification report, the exemption of the AFRMM under the duty drawback regime is contingent on exportation.<sup>35</sup> Therefore, similar to *Welded Carbon Pipe From Turkey (2013-2014)*, the Department determines that the AFRMM functions as an import duty because it is import-dependent and export contingent.

In determining whether a respondent is entitled to an adjustment to U.S. price for duty drawback, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to CEP.<sup>36</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>37</sup>

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<sup>31</sup> See *Welded Pipe from Turkey (2013-2014)*, Issues and Decision Memorandum at Comment 2.

<sup>32</sup> See CSN's second supplemental questionnaire response (SQR), dated February 18, 2016, at Exhibit S2C-6-E, Article 2 and Article 6.

<sup>33</sup> *Id.* at Article 15.

<sup>34</sup> *Id.*

<sup>35</sup> See Sales Verification Report at 17.

<sup>36</sup> See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

<sup>37</sup> *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and

In the *Preliminary Determination*, we found that CSN had not passed the first prong because it had not demonstrated that the exemption granted by the Brazilian government’s duty drawback program is import dependent and export contingent, but stated that we would examine at verification whether the duty drawback adjustment reported by CSN is based solely on the exemptions of duties it receives for imports of raw materials.<sup>38</sup> We found at verification that CSN was “able to segregate imports of raw material inputs eligible for drawback from imports of raw material inputs not eligible for drawback and all domestically sourced inputs because this information is entered separately into SISCOMEX.”<sup>39</sup> We also found at verification that CSN is able to link imported inputs to the finished goods that it sells to the United States through a combination of the SISCOMEX system, its *Ato Concessorio*, declarations of importation, bills of lading, cargo manifests, and export registration documents.<sup>40</sup>

We disagree with the petitioners’ argument that CSN has not satisfied the first prong because it was unable to tie the claimed adjustment to specific U.S. sales on an entry-by-entry basis. All of CSN’s U.S. sales during the POI are tied to an advance license, the *Ato Concessorio*, and, as described above, CSN has demonstrated that it can link its eligible imported inputs to its exports to the United States.

With respect to the second prong, we disagree with the petitioners’ argument that CSN has not provided evidence that it has imported sufficient quantities of raw material inputs. CSN submitted a technical report and annex as part of its application for an *Ato Concessorio*.<sup>41</sup> This technical report and annex outlines the amount of raw material inputs used to produce the products that are to be exported. Additionally, as part of its application for the *Ato Concessorio*, CSN submitted an export plan for the calendar year. As the Department found at verification, the GOB uses this information CSN provided as part of its application process to ensure that the imports and exports reported in SISCOMEX remain in balance. As the Sales Verification Report describes, “the Brazilian government must grant authorization before exports eligible for duty drawback are allowed to leave Brazil. This process involves CSN generating an export registration document through SISCOMEX and will occasionally include a physical inspection of the finished products at the port before the GOB will grant the exemption of duties or taxes” to ensure that CSN’s exports comply with its *Ato Concessorio*.<sup>42</sup> We find that this is sufficient evidence that CSN has imported sufficient quantities of raw material inputs to satisfy the second prong. Similar to the Department’s findings in *Carbon and Certain Alloy Steel Wire Rod from Brazil*,<sup>43</sup> we find that CSN has passed the two-pronged test.

We agree with the petitioners’ argument that Department should make a corresponding adjustment to COP as a result of granting a duty drawback adjustment. In *Certain Corrosion-*

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accompanying Issues and Decision Memorandum at Comment 2. See also *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006).

<sup>38</sup> See *Preliminary Determination* at 12.

<sup>39</sup> See Sales Verification Report at 17.

<sup>40</sup> *Id.* at 17-18.

<sup>41</sup> See CSN’s questionnaire response (QR), dated November 19, 2015, at Exhibit C-15-A.

<sup>42</sup> See Sales Verification Report at 17.

<sup>43</sup> See *Carbon and Certain Alloy Steel Wire Rod from Brazil*, Issues and Decision Memo at Comment 2.

*Resistant Steel Products from India*, the Department explained that “the application of the duty drawback adjustment which simply accepts a respondent’s claimed adjustment for duty drawback with no consideration of what import duties are included in the respondent’s costs of materials may result in an imbalance in the comparison of CEP with NV.”<sup>44</sup> Thus, in order to address this imbalance and accurately determine an adjustment for the “amount of import duties imposed... which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States,”<sup>45</sup> we find it appropriate to make an upward adjustment to U.S. price based on the per unit amount of the import duty cost included in the COP for each control number. The mechanics of this adjustment are detailed in CSN’s Final Cost Calculation Memorandum.<sup>46</sup>

We disagree with CSN that COFINS, ICMS, and PIS taxes are eligible for a drawback adjustment. In previous investigations, the Department has found that COFINS, ICMS, and PIS are VATs<sup>47</sup> and, in accordance with the Department’s past practice, we do not find that VATs are duties under section 772(c)(1)(B) of the Act.<sup>48</sup> Additionally, as the petitioners argue, the Department previously granted a drawback adjustment for Brazilian VAT,<sup>49</sup> but, pursuant to a CIT remand, the Department recalculated its drawback adjustment to exclude the VAT.<sup>50</sup> The CIT affirmed the Department’s recalculation of the duty drawback adjustment excluding VAT.<sup>51</sup> Because the CIT’s decision is specific to this issue, we have not changed our policy concerning VAT and duty drawback. We disagree with CSN that the *Welded Carbon Pipe From Turkey* reviews apply in this instance because the tax at issue in those reviews was not a VAT.<sup>52</sup> Therefore, pursuant to the CIT decision, section 772(c)(1)(B) of the Act, and past determinations by the Department, we have excluded VAT from CSN’s claimed duty drawback adjustment for purposes of the final determination.

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<sup>44</sup> See *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329, June 2, 2016, and accompanying Issues and Decision Memorandum at 8.

<sup>45</sup> See section 772(c)(1)(B) of the Act.

<sup>46</sup> See CSN’s Final Cost Calculation Memorandum.

<sup>47</sup> See, e.g., *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225 (Dec. 17, 2002), and accompanying Issues and Decision Memo at 9–10; *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (Feb. 13, 2006), and accompanying Issues and Decision Memo at 3 (Feb. 3, 2006), and *Carbon and Certain Alloy Steel Wire Rod from Brazil*, Decision Memo at Comment 1.

<sup>48</sup> See *Silicon Metal from Brazil*, Issues and Decision Memorandum at 10 and also see *Carbon Steel Pipe and Tube from Turkey*, 62 FR 26287 (May 13, 1997), and accompanying Issues and Decision Memorandum at Comment 5. In Brazil, VAT are paid on inputs regardless of whether the inputs have been imported or purchased domestically. Section 772(c)(1)(B) of the Act states that EP will 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.” Further, as stated in *Carbon Steel Pipe and Tube from Turkey*, we note that the aforementioned section of the statute makes no provision for an adjustment for VAT.

<sup>49</sup> See *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806 (August 19, 1994).

<sup>50</sup> See *Silicon Metal from Brazil, Final Results of Redetermination Pursuant to Court Remand*, 67 FR 10664 (March 8, 2002). See also <http://enforcement.trade.gov/frn/2002/0203frn/02-5658.txt>.

<sup>51</sup> See *American Silicon Technologies et. al v. United States*, No. 94-09-00555, Slip Op. 99-94 (Ct. Int’l Trade September 9, 1999).

<sup>52</sup> See *Welded Carbon Steel Standard Pipe and Tube Products from Turkey (2013-2014)*, Issues and Decision Memorandum at Comment 2.

## **Comment 2: Inventory Carrying Costs**

CSN argues that, consistent with standard reporting methodologies, it reported its transaction-specific imputed inventory carrying costs in both markets with reference to the relevant time the merchandise was held in inventory, the relevant short-term interest rate, and the relevant valuation of the merchandise in inventory. CSN contends that it valued the merchandise for each transaction based on the total cost of manufacturing (COM) for the relevant control number. Citing *Certain Orange Juice from Brazil*,<sup>53</sup> CSN argues that this is the established valuation approach utilized by respondents in nearly all antidumping duty investigations and reviews.

CSN argues that in its *Preliminary Determination*, the Department recalculated CSN's reported inventory carrying costs in the home market, as well as in the U.S. market. CSN asserts that, according to the Department, it applied the standard formula but cited to only one case as precedent for its recalculation. CSN contends that, while the Department did not articulate what it meant by the "standard formula," a review of the Department's *Preliminary Determination* calculation memorandum indicates that the Department valued merchandise in its recalculation of inventory carrying costs based on total COP, inclusive of G&A expenses and interest expenses, and the cost associated with placing merchandise in inventory, inclusive of transportation and packing expenses.

CSN argues that, for its final determination, the Department should calculate inventory carrying costs based on total COM, as reported by CSN, and the Department should not add costs associated with G&A expenses, interest expenses, and with placing the merchandise in inventory. CSN disagrees with the Department's approach in *Ball Bearings from France*,<sup>54</sup> in which the Department included additional costs in the inventory value when calculating inventory carrying costs. Citing *Stainless Steel Sheet and Strip in Coils from Taiwan*,<sup>55</sup> CSN argues that *Ball Bearings From France* is an isolated and dated instance that does not reflect the Department's normal practice and this practice inappropriately results in an overstatement of the imputed inventory carrying costs.

CSN argues also that, in the event the Department decides to follow the methodology it used in the *Preliminary Determination*, with respect to Prada inventory carrying costs calculation, the Department should include all pre-warehouse movement expenses in its valuation of merchandise for Prada. According to CSN, in the *Preliminary Determination*, the Department neglected to include the movement expenses in fields INLFTW1H, WAREHS1H, PACK1H, and INLFTC1H on sales by Prada, despite the fact that such expenses were incurred prior to the storage of material at Prada.

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<sup>53</sup> See CSN Brief at 8 (citing *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584, (August 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 5 (*Certain Orange Juice from Brazil*)).

<sup>54</sup> *Id.* at 9 (citing *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 13 (*Ball Bearings From France*)).

<sup>55</sup> *Id.* at 9-10 (citing *Stainless Steel Sheet and Strip in Coils From Taiwan*; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7519 (February 13, 2006), and accompanying Issues and Decision Memorandum, at Comment 6 (*Stainless Steel Sheet and Strip in Coils from Taiwan*)).

Citing *Paul Muller Industrie GmbH & Company v. United States*,<sup>56</sup> the petitioners argue that the CIT has held that “there is no methodology mandated by the statute for assessing inventory cost,” so “Commerce has considerable discretion to determine its method of calculation.” The petitioners argue further that the Department, therefore, has the legal discretion to compute inventory carrying costs by including G&A expenses, interest expenses, and transportation and packing costs associated with placing the merchandise in inventory.

The petitioners rebut CSN’s complaint that the Department’s “established valuation approach” bases inventory carrying costs solely on the COM by stating that CSN neglects to mention that in *Ball Bearings From France*, the Department consciously reconsidered and refined its calculation methodology to include expenses other than those associated with COM. According to the petitioners, *Ball Bearings from France* thus makes clear that it is appropriate for the Department to compute inventory carrying costs based not only on COM but also on other costs associated with placing the merchandise in inventory, which would include transportation costs, packing costs, G&A expenses, and interest expenses. The petitioners assert that this methodology is consistent with section 773(b)(3) of the Act, which instructs the Department, when tallying the total COP, to add G&A, interest expenses, and packing costs to COM. The petitioners contend that these additional components of cost are incurred by the foreign company in producing the merchandise and, therefore, constitute additional costs associated with placing the merchandise in inventory in the United States. The petitioners argue that utilizing a methodology that includes these additional costs in the computation of inventory carrying costs is, therefore, not just within the Department’s lawful discretion, but also sensible.

The petitioners argues that CSN’s assertion that *Ball Bearings From France* is a “dated” and “isolated” case is telling since among the multiple decisions CSN cites as ostensibly representative of the Department’s strict adherence to a COM-only methodology for calculating inventory carrying costs, none of the cases cited by CSN distinguish or reject the analysis in *Ball Bearing From France*. According to the petitioners, virtually all of the cases cited by CSN predate the Department’s decision in *Ball Bearings From France*, and the only case that CSN cites that post-dates the *Ball Bearings From France* case does not mention the bearings case or address the components of inventory carrying costs. The petitioners contend that in *Ball Bearings From France*, the Department considered the earlier cases CSN cites and concluded that its refined methodology “does not contravene” them.<sup>57</sup> Moreover, the Department explained that the “issue in each of those cases was whether the inventory value we use to calculate ICCs should be a cost-based value or a price-based value...Which costs should be included in the inventory value was not at issue in any of these cases.” The petitioners contend that *Certain Orange Juice from Brazil* also did not address which costs to include in inventory carrying costs; instead it was concerned with whether inventory carrying costs were product-specific or not. The petitioners argue that, therefore, CSN has not identified a single decision by the Department that has explicitly considered the issue and reached an outcome contrary to *Ball Bearings From*

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<sup>56</sup> See Petitioners’ Rebuttal Brief at 4 (citing *Paul Muller Industrie GmbH & Company v. United States* 502 F. Supp. 2d 1271, 1276 (CIT 2007), affirmed without opinion, 283 Fed. App’x 789 (Fed. Cir 2008) (*Paul Muller Industrie GmbH & Company v. United States*)).

<sup>57</sup> *Id.* at 6 (citing *Ball Bearings From France*).

*France*. The petitioners argue further that there is no reason for the Department to break with its precedent, so it should reaffirm and continue to rely on *Ball Bearings From France*.

Regarding CSN's argument that if the Department applies the refined approach set out in *Ball Bearings from France*, then it should include all pre-warehouse movement expenses in its valuation of merchandise for Prada, the petitioners argue that this approach would result in double counting and therefore should be rejected by the Department. The petitioners argue that CSN's home-market sales database is a consolidated sales listing that includes both CSN's sales to unaffiliated customers and sales by Prada to its customers. According to the petitioners, with respect to Prada's sales, CSN reported those costs and expenses incurred by CSN in selling to Prada as well as the additional costs and expenses Prada incurred in selling to the final unaffiliated home-market customer in the home-market sales database. The petitioners state that, as such, the Department should ignore CSN's attempt to artificially lower its margin and leave its inventory-carrying cost calculations unaltered.

Department's Position: In *Ball Bearings From France*, we explained that, although we have had a practice of calculating inventory carrying costs on the COM of the merchandise in inventory, we determined it appropriate to refine the approach to measuring this imputed expense.<sup>58</sup> Specifically, we explained in *Ball Bearings From France* that inventory carrying costs are a measurement of the time value of money inherent in holding merchandise in inventory over a period time in which the respondent has not recovered the costs it incurred in manufacturing the merchandise and in placing the merchandise in inventory.<sup>59</sup> Therefore, we determined that the costs to the respondent of the merchandise sitting in inventory include not only the as-yet-unrecovered cost of manufacturing the merchandise but also those expenses associated with placing the merchandise in inventory. We concluded that these additional expenses include the freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse as well as packing expenses.<sup>60</sup> As such, and consistent with *Ball Bearings From France*, for the *Preliminary Determination*, we recalculated CSN's inventory carrying cost to ensure that it includes not only COM but also other costs associated with placing the merchandise in inventory, which include transportation costs, packing costs, G&A expenses, and interest expenses.<sup>61</sup>

We disagree with CSN's contention that *Ball Bearings From France* is an "isolated" and "dated" Departmental decision. As we indicate above, the Department has utilized this methodology in other cases since *Ball Bearings From France*.<sup>62</sup> Further, all of the decisions cited by CSN predate *Ball Bearings From France* and, therefore, we find CSN's argument that this is not our practice to be misguided. CSN has not identified a single decision subsequent to *Ball Bearings*

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<sup>58</sup> See *Ball Bearings from France*.

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

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

<sup>61</sup> See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*; 74 FR 41374, (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 23. See also, *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission in Part*; 2009-2010, 79 FR 35312 (June 20, 2014), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>62</sup> *Id.*

*From France* in which inventory carrying costs was calculated without the additional expenses at issue. Thus, we find CSN's argument in this regard to be unpersuasive.

We agree with CSN's argument that, in the event we continue to follow our inventory carrying cost methodology for the final determination, we should adjust Prada's inventory carrying cost calculation to include all pre-warehouse movement expenses. Although CSN provided one home-market sales database that includes both CSN's sales to unaffiliated customers and sales made by its affiliate, Prada, it calculated CSN's inventory carrying cost separately from Prada's inventory carrying cost calculation.<sup>63</sup> Thus, for the final determination we have included in our revised inventory carrying cost calculation all pre-warehouse movement expenses in our valuation of merchandise for Prada.

### **Comment 3: Credit Revenue**

CSN argues that the Department should cap credit revenues by credit expenses, which is, according to CSN, consistent with the Department's treatment of freight and warehousing revenue in the *Preliminary Determination*. Citing *Ferrosilicon from the Russian Federation*,<sup>64</sup> CSN asserts that, while it recognizes that the Department has not capped credit revenues by credit expenses in other proceedings, there is no valid conceptual reason to distinguish the Department's treatment of credit revenue from the Department's consistent treatment of other revenue streams associated with sales such as freight revenue and warehousing revenue. Citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand*,<sup>65</sup> CSN argues that just as it is inappropriate to increase the gross unit selling price as a result of profit earned on the provision of freight or warehousing services, it is also inappropriate to increase the gross unit selling price as a result of profits earned on extending additional financing to customers.

CSN argues that it is also incorrect to liken the credit revenue at issue here to a "post-sale price adjustment" because the record indicates that certain customers will be charged interest for late payment while certain customers are exempt from such late payment charges. According to CSN, its customers are aware at the time of invoicing of the payment terms, which provide revenue to CSN to cover credit. Thus, CSN argues, credit revenues are not at all analogous to "post-sale price adjustments." CSN asserts that if customers pay beyond the allotted payment terms, they are making a decision to pay an amount for credit revenue, above and beyond the value of the steel on the commercial invoice to CSN and, therefore, there is a corresponding increase in the imputed credit expense that CSN experiences.

CSN contends that the invoice price issued to the customer reflects CSN's pricing behavior for steel, taking into consideration the payment period granted to the customer. CSN argues that the customer's decision to pay financing charges for deferred payment beyond the initial payment period is a decision the customer makes that is separate from its decision to purchase steel from

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<sup>63</sup> See CSN's QR at Exhibits S1B-24 and S1B-24.

<sup>64</sup> See CSN Brief at 11 (citing *Ferrosilicon From the Russian Federation: Final Determination of Sales at Not Less Than Fair Value*, 79 FR 44393 (July 31, 2014), and accompanying Issues and Decision Memorandum at Comment 7 (*Ferrosilicon from the Russian Federation*)).

<sup>65</sup> *Id.* at 11 (citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014), and accompanying Issues and Decision Memorandum at Comment 4 (*Circular Welded Carbon Steel Pipes and Tubes From Thailand*)).

CSN, and the corresponding credit revenue should not factor into the net price derived by the Department for purposes of its margin calculations.

CSN explains that the provision of financing services, as with the provision of freight and warehousing services, to CSN's customers should be considered separate and apart from the determination of the net price of the sales transaction. Accordingly, CSN argues, the Department should cap credit revenues by credit expenses in the final determination, as it does for freight and warehousing revenue.

The petitioners argue that, contrary to CSN's contention, the Department has long recognized a conceptual difference between credit revenues and freight revenues. Specifically, the petitioners argue that, under 19 CFR 351.401(c), the Department treats credit revenues as price adjustments, which do not warrant being capped by credit expenses, whereas freight-related revenues are treated as offsets to freight expenses and, therefore, they do warrant being capped by freight expenses.

The petitioners contend that, in arguing to the contrary, CSN is simply rehashing the arguments raised by the respondents in *Ferrosilicon from the Russian Federation* and in countless other decisions.<sup>66</sup> The petitioners assert that the Department has considered those arguments and it has rejected them because it considers credit revenues as price adjustments that do not warrant being capped by credit expenses. According to the petitioners, CSN offers nothing original to this argument, nor has it provided any specific evidence in this proceeding that would justify the Department's reversal from its established practice. The petitioners, therefore, recommend that the Department continue to follow its established practice by not capping CSN's credit revenue by its credit expenses.

Department's Position: The Department's practice is to treat credit revenue when received for late payments as a post-sale price adjustment and not as an offset to a specific expense. As the Department explained in *Orange Juice from Brazil* and in *Ball Bearings from France, Germany and Italy*<sup>67</sup> "the statute does not speak to the treatment of fees associated with late payments. In such circumstances, the Department must determine the most appropriate methodology to use," referencing *U.S. Steel Group v. United States*, 225 F.3d 1284, 1290 (Fed. Cir. 2000) and *Smith-Corona Group v. United States*, 713 F.2d 1568, 1582 (Fed. Cir. 1983) *cert. denied*, 465 U.S. 1022 (1984). Additionally, we clarified in *Orange Juice from Brazil* that revenue earned as late payment fees is a different type of revenue than movement- or packing-related revenues, citing *Cement from Mexico*,<sup>68</sup> where we explained that our longstanding practice of treating early

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<sup>66</sup> See Petitioners' Rebuttal Brief at 9 (citing *Ball Bearings and Parts Thereof From France, Germany, and Italy*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum; *Gray Portland Cement and Clinker from Mexico*, 71 FR 2909 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 9).

<sup>67</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 76 FR 50176 (August 12, 2011) and accompanying Issues and Decision Memorandum at comment 2 (*Orange Juice from Brazil*). See also, *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum, at Comment 6 (*Ball Bearings From France, Germany and Italy*).

<sup>68</sup> See *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909 (January 18, 2006) and accompanying Issues and Decision Memorandum at comment 9

payment discounts as an adjustment to price leads us to the same determination concerning late payment increases to the price. In the instant case, where CSN claims fees charged for late payments as credit revenue, the revenue is appropriately treated a post-sale price adjustment. In addition, as CSN has acknowledged in citing *Ferrosilicon from the Russian Federation*,<sup>69</sup> the Department's well-established practice is not to cap such fees (credit revenue) because the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment; this price adjustment may or may not be equivalent to any reduction or increase in CSN's actual or imputed interest expenses. Thus, for the final determination, we have continued to treat CSN's credit revenue as a post-sale adjustment and we have not capped such fees by credit expenses.

#### **Comment 4: Model Match**

CSN argues that in determining margins for the final determination, the Department should be certain not to match U.S. sales of non-blank products to home-market sales of blanks. CSN states that comparisons of blanks to material in standard coil or cut-to-length form would be extremely distortive and should be avoided. According to CSN, blanks are very different products from hot-rolled steel material in coil form, rectangular cut-to-length sheet form, or other standard, non-coil, symmetrical shapes. CSN points out that blanks are flat-rolled steel products that have been cut from coils to meet customer specified dimensions and geometries, and are intended to be used by the customer in the manufacture of steel parts, components, and other non-subject articles after stamping and/or drawing of the blank.

CSN explains that blanks produced by CSN include "press blanks" that are further manufactured from steel coils by cutting into customer-specified shapes (other than rectangles or squares), which may or may not be symmetrical, and "tailored welded blanks" that include two or more pieces of steel of different physical characteristics that are cut to customer-specified shapes and welded together. According to CSN, steel blanks require substantial additional manufacturing steps after the flat-rolled coil is initially produced, using specialized manufacturing equipment such as transverse slitters, stamping machines, and even welding apparatus. CSN explains that it produces blanks at service centers using specialized manufacturing equipment and customer application-specific custom dies that are dedicated to this purpose.

CSN explains that the manufacture of blanks is a distinct line of business for CSN, but equally important, it is a distinct line of business that CSN undertakes in the home market, and not in the U.S. market. According to CSN, "blanks" have a higher manufacturing costs and higher prices that would distort any comparisons with U.S. sales.

The petitioners argue that in CSN's model match rebuttal comments,<sup>70</sup> CSN recognized that blanks are arguably already identified in the Department's proposed Field 3.7 (FORMH/U) under code "4" for "Not in coil (not squares or rectangles)," but that it nevertheless

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(*Cement from Mexico*).

<sup>69</sup> See *Ferrosilicon From the Russian Federation*.

<sup>70</sup> See CSN's Comments on Model Match Criteria: "Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom — Comments on Product Characteristics and Product-Comparison Criteria", dated September 16, 2015.

recommended that a separate code under the FORMH/U characteristics should be created to explicitly segregate blanks from other forms of material to ensure that blanks are not compared to material in coil form, rectangular cut-to-length sheet form, or other standard, non-coil, symmetrical shapes.

The petitioners argue that the Department already considered CSN's argument and rejected it when it issued its initial questionnaire without adding a new code under FORMH/U to accommodate blanks. The petitioners assert that CSN has not pointed to any changed circumstance that would warrant reversal of the Department's prior determination. The petitioners argue that, with respect to CSN's assertion that the lack of a separate code for blanks will be "extremely distortive," CSN neither explains why it would be distortive, nor points to record evidence of the alleged distortion. For these reasons, the petitioners contend that there is no reason for the Department to depart from the model match criteria it previously adopted.

Department's Position: Section 771(16)(B) of the Act provides three criteria for considering a comparison-market model to be considered similar to the U.S. model: 1) the comparison-market model must be produced in the same country and by the same person as the subject merchandise; 2) the comparison-market model must be like the subject merchandise in component material or materials and in the purposes for which used; 3) the comparison-market model must be approximately equal in commercial value to the subject merchandise. Section 771(16)(C) of the Act also lists three criteria for similar matches where matches are not found under section 771(16)(B) of the Act: 1) the comparison-market merchandise must be produced in the same country and by same person and of the same general class or kind as the merchandise which is the subject of the order; 2) the comparison-market merchandise must be like that merchandise in the purposes for which used; 3) the administering authority must determine that the comparison-market merchandise may reasonably be compared with the subject merchandise. Absent matches under section 771(16) of the Act, we will resort to constructed value pursuant to section 773(e) of the Act. Thus, in this case, we have applied our model match methodology in accordance with section 771(16)(B) of the Act.

CSN argues that the Department must be certain not to match U.S. sales of non-blank products to home-market sales of blanks, because it claims that doing so would result in distortive or inappropriate model matches. However, CSN has not identified whether, in fact, any matches of U.S. sales of non-blank products to home-market sales of blanks products have occurred in the Department's margin calculation for the *Preliminary Determination*. Thus, CSN has not pointed to any evidence on the record indicating that such model matches or other distortion and the alleged resulting distortion, actually occurred as a result of comparing CSN's U.S. sales of subject merchandise with its home market models of the foreign like product. As CSN acknowledges, the Department's model match hierarchy already segregates what CSN describes as "blanks" from coils and from square and rectangular non-coil products in Field 3.7 (FORMH/U) under code "4" for "Not in coil (not squares or rectangles)."<sup>71</sup> Furthermore, even if there were a reason to distinguish "blanks" products from non-blanks products reported under code "4" to avoid inappropriate model matches as CSN contends, we would not be able to do so as CSN did not identify on the record those particular "blank" products it asserts should not be matched to its U.S. sales. Absent this information, CSN's arguments on this subject are wholly

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<sup>71</sup> *Id.*

speculative. Indeed, what CSN would have the Department do absent this information is not apparent.

The Department, however, is not persuaded by CSN's assertion that matching non-blanks merchandise sold in the United States to "blanks" sold in the home market would somehow provide inappropriate model matches. In the vast majority of market-economy proceedings, the Department's practice has been that any and all comparison-market models that are within the class or kind of merchandise are possible similar comparisons, as long as they meet the criteria of sections 771(16)(B) or (C) of the Act.<sup>72</sup> In other words, if models meet the description of the scope of an antidumping duty investigation or order, we consider such products to be like the subject merchandise in component material or materials and in the purposes for which used.<sup>73</sup> Thus, in our view, it could be appropriate to match sales of blanks with sales of non-blanks in light of our normal practice and our interpretation of section 771(16) of the Act.

CSN argues that "blanks" have higher manufacturing costs and higher prices and, therefore, would distort any comparisons with U.S. sales. Section 771(16)(B)(iii) of the Act instructs that the comparison market model must be approximately equal in commercial value to the subject merchandise. In antidumping duty proceedings, section 773(a)(6)(C)(ii) instructs the Department to make an adjustment to normal value to account for a difference between normal value and export price, or constructed export price, where such difference is due to the fact that similar merchandise (compared with identical merchandise) is used as the basis for the NV. Therefore, where appropriate the Department makes a "difference-in-merchandise" adjustment. Further, we use the 20-percent "cap" on the difference-in-merchandise adjustment to determine whether two different models are approximately equal in commercial value. Because we applied our normal methodology of disregarding potential matches with a difference-in-merchandise adjustment of greater than 20 percent, all the matches we actually made are approximately equal in commercial value and adjusted for a difference-in-merchandise, pursuant to section 773(a)(6)(C)(iii), where appropriate. In this context, CSN's argument could be applied to a wide range of different physical characteristics. For example, CSN's argument could essentially be used to argue that the Department should never compare models with different specifications.

Although CSN argues that "blanks" are very different products manufactured from hot-rolled material in coil form, rectangular cut-to-length sheet form, or other standard, non-coil, symmetrical shapes, CSN has not articulated why such differences would be sufficient to render "blanks" so dissimilar to the subject merchandise that the Department's 20-percent "cap" could not account for and eliminate any potential inappropriate matches. Typically, we set no limits on the comparisons between the subject merchandise and the foreign like product beyond not considering models whose difference-in-merchandise adjustment is greater than 20 percent of total COM. In a normal market-economy case, the fact that a model meets the definition of "foreign like product" is enough to make it "similar" for purposes of sections 771(16)(B) and (C) of the Act as long as the difference-in-merchandise is 20 percent or less.<sup>74</sup>

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<sup>72</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

### **Comment 5: Calculation of CSN LLC's G&A Expense Ratio**

The petitioners argue that, in the *Preliminary Determination*, the Department incorrectly accepted CSN LLC's allocation of G&A expenses to its further manufacturing activities only. According to the petitioners, the Department's longstanding practice is to treat all G&A expenses incurred by an affiliated importer as U.S. indirect selling expenses. For example, in *Citric Acid from Canada*, the Department included all G&A expenses in the indirect selling expense ratio because the expenses support the affiliated importer's selling functions.<sup>75</sup> Thus, where further manufacturing activities take place, the petitioners claim that the affiliated importer's G&A expenses should be allocated to all company activities, *i.e.*, to further manufacturing and to re-selling. Furthermore, the petitioners point out that the Department's *Preliminary Determination* conflicts with *Line Pipe from Korea*,<sup>76</sup> where the Department assigned G&A expenses not only to further manufacturing costs, but also to the cost of the merchandise prior to further-manufacturing and to the cost of all non-further manufactured merchandise.<sup>77</sup>

Finally, in addition to advocating a change in the application of the G&A expense ratio, the petitioners proffer that CSN LLC's costs should be revised based on the Department's verification findings. Thus, the denominator to CSN LLC's G&A expense ratio should be revised to include toll processing costs, third-party painting costs, and scrap offsets, and the revised G&A expense ratio should be applied to a revised FURCOM which includes FURPAINT.<sup>78</sup>

CSN rebuts that the petitioners' proposal to apply the reported G&A expense ratio to the total costs for both further manufactured and non-further manufactured products creates a mismatch between the denominator of the calculation (further processing costs only) and the per-unit costs to which the ratio would be applied (the full cost of each transaction, which includes the further processing costs and the costs of the imported coils). While CSN disagrees with the necessity of this adjustment, CSN argues that the Department must ensure that any revision to the reported ratios, whether applied as G&A or indirect selling expense (INDIRSU), must be calculated and applied in a consistent manner.<sup>79</sup>

**Department's Position:** We agree with the petitioners, in part. Specifically, we agree that G&A activities support the general activities of a company as a whole, including its sales and manufacturing functions.<sup>80</sup> Therefore, consistent with our decision in *Line Pipe from Korea*, we

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<sup>75</sup> See Petitioners' Brief at 1 (citing *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 37286 (July 1, 2014) (*Citric Acid from Canada*), and accompanying Issues and Decision Memorandum at Comment 3).

<sup>76</sup> See Petitioners' Brief at 3 (citing *Welded Line Pipe from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*), and accompanying Issues and Decision Memorandum at Comment 20).

<sup>77</sup> See Petitioners' Brief at 1-5.

<sup>78</sup> *Id.* at 6-8.

<sup>79</sup> See CSN Rebuttal Brief at 1-3.

<sup>80</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 35, where the Department stated that G&A expenses "relate to the general operations of the company as a whole"; and, *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (C.I.T. 1998) where the CIT agreed with the Department that G&A

find it is appropriate to allocate G&A expenses to all company activities where the company engages in both further manufacturing and reselling activities.<sup>81</sup> However, we also agree with CSN that the denominator to the G&A expense ratio and the per-unit costs to which it is applied must be on the same basis. Thus, if we are now applying the G&A expense ratio to the total cost of all further manufactured and non-further manufactured goods, then the denominator of the ratio, which as reported includes only further processing costs, must be revised to include not only the further processing costs, but also the cost of the imported coils that were further processed, as well as the cost of all non-further manufactured products.

Therefore, for the final determination, we have revised CSN LLC's G&A expense ratio to base the denominator on the company's COGS from its audited financial statements. In doing so, we have also now incorporated the Department's verification findings with regard to the inclusion of toll processing costs, painting costs, and scrap sales in the denominator, thereby ensuring consistency between the denominator and the per-unit costs to which the ratio is applied (*i.e.*, the total costs for further manufactured and non-further manufactured subject products).

#### **Comment 6: Whether to Use a Consolidated or Non-Consolidated Financial Expense Ratio**

CSN argues that the Department should calculate its U.S. further manufacturing costs using CSN LLC's company-specific financial expenses, rather than CSN's consolidated financial expenses. In support, CSN submits that the Department is under no statutory or legal requirement to calculate financial expenses based on a company's consolidated financial statements and has declined to do so where appropriate.<sup>82</sup> The Department is, however, generally obligated to base its cost calculations on records that "reasonably reflect the costs associated with the production and sale of the merchandise."<sup>83</sup> Yet, CSN asserts that the financial and regulatory environment in which CSN LLC operates is drastically different from that in Brazil where its parent operates. According to CSN, this point is illustrated by the disparate short-term interest rates between the two countries, *i.e.*, 2.62 percent in the United States and 11.77 percent in Brazil. Considering these stark differences, CSN questions how basing financial expenses for operations in the United States on the financial expenses for operations in Brazil advances the Department's duty to accurately reflect CSN LLC's costs of production.

Furthermore, CSN contends the Department's usual rationales for calculating a consolidated financial expense ratio, *i.e.*, the fungibility of money and control of capital, are not applicable here as evidenced by the fact that there was no intercompany borrowing between CSN and CSN LLC. In fact, CSN points out that the courts have ruled that, when there is no intercompany borrowing, the Department cannot assume that the parent company can control the subsidiary

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expenses are those which relate to the general operations of the company as a whole.

<sup>81</sup> See *Line Pipe from Korea* and accompanying Issues and Decision Memorandum at Comment 20.

<sup>82</sup> See CSN Brief at 15 (citing *E.I. DuPont de Nemours & Co., v. United States*, 4 F. App'x 929, 932 (Fed. Cir. 2001) (*E.I. DuPont de Nemours & Co*) stating that "[t]he statute is silent on whether the interest expenses of the exporter or producer 'reasonably reflect' the actual costs of production where the exporter or producer is part of a consolidated group of companies under the control of a single member" and *Final Results of the Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico; 2012-2013*, 80 FR 33482 (June 12, 2015) (*Copper Pipe and Tube from Mexico*) and accompanying Issues and Decision Memorandum at Comment 3, where the Department declined to use consolidated financial expenses).

<sup>83</sup> See section 773(b)(1)(A) of the Act.

company's cost of money.<sup>84</sup> "In those instances, the individual financial statements will more accurately reflect the actual financing costs of producing and exporting the subject merchandise."<sup>85</sup> Consequently, CSN argues that CSN LLC is a separate and distinct legal entity operating exclusively in the United States with both short- and long-term financial transactions in the U.S. financial sector, and as such, CSN LLC should receive its own financial expense ratio.

CSN also asserts that the financial expenses at issue are not foreign market production costs, but rather U.S. price adjustments to CEP; therefore, the proper measurement for U.S. further manufacturing costs is more analogous to the question of what interest rate should be applied in calculating U.S. imputed credit expenses. The Department's own policy bulletin recognizes that the courts have rejected the use of home-market borrowing rates to impute U.S. credit expenses where the respondent had actual U.S. based borrowings.<sup>86</sup>

Finally, CSN claims the Department has recognized in the past that, in certain circumstances, such as in non-market economies (NMEs), it is inappropriate to base financial expenses on the financial statements of foreign parent companies operating in different financial environments.<sup>87</sup> Accordingly, the Department must calculate CSN LLC's financial expenses in a manner that reflects the actual operating environment and actual activities in financing its operations.

The petitioners respond that the Department should reject CSN's request to use CSN LLC's company-specific financial expenses rather than CSN's consolidated financial expenses in the calculation of the further manufacturing costs. According to the petitioners, it is the Department's long-standing practice to base financial expenses on the audited financial statements that represent the highest level of consolidation.<sup>88</sup> Furthermore, the petitioners point out that this practice has been upheld by the Court on numerous occasions over the past two decades.<sup>89</sup>

The petitioners also claim that CSN's support for abandoning the consolidated financial expense ratio is unavailing. According to the petitioners, CSN references non-precedential opinions that have been superseded by the Federal Circuit's more recent binding opinion in *American Silicon*

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<sup>84</sup> See CSN Brief at 17 (citing *AIMCOR v. United States*, 69 F. Supp. 2d 1345, 1354 (CIT 1999) (*AIMCOR*), finding that the Department could not rely on consolidated financial statements to calculate financial expense factors when there was an absence of intercompany borrowing between a particular group of companies; and, *E.I. DuPont de Nemours & Co.*, 4 F. App'x at 933).

<sup>85</sup> *Id.* at 17 (citing *E.I. DuPont de Nemours & Co.*, 4 F. App'x at 933).

<sup>86</sup> *Id.* at 18 (citing Policy Bulletin 98.2: Imputed Credit Expenses and Interest Rates (February 23, 1998); and *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F. 2d 455, 460-61 (Fed. Cir. 1990) "{w}hile the government argues that it would normally be expected that an Italian company would seek financing from a financial institution in Italy, we agree with LMI that it is not reasonable to presume that a commercial enterprise would borrow at almost twice the available rate. In addition, LMI provided evidence that it had obtained dollar-denominated loans.").

<sup>87</sup> *Id.* at 17 (citing *Copper Pipe and Tube from Mexico* and accompanying Issues and Decision Memorandum at Comment 3).

<sup>88</sup> See Petitioners' Rebuttal Brief at 14 (citing *Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, 72 FR 9924, (March 6, 2007), and accompanying Issues and Decision Memorandum at 19-20).

<sup>89</sup> *Id.* at 14 (citing *e.g., Elkem Metals Co. v. United States*, 28 CIT 508, 510-12 (2004); *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. 630, 647-49 (CIT 1997); *Camargo Correa Metais, S.A. v. United States*, 17 CIT 897, 902 (1993); *American Silicon Technologies v. United States*, 334 F.3d 1033 (Fed. Cir. 2003)).

*Technologies*, in which the Court expressly upheld the Department’s practice of using consolidated financial expenses.<sup>90</sup> Furthermore, in *American Silicon Technologies*, the Federal Circuit also explicitly rejected the argument that “adequate intercompany financial transactions” were necessary for the Department to rely on consolidated financial statements. Conversely, the Department’s practice, which has been confirmed by the Court, is to consider majority ownership evidence of a parent’s control that justifies the use of consolidated financial statements.<sup>91</sup> Here, CSN LLC is wholly-owned by CSN, as such, CSN has sufficient control over CSN LLC to make the debt and equity of the corporate group fungible.

Finally, the petitioners rebut that there is no correlation between the calculations of financial expenses and imputed credit expenses. The financial expense ratio includes expenses related to both short and long term borrowings as well as net exchange rate gains and losses, while imputed credit expenses relate only to short-term expenses. Thus, CSN’s argument in this regard has no bearing on the financial expense ratio calculation.

Department’s Position: We disagree with CSN. Section 773(b)(3)(B) of the Act, provides that, for purposes of calculating COP, the Department shall include an amount for general expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question. When the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of the Department. Although the Act does not specify a particular method for calculating financial expenses, the Department’s long-standing practice is to calculate a respondent’s financial expense ratio based on the audited financial statements of the highest level of consolidation available.<sup>92</sup> Therefore, we have continued to calculate CSN LLC’s net financial expense ratio for the final determination based on the consolidated financial statements of its parent, where CSN LLC is a subsidiary, in accordance with this established practice.

This methodology recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies.<sup>93</sup> It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group.<sup>94</sup> There is a presumption that consolidated financial statements are more meaningful than separate and unconsolidated financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity.<sup>95</sup> As the Department stated in *Low Enriched Uranium from France*:

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<sup>90</sup> See Petitioners’ Rebuttal Brief at 17 (citing *American Silicon Technologies v. United States*, 334 F.3d 1033 (Fed. Cir. 2003)).

<sup>91</sup> *Id.* at 19 (citing *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. at 649).

<sup>92</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 25 (*Certain Frozen Warmwater Shrimp from India*); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) (*Steel Wire Rod from Mexico*) and accompanying Issues and Decision Memorandum at Comments 21-22.

<sup>93</sup> See *Steel Wire Rod from Mexico*, and accompanying Issues and Decision Memorandum at Comments 21-22.

<sup>94</sup> *Id.*

<sup>95</sup> See Article 3A - Consolidated and Combined Financial Statements, 35,281, Reg. §210.3A-02, SEC Handbook, Rules and Forms for Financial Statements and Related Disclosures, as of December 1997.

Companies finance operations through various forms of debt transactions, stock transactions, cost sharing and reimbursement schemes, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. In such circumstances, the controlling management of the group coordinates these activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to, debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; sharing or undertaking strategic costs such as research and development; or conversions of debt into equities (or vice versa) to present a group member in a more favorable financial position. The important point here is that the corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions.<sup>96</sup>

Thus, the consolidated financial statements of CSN LLC's parent group are more meaningful than CSN LLC's own separate financial statements, and the consolidated financial statements are necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. We find in this case that CSN has a controlling interest in CSN LLC.<sup>97</sup> As the Department stated in *Certain Frozen Warmwater Shrimp from India*:

Financial expenses recorded on a respondent's own financial statements, or a lower level consolidation, only reflect the financial position that the management of the group wishes to present for that particular subsidiary. Because the majority of the board of directors, and by extension management, of each group member is ultimately controlled by each successive board of directors, up to the highest level board of directors and management, it is reasonable to conclude that the overall strategic operations are guided from above. The Department recognizes that the very purpose of creating a corporate group is to leverage the strategic and competitive advantages of individual group companies for the betterment of the whole. Thus, the financial position of one group member will not properly reflect the actual financial position of that company. It cannot be ignored that the company is operating as a member of a larger entity, with the support (direct or indirect) to which it is entitled from the group.<sup>98</sup>

The true economic picture of the consolidated group can only be seen when all inter-company holdings (*i.e.*, shares in affiliates and debts between affiliates) and inter-company transactions (*i.e.*, inter-company sales, receivables, payables, *etc.*) have been eliminated (*i.e.*, removal of the double-counting effect of inter-company transactions) in the consolidated financial statements of the parent company. Only after such eliminations does the debt structure of the group become apparent and does the actual cost of borrowing of group companies become visible. Such

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<sup>96</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Low Enriched Uranium From France*, 66 FR 65877 (December 21, 2001) (*Low Enriched Uranium from France*) and accompanying Issues and Decision Memorandum at Comment 14.

<sup>97</sup> See CSN's October 20, 2015 section A response at exhibit A-12A, page 172.

<sup>98</sup> See *Certain Frozen Warmwater Shrimp from India*, and accompanying Issues and Decision Memorandum at Comment 26.

eliminations also derive a COGS figure free of inter-company transactions. The consolidated COGS is used to allocate the true financial expense to the products produced within the group.

The CAFC has sustained “as reasonable Commerce’s well-established practice of basing interest expense and income on fully consolidated financial statements.”<sup>99</sup> Moreover, the CAFC affirmed “Commerce’s well-established practice of acknowledging the role of consolidated statements.”<sup>100</sup> We note that the CAFC in *American Silicon Technologies* determined that Commerce reasonably calculated interest expense based on the consolidated financial statements of the parent.

In the first place, this court notes that standard accounting principles acknowledge consolidated financial statements as a fair presentation of the financial position of a group. See, Floyd A. Beams, *Advanced Accounting* 74, 77, 91 102-03 (5<sup>th</sup> ed. 1992). Following those practices, Commerce has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible. Commerce’s policy recognizes that consolidated financial statements indicate that a corporate parent controls a subsidiary. These consolidated statements represent the financial health of parent company operations in view of subsidiary operations. In addition, fungible financial assets invite manipulation. In other words, if Commerce only used a single division of a group as the source of financing costs, the controlling entity could shift borrowings from one division to another division to defeat accurate accounting.<sup>101</sup>

Citing *AIMCOR* and *E.I. Dupont de Nemours & Co.*, CSN argues that CSN LLC had no inter-company borrowings; therefore, the Department cannot assume parent company control and resort to using consolidated financial statements.<sup>102</sup> However, these cases are more than 15 years old, and subsequent CAFC decisions have made it clear that evidence of intercompany borrowing is not a requirement for using the financial statements of the ultimate corporate parent.<sup>103</sup> The CAFC further explained that it was unnecessary for Commerce to assess intercompany financial transactions in calculating finance expenses in a dumping margin since this would create “a new kind of test {which} would impose significant new administrative burdens on Commerce and invite potential manipulation {which} might take the form of a controlling company selecting a financial cost ratio by directing one its subsidiaries with a low ratio to lend to the exporter.”<sup>104</sup> Thus, we find CSN’s arguments regarding intercompany borrowing to be unpersuasive.

CSN also compares the financial expense rate used to calculate financial expenses for the COP to the short-term borrowing rate used for calculating credit expenses. We disagree that this is a valid comparison as these are two distinct rates. Credit expenses are imputed amounts that rely on the short-term interest rates associated with the currency in which sales are denominated, whereas a company’s financial expense for COP relates to the company’s actual borrowing costs

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<sup>99</sup> See *American Silicon Technologies*, 334 F. 3d at 1037-1038.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 1037.

<sup>102</sup> See *AIMCOR*, 69 F. Supp. 2d 1345, and *E.I. DuPont de Nemours & Co.*, 4 F. App’x at 933.

<sup>103</sup> See *E.I. DuPont de Nemours & Co.*, 4 F. App’x at 933.

<sup>104</sup> *Id.*

(i.e., interest expense) as a percentage of its total COGS. As the Department explained in *Welded Carbon Pipe from Turkey*, it calculates credit expenses using the short-term interest rate tied to the currency in which the sales are denominated based on the respondent's weighted-average short-term borrowing experience in that currency. The Department affirmed in that case that "the fact that the Department uses the highest level of consolidation to calculate interest expense used in the cost of production calculation has no bearing on the short-term borrowing rate used to calculate credit expense."<sup>105</sup>

Citing *Copper Pipe and Tube from Mexico*, CSN also contends that the Department has recognized that basing financial expense calculations on the expenses of the foreign parent companies operating in different environments is inappropriate in certain circumstances.<sup>106</sup> However, in *Copper Pipe and Tube from Mexico*, the Department was faced with a different fact pattern where the consolidated entity operated in an NME. Because we do not rely on the financial statements of companies operating in NMEs, we did not consider it appropriate to use the consolidated financial statements. Here, no such fact pattern exists. Therefore, for the reasons enumerated above, the Department has continued to rely on the consolidated financial expense ratio in calculating CSN LLC's further manufacturing costs.

#### **Comment 7: The Market Value for Affiliated Energy Inputs**

CSN argues that in the *Preliminary Determination*, the Department inappropriately adjusted the average transfer price for the electricity inputs that CSN obtained from its affiliates ITASA, Igarapava, and CSN Energia, to reflect what the Department asserted was a market value. However, according to CSN, the record clearly demonstrates that the average transfer price paid by CSN is consistent with the amount usually reflected in sales of the subject merchandise in Brazil pursuant to section 773(f)(2) of the Act.<sup>107</sup>

CSN points out that its transfer price is well above the maximum rate of 30.26 Brazilian reais per megawatt hour (BRL/MWh) that hydroelectric facilities such as those operated by CSN's affiliates ITASA and Igarapava may legally charge consumers in the captive market (i.e., households and small companies). Contrary to the Department's skepticism reflected in the cost verification report regarding the applicability of a captive market rate to industrial users, CSN argues that the Department has previously recognized that "utility companies typically charge residential customers a higher rate than industrial users because they require additional lines and converters to supply the electricity."<sup>108</sup> Therefore, CSN concludes that the market rate for industrial users would be well below the 30.26 BRL/MWh captive market rate, and as such, CSN's average affiliated transfer price is above both the captive and industrial market rates.<sup>109</sup>

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<sup>105</sup> See *Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76,939 (December 9, 2011), and accompanying Issues and Decision Memorandum at 28 (Comment 10).

<sup>106</sup> See *Copper Pipe and Tube from Mexico* and accompanying Issues and Decision Memorandum at Comment 3.

<sup>107</sup> See CSN Brief at 12-15.

<sup>108</sup> *Id.* at 13 (citing *Notice of Final Determination of Sales at Less Than Fair Value; Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756 (July 19, 1999)).

<sup>109</sup> See CSN Brief at 12-15.

CSN also argues that the market price used by the Department in its *Preliminary Determination* adjustment is not comparable to the transfer prices paid by CSN to its affiliates. According to CSN, the market rate used by the Department reflects a price in a different geographical region and, unlike its hydro-electric affiliates ITASA and Igarapava, it is a price that does not reflect an exclusively lower-cost hydro power producer.<sup>110</sup>

Continuing, CSN alleges that the market rate used by the Department is also an inappropriate comparison for its affiliate CSN Energia since the company is an energy trader rather than a producer. CSN notes that in *Coated Free Sheet Paper from Indonesia*, the Department distinguished between affiliates producing electricity as opposed to merely reselling electricity.<sup>111</sup> Where the affiliate generated the electricity as a service to the respondent, the Department declined to compare the transfer price to a market price for a reseller. Instead, the Department looked to the affiliate's financial statements to see if the company was profitable during the POI, and because it was, the Department did not apply the transaction disregarded rule. Similarly, CSN argues that the Department should not adjust the prices from CSN Energia, an energy trader, using the non-comparable prices from an electricity producer. Indeed, CSN states that as an energy trader, CSN Energia is required under Brazilian law to charge a price that covers the cost of acquiring the electricity. CSN points out that CSN Energia was profitable during the POI and, therefore, in accordance with *Coated Free Sheet Paper from Indonesia*, no adjustment is needed.<sup>112</sup>

The petitioners contend that there are comparable electricity prices on the record that can be used for the transactions disregarded rule. Specifically, the petitioners point out that CSN's affiliate CSN Energia had long-term power contracts with both affiliated and unaffiliated parties during the POI. Therefore, the petitioners argue that for the final determination the Department should increase CSN's average affiliated transfer price for electricity inputs to reflect the average price CSN paid to unaffiliated parties plus amounts for CSN Energia's overhead, SG&A, and financial expenses.<sup>113</sup>

The petitioners assert that in *Coated Free Sheet Paper from Indonesia* the Department was unable to find a market price for the unique services provided by the respondent's affiliated electricity supplier. Here, there is no evidence to suggest that CSN's arrangements with its affiliated electricity suppliers are so unique that there are no comparable market prices. Therefore, the Department should rely on its standard transactions disregarded analysis, *i.e.*, transfer price versus market price.<sup>114</sup>

**Department's Position:** In the *Preliminary Determination*, the Department increased CSN's affiliated electricity transfer prices to reflect the electricity prices CSN paid to unaffiliated parties, *i.e.*, market values, in accordance with section 773(f)(2) of the Act.<sup>115</sup> The Department

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 14 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) (*Coated Free Sheet Paper from Indonesia*) and accompanying Issues and Decision Memorandum at Comment 5).

<sup>112</sup> *Id.* at 12-15.

<sup>113</sup> See Petitioners' Rebuttal Brief at 11-13.

<sup>114</sup> *Id.*

<sup>115</sup> See Preliminary Cost Calculation Memorandum.

continues to find that a comparison of CSN's average affiliated and unaffiliated electricity prices provides the best information on the record that is consistent with both the statute and Department practice.

Section 773(f)(2) of the Act states that “{a} transaction directly or indirectly between affiliated persons may be disregarded, if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.” Thus, the statute directs the Department to test the arm's-length nature of affiliated transactions to determine whether they reflect a market value. Because this section of the statute does not specify a particular methodology for determining market value, the Department has established a hierarchy for establishing market value in the application of section 773(f)(2) and (3) of the Act. The Department's express preference for market value is a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, the Department looks to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.<sup>116</sup>

In the instant case, CSN purchased electricity from both affiliated and unaffiliated parties during the POI. While both CSN and the petitioners have offered alternative market values, we have not considered these options because the Department's preferred methodology, *i.e.*, relying on the respondent's own purchases from unaffiliated parties, is available.

Even so, CSN argues that its unaffiliated purchases should not be used because they are not comparable to the company's affiliated purchases. We disagree. As the Department has remarked in previous cases, “{a} respondent's own purchases from its unaffiliated suppliers inherently represent consumption by a comparably sized company, in the same industry, and in the market under consideration.”<sup>117</sup> Thus, absent evidence of unusual circumstances surrounding such unaffiliated purchases, the Department finds CSN's own unaffiliated purchases to be the preferable source for market prices.<sup>118</sup> As the record shows in this case, the inputs are identical (*i.e.*, electricity). Although CSN submits that the company's affiliated and unaffiliated prices are not comparable because they reflect varying geographical regions, electricity production methods, or supply chains (producer versus trader), we do not find these to be unusual circumstances that render unreasonable the Department's preferred methodology for determining market value. The market price at question is for the same input, electricity, consumed by the respondent in the market under consideration, thus, we find that CSN's unaffiliated electricity

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<sup>116</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerators from Korea*) and accompanying Issues and Decision Memorandum at Comment 17; and, *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004) (*Silicomanganese from Brazil*) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>117</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>118</sup> *Id.*

purchases are a reasonable reflection of market value for the purpose of the transactions disregarded rule.

We also find that CSN's reliance on *Coated Free Sheet Paper from Indonesia* is misplaced. In that case, the Department found that there were no unaffiliated purchases of the unique service provided by the affiliated supplier (*i.e.*, electricity generation rather than electricity). Consequently, the Department declined to use its preferred methodology and instead looked to another source for the market price of electricity generation.<sup>119</sup> Here, however, that specific fact pattern is not present because we have identical inputs – electricity – purchased from unaffiliated suppliers. Therefore, for the final determination, we find that the prices paid by CSN to unaffiliated suppliers represent the appropriate market price for testing the arm's-length nature of CSN's affiliated electricity transactions.

### **Comment 8: Whether to Include Certain Expenses Recorded Directly to COGS**

CSN argues that the Department should not continue to apply the adjustment used in the *Preliminary Determination*, which increased the reported per-unit costs for expenses that CSN normally records, directly to the COGS. CSN asserts, however, that if the Department continues to believe that an adjustment is necessary, the expenses identified by the Department at the cost verification as unrelated to the production of subject merchandise should be excluded from the adjustment.<sup>120</sup>

The petitioners argue that the Department should increase CSN's reported per-unit costs in accordance with the findings discussed in the cost verification report, *i.e.*, include the expenses related to steel production, *i.e.*, steel plant administration costs, steel plant stock and cost adjustments, and a portion of the corporate duty expenses.<sup>121</sup>

Department's Position: CSN excluded from the reported costs several expenses that are related to production, but that are directly expensed to COGS rather than incorporated in the company's inventoried product costs. Of these expenses, we find it appropriate to adjust the reported costs to include the steel plant administrative costs, the steel plant stock and cost adjustments, and the portion of the excluded costs that were designated as related to corporate duties. Based on our findings at the cost verification,<sup>122</sup> we have revised our adjustment from the *Preliminary Determination* to include only those expenses that were found to be related to the merchandise under consideration.

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<sup>119</sup> See *Coated Free Sheet Paper from Indonesia* and accompanying Issues and Decision Memorandum at Comment 5.

<sup>120</sup> See CSN Brief at 19.

<sup>121</sup> See Petitioners' Brief at 9.

<sup>122</sup> See Cost Verification Report at 2.

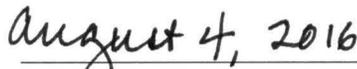
**VIII. RECOMMENDATION**

We recommend applying the above methodology for this final determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
(Date)