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October 15, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates

SUMMARY:

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes in the margin calculation as discussed below. We recommend that you approve the Department of Commerce's (the Department's) positions, described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation for which we received comments from parties:

I. List of Comments

Universal

Comment 1: Reclassification of Sales from Home Market to Third Country
Comment 2: Level of Trade
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ADPICO

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II. Background

On June 1, 2012, the Department published in the *Federal Register* its preliminary determination in the antidumping duty investigation of circular-welded carbon quality steel pipe (certain steel pipe) from the United Arab Emirates (UAE). *See Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 32539 (June 1, 2012) (*Preliminary Determination*). The merchandise covered by this investigation is certain steel pipe from the UAE, as described in the "Scope of Investigation" section in the *Federal Register* notice of the final determination. The period of investigation (POI) is October 1, 2010 to September 30, 2011. This investigation covers two manufacturers/exporters that were selected as mandatory respondents, Universal Tube and Plastic Industries, Ltd. (UTP-JA), KHK Scaffolding & Formwork LLC (KHK), and Universal Tube and Pipe Industries LLC (UTP-DIP) (collectively, Universal) and Abu Dhabi Metal Pipes & Profiles Industries Complex LLC (ADPICO).

Petitioners Allied Tube and Conduit and the JMC Steel Group (collectively, petitioners) timely requested a hearing on July 2, 2012. On September 13, 2012, petitioners, Universal, and ADPICO timely filed case briefs commenting on our *Preliminary Determination*. Petitioners withdrew their request for a hearing on September 13, 2012. On September 18, 2012, Universal and petitioners timely submitted rebuttal comments.

III. Discussion of Interested Party Comments

Comment 1: Reclassification of Sales from Home Market to Third Country

On June 11, 2012, Universal submitted, *inter alia*, a revised home market database which re-classified certain sales as third-country sales. Universal further amended its home market sales data as a minor correction presented on the first day of verification. Petitioners contend verification is not an opportunity to submit new factual information. Petitioners' Case Brief at 3, citing the Department's June 8, 2012 Home Market Sales Verification Outline at 2. Petitioners maintain the Department usually revises minor errors identified at the beginning of verification to increase the accuracy of the final results, citing *Rubberflex et al. v. United States*, 59 F. Supp. 2d 1338 (CIT 1999) (*Rubberflex*). However, petitioners aver, the disclosure of new information after issuance of the verification outline does not provide the Department or interested parties time to review such information or issue supplemental questionnaires and review the responses to such questionnaires before verification commences. Citing *Reiner Brach et al. v. United States*, 206 F. Supp. 2d 1323 (CIT 2002) (*Reiner Brach*), petitioners claim interested parties must be given an opportunity to vet significant matters prior to verification. Petitioners assert the home market sales verification outline issued in the instant proceeding indicated significant revisions would not be accepted at verification, except in limited instances in which the information has a negligible impact on the case. Petitioners' Case Brief at 5, citing the Department's June 8, 2012 Home Market Sales Verification Outline at 2.

Petitioners state that after the Department released its home market sales verification outline on June 8, 2012, Universal informed the Department on June 11, 2012[1] that it had determined certain home market sales were destined for a third country market. Petitioners then cite a letter filed by Universal on June 13, 2012, in which the respondent clarified that sales to two customers were destined for a third country and asserted these sales should be removed from the home market sales database. Petitioners' Case Brief at 5-7, citing Universal's June 13, 2012 Letter to the Department at 1-2. In Universal's home market sales verification minor corrections letter, petitioners state, Universal indicated it revised its quantity and value chart to reflect the reclassification of sales by UTP-JA to two customers from home market to third country sales. *Id*. at 7, citing Universal's June 20, 2012 Home Market Sales Minor Corrections Letter at Verification Exhibit 1. Petitioners state Universal also indicated in its home market sales verification minor corrections letter that it was reclassifying certain sales by affiliated reseller Dayal Steel Suppliers LLC (DSS) from domestic to third country sales, and reporting additional sales by DSS that were not picked up when the sales database was created. *Id.*

Petitioners argue Universal's reclassification of sales from home market to third country after issuance of the home market sales verification outline should be rejected as untimely and not minor. With respect to the reclassification of UTP-JA's sales to two customers from home market to third country sales, petitioners assert this information was filed too late in the investigation to allow for the issuance of supplemental questionnaires or for further examination prior to verification. Citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010) and accompanying Issues and Decision Memorandum at Comment 6, petitioners maintain verification is conducted to confirm the accuracy of information contained in questionnaire responses; verifications are not an opportunity to accept new information. Petitioners claim Universal did not reclassify the UTP-JA sales at issue in response to a question posed by the Department in a supplemental questionnaire, but, rather, informed the Department the sales at

[1] Universal's response to the Department's May 15, 2012 supplemental questionnaire for section D (section D supplemental questionnaire) was due on June 12, 2012. *See* the Department's June 11, 2012 letter to Universal. However, Universal filed revised cost databases and revised home market and U.S. sales databases on June 11, 2012.

issue were destined for a third country in response to question 22(c) of the Department's section D supplemental questionnaire. Petitioners' Case Brief at 6. Petitioners argue Universal's response to that supplemental question is "altogether unsolicited and unrelated to the Department's question, or the section D questionnaire itself in which Universal provided its disclosure." *Id*. As for the DSS sales that were reclassified as third country sales and the new DSS sales reported at verification, petitioners contend it appears this information first surfaced during the presentation of minor corrections on the first day of the home market sales verification.

Petitioners assert the UTP-JA and DSS sales reclassified as third country sales make up a significant portion of both the quantity and value of Universal's revised body of home market sales. *Id*. at 7-8, citing Universal's June 20, 2012 Home Market Sales Minor Corrections Letter at Verification Exhibit 1, Attachment 2. As such, petitioners contend the quantity and value of the reclassified sales are large, not "minor," and more importantly, have a considerable effect on the dumping margin. Petitioners maintain the reclassification of the sales at issue from home market to third country appears to be last-minute cherry picking at a point in the investigation when further inquiry before verification was not possible.

Petitioners contend the reclassification of sales from home market to third country does not constitute a minor correction, does not corroborate information already on the record, and the need for such reclassification was not apparent prior to issuance of the verification outline. For these reasons, and because the quantity and value of sales that are removed from the calculation of normal value is substantial, excluding these sales has a significant impact on the dumping margin, and the untimeliness of the reclassifications (*i.e.*, after issuance of the verification outline), petitioners urge the Department to reject Universal's reclassification of sales from home market to third country.

Universal argues it properly excluded from its home market sales database sales by UTP-JA to two customers that were destined for a third country. Universal contends it realized the sales needed to be reclassified while preparing its response to questions in the section D supplemental questionnaire regarding customs duties paid on sales to the local market. Universal's Case Brief at 3, citing its June 12, 2012 section D supplemental questionnaire response (June 12 DSQR) at 30-34. Universal asserts that merchandise UTP-JA sold to third countries is not subject to the five percent duty it is required to pay on sales to the local market. *Id.*, citing Home Market Sales Verification Exhibit 11 (HMSVE 11) at 2 and Home Market Sales Verification Exhibit 13 (HMSVE 13) at 3-4. Universal maintains it placed its revised home market sales database on the record a week before the start of the home market verification.

Universal states it presented a revised quantity and value chart reflecting the reclassification of the UTP-JA sales (and the changes related to DSS's sales) as a minor correction prior to the start of verification. *Id.*, citing Home Market Sales Verification Exhibit 1 (HMSVE 1) at 2-3. Universal contends the Department verified the revisions resulting from the reclassification of these sales in a number of ways, beginning with linking the revised quantity and value to UTP-

JA's financial statements and also performing a completeness check for two months of the POI. *Id*. at 4, citing Home Market Sales Verification Exhibit 8 and Memorandum to the File through Robert James from Deborah Scott and Steve Bezirganian, "Home Market Sales Verification of Universal Tube and Plastic Industries, Ltd. (UTP-JA) and Its Home Market Affiliates (collectively, Universal) in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates (UAE)," dated August 28, 2012 (Home Market Sales Verification Report) at 28-29. In addition, Universal argues, at verification the Department examined documentation pertaining to specific sales to both customers and noted the documentation contained references to third-country markets. *Id.*, citing the Home Market Sales Verification Report at 36-38; HMSVE 11; and HMSVE 13 at 2, 3, 5, and 7.

Regarding the DSS invoices which were reclassified as third country sales and eliminated from the home market sales database as a minor correction, Universal contends the Department verified these sales were for export to a third country, and therefore it is appropriate to exclude them from the home market sales database. *Id*. at 4-5, citing the Home Market Sales Verification Report at 2 and 4. Universal argues the Department also observed during the verification of UTP-JA's sales to Prime Metal Corp. USA (Prime Metal) and at the verification of Prime Metal that the single customer to whom these sales were made was involved in sales to a particular third country. Specifically, Universal asserts, Prime Metal made sales to one of its largest U.S. customers, and the merchandise was picked up in Dubai by a certain customer which arranged for delivery to the third country. *Id*. at 5, citing the Home Market Sales Verification Report at 29; Home Market Sales Verification Exhibit 26 (HMSVE 26); Memorandum to the File through Robert James from Deborah Scott and Steve Bezirganian, "U.S. Sales Verification of Prime Metal Corp. USA (Prime Metal) in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates (UAE)," dated September 6, 2012 (U.S. Sales Verification Report) at 20-21; and U.S. Verification Exhibit 7.

With respect to the additional DSS sales reported as a minor correction, Universal maintains it only identified these as home market sales while preparing for the home market sales verification because these sales had been recorded in an account for small sales to third countries. Universal claims the Department verified that these sales were correctly included in the minor corrections list and database submitted with the corrections, and were properly included in DSS' total quantity and value of sales. *Id*. at 5, citing Home Market Sales Verification Exhibit 1 (HMSVE 1) at Attachment 2. Universal argues the Department examined support documentation for two invoices selected at verification and verified all of the relevant information, including that the sales consisted of subject merchandise (specifically, ASTM Schedule 40 A53) made in the home market. *Id*. at 5-6, citing the Home Market Sales Verification Report at 40-41 and Home Market Sales Verification Exhibits 19 (HMSVE 19) and 20 (HMSVE 20).

Petitioners did not provide any rebuttal comments on this issue.

In its rebuttal brief, Universal contends petitioners' argument that Universal's reclassification of sales as third country sales was untimely is essentially identical to the letter petitioners filed on

August 14, 2012 regarding this issue, and asserts petitioners have provided no explanation for why they did not comment on this issue until two months after the corrections were submitted. Universal maintains the reclassification of sales by UTP-JA as third country sales resulted from responding to the Department's section D supplemental questionnaire, which contained many questions regarding the exportation of material from the Jebel Ali Free Trade Zone (JAFZA) to customers in the local market and the payment of duties. Specifically, Universal argues, it discovered that sales to two of UTP-JA's customers were exported to third countries and hence no duties were assessed on these sales; as a result, Universal contends, it reported these corrections to the Department along with its June 12 DSQR, which was timely filed. Universal asserts the Department verified the accuracy of these revisions and the verification exhibits, which have been on the record since July 2, 2012, clearly show the reclassified sales were made to third countries.

As for the DSS sales reclassified as third country sales, Universal argues that petitioners suggest corrections should be filed by the time the verification outline is issued even while conceding that the Department usually corrects minor errors presented at the outset of verification. Universal's Rebuttal Brief at 4. Universal contends it filed its minor corrections in a proper and timely manner and that the Department verified all of the minor corrections. Universal asserts petitioners' citations to *Rubberflex* and *Reiner Brach* comport with the Department's procedures which were to fully verify all of the minor corrections. Universal claims petitioners are incorrect that those cases involve deadlines related to the verification outline. *Id.* at 4-5, citing *Rubberflex*, 59 F. Supp. 2d at 1347 and *Reiner Brach*, 206 F. Supp. 2d at 1333, 1334.

Universal argues petitioners have exaggerated the relevance of the minor corrections for DSS. Universal states that in response to the letter it filed on August 17, 2012 regarding errors in petitioners' August 14, 2012 letter, petitioners revised the sales values of the eliminated sales and deleted their arguments about how much greater the sales values are for the excluded sales compared to the rest of the database. Universal maintains that comparison formed the basis for petitioners' claim that the excluded DSS sales would have a major effect on the margin. Universal contends the excluded DSS sales constitute only a handful of sales. Universal's Rebuttal Brief at 4-5, citing HMSVE 1 at 3-4. Universal reiterates that the Department verified the DSS sales at issue were bound for a third country and argues these sales must be excluded in order to calculate an accurate margin.

Department's Position: We agree with Universal in part. Along with its June 12, 2012 response to the Department's section D supplemental questionnaire, Universal submitted revised home market and U.S. databases. Universal explained in its June 12 DSQR that it had revised its home market sales database in part to correct the reported direct selling expenses for four customers and to delete sales by UTP-JA to two customers that were sales to third countries. *See* Universal's June 12 DSQR at 1. Universal indicated that both of these revisions were discussed in response to question 22(c), which asked Universal to "explain why it is appropriate to reduce the gross sales price of home market products" by import duties paid on merchandise sold in the domestic market. *Id*. at 33. In response to that question, as well as elsewhere in its June 12

DSQR, Universal indicated that UTP-JA, which is located in a free trade zone, must pay a duty when it exports products from the free trade zone into the UAE. *Id*. at 30-33 and Exhibit D-61. Universal also stated in response to question 22(c) that it "inadvertently applied this customs duty to four customers who are located in the Jebel Ali Free Zone who would not be required to pay this duty since they are located in the JAFZA," and then listed the four customers for which it was no longer reporting the import duties in its revised home market database. *Id*. at 33-34. It then stated, "Universal discovered a customer – {customer A} whose sales were destined for a third country market and has excluded them from the home market sales database." *Id*. at 34. The context of that response suggests that in the process of responding to the Department's question (and other questions in the section D supplemental questionnaire related to this topic), Universal discovered sales to certain of UTP-JA's customers were ultimately shipped to third country markets.

When we examined Universal's revised home market database, we observed that it still contained sales to customer A, but excluded sales to another customer, which we refer to hereinafter as customer B. The following day, Universal filed a letter in which it provided the following clarification:

> in question 22(c), we notified the Department that Universal had discovered a customer - {customer A}- whose sales were destined for a third country market and therefore had excluded them from the revised home market sales database submitted with Universal's response. In the revised sales database, however, Universal removed the sales to another customer - {customer B}, whose sales were also destined for a third country market - but did not remove {customer A's} sales. Sales to *both* customers ({B and A}) should be excluded from Universal's home market sales database. We apologize for any confusion this inadvertent error may have caused the Department or other interested parties.

See Universal's June 13, 2012 Letter to the Department at 1-2 (emphasis Universal's).

During the presentation of minor corrections on the first day of the home market sales verification, Universal indicated that it had updated its home market sales quantity and value to reflect the reclassification UTP-JA's sales to customers A and B as third country sales. In the verification outline issued on June 8, 2012 (*i.e.*, prior to Universal's June 12 DSQR), we had pre-selected one sale by UTP-JA to customer A as one of our sales traces. In order to explore Universal's claim that sales to this customer were destined for the third country market, we informed Universal at verification that we still wished to see support documentation for this sale. Likewise, we selected two invoices to customer B and asked Universal to provide support documentation.

From the documentation Universal provided for customer A, we noted the customer's purchase order referenced transportation to a third country market. We also noted the bill of entry (*i.e.*, the Dubai Customs form), which, the respondent explained, UTP-JA fills out based on what it expects to ship the next day,[2] listed the destination of the merchandise as that same third country market. *See* HMSVE 11 and the Home Market Sales Verification Report at 36-37. With respect to the two invoices to customer B for which we requested support documentation, we noted the material issue slips (*i.e.*, loading slips) referenced a particular third country (or city within that country), and the bills of entry identified that same third country as the destination. *See* HMSVE 13 and the Home Market Sales Verification Report at 38.

In addition, as part of the minor corrections provided at the outset of the home market sales verification, Universal stated that eight sales by one of its affiliated resellers, DSS, should be removed from the home market database and reclassified as third-country sales. *See* HMSVE 1 at 1 and 4 and the Home Market Sales Verification Report at 4. We selected one of the eight sales and asked to see support documentation. We observed that one of the documents Universal provided, a sales contract, specified the material was for the customer's export customer in a third country, and requested that the shipping marks include the name of that third country. *See* HMSVE 26 and the Home Market Sales Verification Report at 4.

In determining whether it is appropriate to accept Universal's reclassification of sales to customer A, customer B, and the eight DSS sales as third-country sales, we first address the issue of when this information was reported to the Department. With respect to customers A and B, Universal did present this information prior to verification, albeit only days before. However, as noted above, Universal reclassified these sales in the context of responding to questions in the section D supplemental questionnaire regarding the payment of duties on merchandise sold in the home market. We then explored this issue at verification by examining and collecting sample documentation for customers A and B. Thus, we do not find that Universal's timing in reclassifying sales to customers A and B as third-country sales would be cause to reject the reclassification.

Regarding the eight DSS sales, Universal first informed the Department at the outset of verification that it was reclassifying them as third-country sales as a minor correction. Based on the very small quantity, value, and number of sales observations these represent as a percentage of the overall home market database, we accepted this as a minor correction and examined Universal's claim by reviewing and collecting support documentation for one of the eight sales. As such, we find this information was properly presented as a minor correction and we do not reject the reclassification of these sales on the basis of timing.

Our decision, therefore, as to whether to accept the reclassification of these sales as third-country sales rests on the documentary evidence we collected at verification. Below we address our positions with respect to customer A, customer B, and the eight DSS sales separately.

In the case of customer A, we have documentation clearly pre-dating the sale which shows the destination of the merchandise. In particular, the customer's purchase order specifies that the merchandise is to be transported to a certain third country. *See* HMSVE 11 at 3. Information on

[2] *See* the Home Market Sales Verification Report at 56-57.

the other documents in the verification exhibit (*i.e.*, the sales invoice, proforma invoice, and merchandise delivery note) contain information such as the UAE customer's name, product characteristics, price, and quantity which clearly links back to the purchase order, and the merchandise delivery note even references the purchase order number. *Id*. at 4-7. The bill of entry also lists the same third country as the purchase order. *Id*. at 8. Thus, based on the documentation, we find that UTP-JA had knowledge as early as the time the UAE customer ordered the merchandise that it was bound for a third country. As a result, we find that it is appropriate to accept Universal's reclassification of UTP-JA's sales to customer A as third-country sales, and are excluding these sales from our calculation of normal value for the final determination.

With respect to customer B, the documentary evidence consists of sales invoices, material issue slips, and bills of entry for each of the two sales. *See* HMSVE 13. For both sales, the material issue slips and bills of entry reference a third country (or city in that country). *Id*. at 2, 3, 5, and 7. However, unlike the bill of entry for customer A, the bills of entry for the two sales to customer B contain the notation "Import to Local from FZ." Further, the invoices indicate that the customer is a UAE customer (*i.e.*, customer B). While the invoice for customer A also lists the UAE customer's name (*i.e.*, customer A), in contrast to the documents provided for customer A, there are no earlier purchase orders for the sales to customer B clearly indicating third country destination. We do not find that the material issue slips and bills of entry sufficient on their own to conclusively establish UTP-JA's knowledge with respect to customer B at the time of sale, particularly given the notation "Import to Local from FZ" on the bills of entry. Lacking definitive information with respect to customer B, we have not accepted Universal's reclassification of sales to customer B as third-country sales, and are including those sales in our calculation of normal value for the final determination.

Finally, with respect to the eight DSS sales, the documentation we examined consists of a sales contract clearly pre-dating the sale which stated the material was for the customer's export customer in a third country and indicated the shipping marks should include the name of that third country. *See* HMSVE 26 at 1-2. The other documents in the verification exhibit (*i.e.*, sales invoice, delivery note, and revised purchase order[3]) list information such as the UAE customer's name, product characteristics, and price which plainly links back to the sales contract. *Id*. at 3-5. Based on the documentation, we find that DSS had knowledge as early as the time the UAE customer ordered the merchandise that it was destined for a third country. Therefore, we find that it is appropriate to accept Universal's reclassification of these eight DSS as third-country sales, and are excluding them from our calculation of normal value for the final determination.

Lastly, we address the additional DSS sales which Universal provided as a minor correction at the outset of the home market verification and mention in their case brief. While petitioners also mention these sales in their case brief, they do not argue specifically against their inclusion in the home market database, but, rather, merely mention that this information first appeared at verification. We note that we accepted this information as a minor correction at verification,

[3] We note there is no bill of entry for this sale as DSS is located in Dubai and not in a free trade zone.

and, from the list of new sales, selected two invoices and asked to see support documentation. *See* the Home Market Sales Verification Report at 4 and 40-41; *see also* HMSVE 19 and HMSVE 20. Since we have no basis on which to exclude these sales from our analysis, we have included them in our calculation of normal value for the final determination.

For more information regarding our exclusion and inclusion of the sales described above, *see* Memorandum to the File, through Robert James, Program Manager, from Deborah Scott, International Trade Compliance Analyst, entitled "Analysis of Data Submitted by Universal in the Final Determination of the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated October 15, 2012 (Final Analysis Memorandum).

If this investigation results in an antidumping duty order, in any future administrative reviews we intend to investigate more closely any claims regarding third-country sales.

Comment 2: Level of Trade

Petitioners state that in Universal's questionnaire responses, Universal reported it could not quantify level of trade (LOT) differences between home market producers and distributors. However, petitioners assert, Universal claimed at verification that it could measure differences between UTP-JA, a producer, and DSS, a distributor, and therefore determine a difference in LOT. Petitioners' Case Brief at 9, citing the Home Market Sales Verification Report at 5. Petitioners argue the Department should accept Universal's claim prior to verification that LOT differences could not be quantified. Petitioners contend the Department should not consider Universal's methodological change regarding LOT because Universal first raised it at verification. Petitioners maintain the Department often disregards adjustments first claimed at verification that entail a methodological change from what was set forth in questionnaire responses. *Id*. at 10, citing *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 4 (*Shelving and Racks from the PRC*). Petitioners argue the methodological change regarding LOT differences which Universal proposed at verification is untimely and not minor, and they urge the Department to reject it for the final determination.

Universal states that in the preliminary determination, the Department found there were two home market LOTs, sales by the producers to unaffiliated customers (HMLOT1) and sales by the affiliated distributors to unaffiliated customers (HMLOT), and one LOT in the U.S. market. Universal further states the Department found it could not grant a LOT adjustment because the price differences between the U.S. LOT and the two home market LOTs could not be quantified due to the lack of an equivalent home market LOT to the CEP LOT. Universal concurs with the Department's application of a constructed export price (CEP) offset when U.S. sales are compared to HMLOT1 sales. However, Universal contends, since HMLOT2 is two LOTs removed from the LOT of U.S. sales, there are substantial LOT differences that the CEP offset does not capture when distributor sales are compared to U.S. sales. Thus, for the final determination, Universal maintains the Department should adjust for these LOT differences based on the price differences between the two home market LOTs. In making this argument, Universal refers to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany,* 67 FR 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 12.

Universal asserts the statute requires the Department to compare normal value to CEP or export price (EP) sales at the same level of trade. When comparisons cannot be made at the same LOT, Universal argues, the statute provides first for a LOT adjustment and also for a separate adjustment for CEP sales when the data do not provide an appropriate basis for determining a LOT adjustment (*i.e.*, the CEP offset adjustment). Universal's Case Brief at 25, citing section 773(a)(7)(A) and (B) of the Tariff Act of 1930, as amended (the Act). Universal claims both circumstances are present in this case.

Universal contends that in granting a CEP offset, the Department has already acknowledged HMLOT1 was at a more advanced LOT than the CEP LOT. Universal argues HMLOT2 is a more advanced LOT than HMLOT1 and far more advanced than the CEP LOT, *i.e.*, two LOTs removed from U.S. sales. Thus, Universal claims that when U.S. sales are compared to HMLOT2 sales, an additional LOT adjustment is required to account for the remaining LOT difference which cannot be fully accounted for by the CEP offset. Universal asserts the Department can quantify the price differences between the two home market LOTs based on the consistent price differences between the two LOTS due to differences in the selling activities performed. *Id*. at 26, citing Home Market Sales Verification Exhibit 6. Universal avers the LOT adjustment, which would be based upon the consistent price differences between HMLOT1 and HMLOT2, should be approximately eight percent.

Universal contends there are a number of differences between the services provided for the two home market LOTs and expenses incurred on HMLOT2 sales that are not incurred on HMLOT1 sales. *Id*. at 27, citing HMSVE 1 at 1 and 10. For instance, Universal asserts, producer UTP-JA focuses on supplying large quantities that are manufactured to order to an established customer base. *Id*., citing the Home Market Sales Verification Report at 15 and HMSVE 1 at 10. Universal argues UTP-JA does not stock finished goods and if a customer wants to buy from inventory, UTP-JA refers the customer to one of the affiliated distributors. *Id.,* citing the Home Market Sales Verification Report at 15. In contrast, Universal maintains that DSS, one of the affiliated distributors, has smaller customers which require more assistance and thus DSS has more sales people to deal with particular geographic areas and has sales people present at the warehouse to deal with sales that are made on the spot and in cash. *Id*. at 27-28. Universal contends DSS sells in smaller quantities and it incurs additional inventory expenses because it must maintain inventory for customers which place smaller orders or require just in time delivery. Universal maintains the affiliated distributors' sales were made almost entirely from inventory. *Id*. at 28, citing Universal's January 24, 2012 section A questionnaire response (January 24 AQR) at 16; Universal's March 20, 2012 section A supplemental questionnaire response (March 20 ASQR) at 9; and Universal's May 4, 2012 section A supplemental questionnaire response (May 4 ASQR) at 3.

Petitioners did not provide any rebuttal comments on this issue.

In its rebuttal brief, Universal argues this issue should be decided based upon the verified facts and the legal standard for granting LOT adjustments. Universal asserts it did not provide any new information and it was obvious in this case that the difference between HMLOT1 and HMLOT2 could be quantified.

Department's Position: We disagree with Universal that we should make a LOT adjustment for the final determination. In its May 4, 2012 ASQR at 2, Universal stated the following:

> Universal cannot claim a level of trade adjustment because it has no domestic sales that are at the same level of trade as the U.S. CEP sales. Both the producers and affiliated distributors in the domestic market are at a more advanced level of trade than the U.S. CEP sales, and thus Universal is unable to quantify the differences in the level of trade between the U.S. and domestic markets. Adjustments for Prime Metal's selling functions result in a U.S. level of trade that is less advanced than the home market levels of trade because the adjusted U.S. price will be net of the selling expenses related to all selling functions on the sale to the unaffiliated U.S. customer *(e.g.,* the indirect selling expenses in Field INDIRSU). Under the Department's well-established practice regarding level of trade, therefore, Universal warrants a CEP offset.

In the *Preliminary Determination*, we stated that based on our analysis of the information on the record, we found that Universal sold at two different LOTs in the home market and one LOT in the United States. *See Preliminary Determination*, 77 FR at 32548. We stated that after comparing the U.S. LOT to the two home market LOTs, "we considered the CEP LOT to be different from the two home market LOTs and to be at a less advanced stage of distribution than the home market LOTs." *Id*. We continued:

> Based on our findings, we could not match the CEP sales to sales at the same LOT in the home market. In addition, we could not make a LOT adjustment because the differences in price between the CEP level of trade and the two home market LOTs could not be quantified due to the lack of an equivalent LOT in the home market to the CEP LOT. Also, there are no other data on the record which would allow us to make a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOTs are more remote from the factory than the CEP LOT, for this preliminary determination we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

After having stated conclusively that it could not claim a LOT adjustment, Universal claimed at verification as part of its minor corrections that it could quantify differences in selling practices between the two home market LOTs. However, we find that Universal's claim for a LOT adjustment at verification is untimely, and, as a change in methodology, does not constitute a "minor correction." In the past, the Department has disallowed adjustments claimed as minor corrections at verification which involve a change in methodology. *See*, *e.g.*, *Shelving and Racks from the PRC*. Furthermore, Universal has not provided any substantive analysis to show the Department's analysis in the *Preliminary Determination* was erroneous. As a result, we continue to find that the CEP offset is sufficient to make CEP and normal value comparable, and have not made an additional LOT adjustment for the final determination.

Comment 3: Early Payment Discounts

In its February 21, 2012 section C questionnaire response (February 21 CQR), Universal reported that its U.S. affiliate, Prime Metal, granted an early payment discount on sales to its largest U.S. customer for payments received within 20 days of the invoice date. In its April 25, 2012 section C supplemental questionnaire response (April 25 CSQR), Universal clarified that the discount was granted on payments even when they were not made within 20 days.

Petitioners argue that at the U.S. verification, the Department found early payment discounts were not always reported on sales to Prime Metal's largest customer. Referring to one of the sales the Department examined at verification, petitioners assert an early payment discount had been granted on that sale but not reported in the U.S. database. Petitioners quote the Department's U.S. verification report where it states, "Therefore, it is evident that the respondent did not report in the final U.S. sales database all the discounts granted to the customer… . There are other sale observations in the database for which the payment date was more than 20 days after the invoice date, but for which a discount was reported." Petitioners' Case Brief at 11, citing the U.S. Sales Verification Report at 34-35. Based on the Department's finding of unreported early payment discounts for sales sampled at verification, petitioners contend it is logical to assume Universal neglected to report early payment discounts on other sales to this customer. Therefore, petitioners urge the Department to calculate an early payment discount on all sales to Prime Metal's largest customer for which such a discount was not reported.

Referring to the sale cited by petitioners above, Universal notes it did not report an early payment discount on that sale but it provided information showing the discount had been granted.   Universal states the Department noted in the U.S. verification report that of the sales to Prime Metal's largest customer for which it did not report an early payment discount, a certain number were paid less than 32 days after invoice date (*i.e.*, the number of days between invoice date and payment for the sale cited by petitioners). Universal's Case Brief at 12, citing the U.S. Sales Verification Report at 34-35. Universal asserts the Department should calculate an early payment discount for that subset of sales. Universal contends the unreported early payment discounts constitute an error related to sales whose payment dates that were updated for the April 25 CSQR, but for which Universal inadvertently did not report the early payment discount.

Petitioners did not provide rebuttal comments on this issue.

In its rebuttal brief, Universal maintains petitioners have not provided any analysis, argument, or justification for calculating an early payment discount on all sales to Prime Metal's largest customer for which no early payment discount was reported. Universal reiterates that early payment discounts should only be applied to that subset of sales which were paid less than 32 days after invoice date.

Department's Position: As noted above, Universal reported that Prime Metal granted an early payment discount on sales to its largest customer for payments received within 20 days of the invoice date. Universal later clarified in its April 25 CSQR that this discount was granted even when payment was not received within 20 days. At verification, while examining a sale to this customer for which an early payment discount had not been reported, we found the customer had taken, and Prime Metal had recorded in its accounting system, an early payment discount.

We agree with petitioners that we should calculate an early payment discount for all sales to Prime Metal's largest customer for which the respondent did not report an early payment discount. The documentation for the sale we examined at verification showed that a discount was taken by the customer, and granted by Prime Metal, when payment occurred 32 days after the invoice date. However, we find that calculating early payment discounts only for the subset of sales where a discount was not reported, but payment occurred less than 32 days after the invoice date, would be arbitrary. This is because information on the record shows that Prime Metal did not hold to a 20 day-timeframe in either reporting or recording these discounts. Thus, there is no basis to conclude that 32 days is the timeframe beyond which Prime Metal did not grant early payment discounts. As for Universal's contention that the unreported early payment discounts inadvertently resulted from not updating the early payment discount field in the database submitted with its April 25 CSQR, Universal could have corrected the error subsequent to its submission of that database. For instance, Universal could have updated this field in the U.S. database it submitted with its June 12 DSQR, or it could have presented this as a minor correction at the outset of the U.S. verification. Accordingly, as necessary information is not available and Universal provided information that could not be verified, it is necessary to apply facts available with respect to the early payment discounts in accordance with section 776(a)(1) and (2)(D) of the Act. Furthermore, because we conclude that Universal could have correctly reported this information but did not do so, it did not act to the best of its ability in reporting this information. Accordingly, an adverse inference that discounts were provided on all sales to this customer is warranted in accordance with section 776(b) of the Act. Therefore, for this final determination we have calculated an early payment discount for all sales to Prime Metal's largest customer for which no discount was reported. For more information, *see* the Final Analysis Memorandum.

Comment 4: Post-Sale Price Adjustments to U.S. Price

Petitioners state the Department identified a few sales at the U.S. verification for which there were credit notes that decreased the sales price but were not reported in the U.S. database. Petitioners' Case Brief at 12-13, citing the U.S. Sales Verification Report at 24-25. Petitioners assert the Department should reduce the U.S. price of the sales at issue to reflect the credit notes pertaining to these sales.

Universal agrees the Department should reduce the U.S. price of these sales to account for the credit notes related to these sales.

Department's Position: We agree with both petitioners and Universal and have made this change for the final determination. For more information, *see* the Final Analysis Memorandum.

Comment 5: U.S. Indirect Selling Expense Ratio

Petitioners note that Prime Metal, Universal's U.S. affiliate, does not have audited financial statements, and thus the Department verified Prime Metal's sales and expenses by referring to Prime Metal's federal income tax return. Petitioners state the tax return listed a deduction for bad debt expenses, but the amount of bad debt included in the numerator of the U.S. indirect selling expense (ISE) ratio was only a portion of that. Petitioners' Case Brief at 13, citing U.S. Verification Exhibit 4 (USVE 4) at 4 and U.S. Verification Exhibit 5 (USVE 5) at 12. Petitioners note that page 39 of U.S. Verification Exhibit 13 (USVE 13) contains a worksheet identifying the amounts making up the bad debt expense claimed on the tax return, one of which is the amount for bad debt included in the numerator of the U.S. ISE ratio. Petitioners argue the Department should include the full amount of the bad debt claimed as a deduction to income for U.S. federal tax purposes in the numerator of the ISE ratio, instead of just the portion that Universal included.

In addition, petitioners note Universal reported as a minor correction that certain expenses pertaining to Goods and Services Tax (GST) paid on Canadian sales should be removed from the numerator of the U.S. ISE ratio. Petitioners' Case Brief at 14, citing the U.S. Sales Verification Report at 4. Petitioners assert these expenses should be included in the numerator of U.S. ISEs, because the denominator of the U.S. ISE ratio comprises all of Prime Metal's sales, including Canadian sales.

Universal states that Prime Metal records expenses related to minor processing (*e.g.*, threading) as cost of sales in its accounting system, and expenses related to selling pipe and the overall operation of the company as general expenses. Universal's Case Brief at 13, citing U.S. Verification Exhibit 3. Universal notes it did not include expenses booked as cost of sales in the numerator of the U.S. ISE ratio because these do not pertain to the back-to-back sales of pipe reported to the Department, but rather to Prime Metal's inventory sales. Universal explains that it reported Prime Metal's general expenses to the Department as either movement, direct, or indirect selling expenses, except for those expenses directly related to inventory sales. *Id.*, citing USVE 13.

Universal states that at the U.S. verification, the Department found Prime Metal had mistakenly recorded some expenses that should have been recorded under cost of sales as general expenses, and vice versa. *Id*., citing the U.S. Sales Verification Report at 37. Universal agrees with the Department that these expenses were recorded incorrectly but states the amount mistakenly booked as general expenses (and thus included in the U.S. ISE calculation) is greater than the amount mistakenly recorded under cost of sales. *Id*., citing *Id*. and USVE 13 at 5-7. Universal contends these are minor errors which should not require revisions to the U.S. ISE ratio, but if the Department does correct them, it must account for all the errors and not just those that are unfavorable to Universal.

Petitioners did not provide rebuttal comments on this issue.

In rebuttal, Universal asserts petitioners have not cited to any precedent or provided any justification as to why the bad debt on Prime Metal's federal tax return should be included in the U.S. ISE ratio. Universal argues the Department's practice is to base its analysis on a company's financial accounting records and therefore the Department should not include the bad debt listed on the tax return in the ISE ratio.

Universal contends the Department reconciled Prime Metal's reported sales from Prime Metal's accounting system to the tax return and relied on the accounting system for all other expenses. Universal states that at the U.S. verification, the Financial Controller of UTP-JA explained he had given information regarding Prime Metal's bad debts to an outside tax accountant, who then advised what amount should be reported on the tax return. Universal asserts one portion of the bad debt claimed on the tax return consisted of the amount booked in Prime Metal's accounting system as bad debt and reported to the Department as part of U.S. ISEs. Universal's Rebuttal Brief at 8, citing the U.S. Sales Verification Report at 39. Universal maintains the remaining portions pertained to the loss of a deposit on a residence; stock sales; scrap sales; scaffolding sales; and sales to one of Prime Metal's customers of pipe that is produced to order in the UAE (*i.e.*, direct shipments). *Id*., citing *Id*. Universal claims the Department observed this last category of debt related to sales with payment due dates from 2007 through 2009, which were not in the POI. Universal argues the customer to whom this last category of debt is attributed is Prime Metal's largest customer and a customer in good standing. Universal avers Prime Metal has not written off this debt or the debts of other customers in its financial accounting records because it expects these debts will be paid.

Universal claims it is problematic to treat an amount classified as bad debt for IRS purposes as an ISE. Universal contends there have been no cases in which the Department has relied upon a company's federal income tax return over its books and records to ascertain bad debt or other U.S. ISEs for antidumping purposes. Universal cites *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 77 FR 34344 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 5 (*Circular Welded Pipe from Korea*), claiming in that case the Department did not include a provision for doubtful accounts as bad debt in ISEs because the Department found the company had not reported any bad debt and classifying a balance sheet reserve as an ISE for each year it remains on the balance sheet would overstate the bad debt. In addition, Universal argues the objectives of the tax code differ from public financial accounting and therefore following the tax rules will not automatically lead to the correct matching of expenses and income for antidumping purposes. For instance, referring to the bad debt related to invoices with payment due dates from 2007 through 2009, Universal maintains "{i}t is possible that the bad debt might have been claimed as a deduction in those tax years but due to Prime Metal's low profitability, they were not claimed as income deductions at that time." Universal's Rebuttal Brief at 10.

Universal argues none of its bad debt tax deduction related to invoices with payment due dates in 2010 or 2011, even though the tax return covered the period September 1, 2010 to August 31, 2011. Noting the bad debt on the tax return related to invoices due for payment in 2008 and 2009, which Universal maintains was an extraordinary period for the U.S. economy, Universal avers there is no basis to believe the tax deduction claimed for 2010 would be more typical of Prime Metal's bad debt experience in the POI than its actual financial accounting records. Universal claims a comparison of the bad debt deduction on Prime Metal's 2010 tax return to the amount claimed on the company's 2009 tax return shows the 2010 amount was extraordinary. Furthermore, Universal asserts, the majority of the bad debt claimed on the tax return does not pertain to back-to-back sales of UAE pipe. Universal contends that when the Department finds a company's bad debt provision pertains to a fiscal period that extends before or after the review period, the Department only allocates a portion of the bad debt to the POR. *Id*. at 11, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010) and accompanying Issues and Decision Memorandum at Comment 4. As such, Universal argues that even if the bad debt at issue had been recorded in Prime Metal's accounting system, the Department would allocate only one-third of the debt for the period 2007 to 2009 to the POI. As an alternative, Universal suggests the Department could calculate an average of the bad debt on the 2009 tax return and the bad debt on the 2010 tax return related to sales with payment due dates from 2007 through 2009.

Regarding the expenses related to Canadian sales, Universal contends petitioners are mistaken that these GST payments are selling expenses, or even expenses that should be included in the calculation of ISEs. Universal asserts sales taxes are not classified as an ISE. Universal also reiterates the GST payments relate directly to Canadian sales. Therefore, Universal maintains these expenses are properly excluded from the numerator of the ISE ratio.

Department's Position: First, with respect to bad debt, we agree with petitioners that we should include the entire amount of bad debt from Prime Metal's tax return in the numerator of the U.S. ISE ratio. Prime Metal does not have audited financial statements. *See* Universal's January 24 AQR at 21. As a result, Universal placed a copy of Prime Metal's federal corporate income tax return for the period September 1, 2010 through August 31, 2011 (*i.e.*, Prime Metal's fiscal year) on the record. *See* Universal's May 4 ASQR at Exhibit A-43. Universal also submitted a copy of Prime Metal's amended federal corporate income tax return on the record. *See* Universal's May 10, 2012 section A supplemental questionnaire response at Attachment 2. At the U.S. verification, we reviewed these tax returns. *See* the U.S. Sales Verification Report at 11, *see also* USVE 5 (original tax return) and USVE 4 (amended tax return).

Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In instances where a company does not prepare financial statements that are audited by independent auditors or reviewed by independent accountants, the Department looks to other financial records, prepared for purposes independent of the antidumping proceeding, such as income tax returns, which attest to the veracity of a respondent's accounting system and information submitted to the Department. *See* Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003) and accompanying Issues and Decision Memorandum at Comment 15; Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review, 64 FR 17314, 17316 (April 9, 1999); and Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427 (October 1, 1997), among others.

Since Prime Metal does not have audited financial statements, we relied upon the company's U.S. Federal Income Tax Return for reconciliation purposes during the U.S. verification. Specifically, we reconciled the sales reported in the U.S. database to Prime Metal's accounting system by way of its profit and loss statements, which it prepares in the normal course of business. *See* the U.S. Sales Verification Report at 16-17. In the absence of audited financial statements, we then reconciled the profit and loss statements to Prime Metal's Federal income tax return. *Id*. at 17. We note that the U.S. Federal income tax return contains a reconciliation of the company's "income per books" to the income reported on the tax return. This reconciliation is a standard required section of the income tax return in Schedule M-1.

Contrary to Universal's assertion, in this case it is proper to rely on Prime Metal's tax return because in the absence of audited financial statements, that tax return was the document to which we reconciled the reported information to Prime Metal's accounting system at verification. Universal argues that at verification, the Department reconciled Prime Metal's reported sales from the company's accounting system to the tax return and relied upon Prime Metal's financial accounting system for expenses. However, in performing a quantity and value (*i.e.*, sales) reconciliation at verification, the Department is essentially verifying the veracity of a respondent's books and records, which are the source of the sales and expense data reported to the Department. In conducting such a reconciliation, the Department's normal practice is to tie the reported sales data to the respondent's accounting system in some form (*e.g.*, trial balance, profit and loss statements, *etc*.) and ultimately to some overarching document, such as an income statement in an audited financial statement, or, as in this case, a tax return. In verifying a respondent's reported expenses, if the overarching document does not contain specific line items for individual types of expenses (*e.g.*, freight, salaries, *etc.*), the Department will refer to the respondents' books and records in some form, which ultimately tie to the audited financial statement or tax return. The Department may also rely directly upon the overarching document to determine a respondent's expenses. *See, e.g.*, *Frontseating Service Valves From the People's*

Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 15, in which we stated that we based the respondent's ISE ratio on its audited financial statements covering the review period.

During the POI, Prime Metal recorded an amount in the "bad debt" account in its accounting system. This amount, which is one portion of the bad debt reported on Prime Metal's tax return, is the only amount which Universal contends should be included in the U.S. ISE ratio. Universal claims the remainder of the bad debt on the tax return either does not relate to sales of subject merchandise or relates to sales which occurred prior to the POI. If that remaining bad debt was truly not recorded in Prime Metal's accounting records, it would have to appear as a reconciling item on Schedule M-1 of the U.S. Federal income tax return. However, it does not. *See* USVE 4 at 8, which contains Schedule M-1, Reconciliation of Income (Loss) per Books With Income per Return. As for Universal's citation to *Circular Welded Pipe from Korea*, we note the circumstances in that case were different. Specifically, in *Circular Welded Pipe from Korea*, there was no bad debt expense or change in the provision for doubtful accounts and therefore we did not include any bad debt expenses in ISEs. In the instant case, there is a bad debt expense that is deducted on the income tax return and reflected in Prime Metal's accounting system. Thus, based on the fact that it is appropriate to rely on Prime Metal's tax return in this case, and that the remainder of the bad debt expense deducted on the Federal income tax return is captured in Prime Metal's accounting system as evidenced by there not being a reconciling item on Schedule M-1, we determine that it is appropriate to include the entire amount of the bad debt on the tax return in the numerator of the U.S. ISE ratio.

With respect to Universal's argument that a portion of the remaining bad debt does not relate to sales of subject merchandise, we disagree that it is inappropriate to include that portion in the numerator of the U.S. ISE ratio. The denominator of the U.S. ISE ratio includes all sales, both subject and non-subject. *See* USVE 13 at 2 and U.S. Verification Exhibit 6 (USVE 6) at 1. Thus, in order to achieve the most accurate allocation possible, we must make the numerator "on par" with the denominator. As for Universal's assertion that a portion of the remaining bad debt does not pertain to sales within the POI, Prime Metal has claimed them as an expense on its tax return for the 2010 fiscal period, which we have relied upon for this investigation.

Based on the foregoing reasons, we have included the entire amount of the bad debt expense from Prime Metal's federal corporate income tax return in the numerator of the U.S. ISE ratio.

Second, we agree with petitioners that we should include the expenses related to GST paid on Canadian sales in the numerator of the U.S. ISE ratio. While Universal contends we should not include these expenses because they are sales taxes, which are not classified as ISEs, we disagree. In this case, Prime Metal has not recorded these amounts in its accounting system as a liability for a tax which it collects and later remits, but rather as an expense. Regarding the argument that these expenses relate to Canadian sales, as we noted above, the denominator of the U.S. ISE ratio includes all sales, including sales to Canada. *See* USVE 13 at 2 and USVE 6 at 1.

Thus, it is appropriate to include expenses incurred on such sales in the numerator of the U.S. ISE ratio.

Third, as we have already noted, the denominator of the U.S. ISE includes all sales, including back-to-back sales of pipe reported in the database and Prime Metal's inventory sales. *See* USVE 13 at 2 and USVE 6 at 1. As such, we have determined that it is appropriate to include the expense categories related to inventory sales, which Universal excluded from the calculation, in the numerator of the U.S. ISE ratio. In a similar manner, we also find it is appropriate to include the amounts recorded in certain cost of sales accounts in the U.S. ISE numerator because they relate to the inventory sales captured in the denominator of the U.S. ISE ratio. In this way, we have corrected the errors identified in Universal's case brief (*i.e.*, the amounts mistakenly recorded under general expenses instead of cost of sales, and *vice versa*).

Finally, at the U.S. verification, we learned that certain categories of expenses which Universal had excluded from the numerator of the U.S. ISE ratio consisted of Medicare, Social Security, and federal and state unemployment taxes. *See* the U.S. Sales Verification Report at 36. Since these are benefits paid to sales employees and therefore are related to selling expenses, we have included these amounts in the numerator of the U.S. ISE ratio for the final determination.[4] The Department considers it appropriate to include such fringe benefit taxes in the calculation of the dumping margin. *See*, *e.g.*, *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009) and accompanying Issues and Decision Memorandum at Comment 5.

For further information about each of the items discussed above, *see* the Final Analysis Memorandum.

Comment 6: Various Issues Noted in the Home Market and U.S. Sales Verification Reports

Universal raised each of the issues discussed below in its case brief. Petitioners did not comment on any of these issues in their case or rebuttal briefs.

A. Handling Expenses

Universal states the Department noted the handling expenses identified as a minor correction at verification may not have been allocated properly. Universal's Case Brief at 6, citing the Home Market Sales Verification Report at 3 and 57. Universal affirms it intended to allocate the handling expenses over subject and non-subject merchandise, but mistakenly only allocated the expense to subject merchandise. Universal claims that since this is a valid expense but the record does not contain the information necessary to amend this error, the Department should

4 It is unclear whether any of the benefits recorded in these accounts may have been paid to employees involved with Prime Metal's inventory sales. However, even if they were, it would be appropriate to include them in the numerator of the U.S. ISE ratio, since as noted previously the denominator of the U.S. ISE ratio includes all sales.

apply the lowest per-unit amount reported in Universal's June 20, 2012 Home Market Sales Minor Corrections Letter at Attachment 3.

Department's Position: Universal identified the handling expenses as a minor correction at the outset of the home market sales verification. As Universal notes, in the home market sales verification report the Department questioned whether Universal had allocated this expense properly in reporting it to the Department. Universal acknowledges that it intended to allocate this expense over both subject and non-subject merchandise, but inadvertently only allocated it over subject merchandise. As a result, for this final determination, we have granted a deduction for handling expenses to the relevant transactions using the approach suggested by Universal, *i.e.*, by applying the lowest per-unit amount reported in the database submitted with Universal's home market sales minor corrections. For further information regarding this change, *see* the Final Analysis Memorandum.

B. Inventory Carrying Costs

As part of the minor corrections presented at the home market sales verification, Universal indicated it had not recalculated inventory carrying costs based on the revised total costs of manufacture (TOTCOMs) reported in the cost databases submitted with its June 12 DSQR. Universal argues the Department should recalculate inventory carrying costs for home market and U.S. sales using the weighted-average TOTCOMs the Department calculates in the computer program for all three producers and the inventory carrying cost ratios in Universal's February 21, 2012 section B questionnaire response (February 21 BQR) at Exhibit B-12.

Department's Position: We agree with Universal and, for the final determination, have recalculated inventory carrying costs using the cost databases Universal submitted with its June 12 DQSR and on August 22, 2012. However, we have not made this correction exactly as Universal suggested in its case brief. First, in recalculating inventory carrying costs for the home market affiliated resellers (INVCAR1H and INVCAR2H), we have used the revised ratios reported for each distributor in Universal's April 25 BSQR. Second, rather than recalculating the home market producers' inventory carrying costs (INVCAR1H) based on the weighted average TOTCOMs calculated for all three producers, we have applied the weighted average TOTCOMs calculated for each producer to each producer's sales, which results in a greater level of accuracy. Further, in calculating INVCAR1H we have also used the updated ratios reported for each producer in Universal's April 25 BSQR. Finally, we recalculated inventory carrying costs on U.S. sales (DINVCARU) using the weighted average TOTCOMs calculated for UTP-JA, because all of the subject merchandise sold in the United States by Universal during the POI was produced by UTP-JA. Relying on the individual producer's (*i.e.*, UTP-JA's) TOTCOMs results in a greater degree of accuracy than would be the case if we used the weighted average TOTCOMs calculated for all three producers. Also, we used the updated ratio for UTP-JA from Universal's April 25 BSQR. For more information regarding this change, *see* the Final Analysis Memorandum.

C. Manufacturer Field

Universal maintains the Department correctly observed the length of the manufacturer field in the home market database (MFRH) had been set to three digits, and therefore only "UTP" appeared in the MFRH field for sales by both UTP-JA and UTP-DIP. Universal's Case Brief at 7, citing the Home Market Sales Verification Report at 3. Universal claims the fact that UTP-DIP is the producer of all merchandise sold by UTP-DIP can be corroborated by the separate cost of production (COP) database submitted for UTP-DIP. *Id.*, citing Universal's June 12 DSQR at Exhibit D-60.

Department's Position: We agree with Universal. Therefore, for the final determination, we have inserted programming language to indicate that sales by UTP-DIP were manufactured by UTP-DIP and sales by UTP-JA were manufactured by UTP-JA. For more information regarding this change, *see* the Final Analysis Memorandum.

D. Pipe Specification Coding

Universal asserts the Department correctly remarked that while certain sales were mistakenly reported as ASTM A135 grade A instead of ASTM A53 grade A in the U.S. database, both specifications are assigned the same reporting code in the field SPECU. Universal's Case Brief at 7, citing the Home Market Sales Verification Report at 3 and 44. Universal maintains the Department's verification of a certain U.S. sales observation confirmed the whole order consisted of ASTM A53 grade A merchandise, even though it was erroneously reported as ASTM A135 grade A merchandise. *Id.* at 7-8, citing Home Market Sales Verification Exhibit 28.

Department's Position: As Universal states, and as we noted in the home market verification report, merchandise reported as ASTM A53 grade A and ASTM A135 grade A share the same reporting code (*i.e.*, "3000") in the field SPECU. Similarly, "3000" denotes both ASTM A53 grade A and ASTM A135 grade A merchandise in the field CONNUMU. Since SPECU and CONNUMU reflect the identical reporting code for both grades, it is not necessary to make any changes for the final determination.

E. Misapplied Credit Memo

Universal states the Department found at verification that UTP-JA had erroneously applied a credit note pertaining to one invoice to another invoice. Universal's Case Brief at 8, citing the Home Market Sales Verification Report at 3. Universal asserts the reasons for the mismatch were discussed at verification and UTP-JA provided the information needed to correct this error. *Id.*, citing *Id.* at 27 and Home Market Sales Verification Exhibit 8 at 55i.

Department's Position: We agree with Universal that UTP-JA provided the information necessary to amend this error. Thus, we have corrected this error for the final determination. For additional information regarding this change, *see* the Final Analysis Memorandum.

F. Indirect Selling Expenses Incurred in the Home Market on U.S. Sales

Universal agrees with the Department's finding that the field DINDIRSU does not reflect the revised ratio reported in Exhibit B-33 of Universal's April 25, 2012 section B supplemental questionnaire response (April 25 BSQR). Universal's Case Brief at 8-9, citing the Home Market Sales Verification Report at 58. Universal maintains the Department should recalculate DINDIRSU by applying the revised ratio to the gross unit price less billing adjustments.

Department's Position: We agree with Universal that we should use the revised ratio from Exhibit B-33 of its April 25 BSQR to recalculate DINDIRSU. However, we disagree that we should apply the revised ratio to gross unit price less billing adjustments for two reasons. First, in calculating DINDIRSU for the U.S. database, Universal itself applied the ratio to gross unit price without making any deductions to price. *See*, *e.g.*, Universal's June 11, 2012 U.S. sales database. Second, neither the narrative in Universal's February 21 CQR nor the narrative in its April 25 CSQR indicate Universal calculated DINDIRSU by deducting billing adjustments from the gross unit price. As such, Universal did not deduct billing adjustments from gross unit price in calculating DINDIRSU in its own submissions, even though it now claims in its case brief that the Department should do so. Therefore, we have recalculated DINDIRSU for the final determination by multiplying the ratio in Exhibit B-33 of Universal's April 25 BSQR by the gross unit price. For more information regarding this change, *see* the Final Analysis Memorandum.

G. DSS Inland Freight

Universal states that DSS modified its calculation of inland freight during verification to improve the allocation of salary-related expenses and to remove depreciation expenses since the trucks used to deliver merchandise were completely depreciated. Universal's Case Brief at 9, citing the Home Market Sales Verification Report at 3 and 49-51. As a result of these corrections, Universal states, the cost per kilometer decreased. *Id*., citing its April 25 BSQR at Exhibit B-26 and Home Market Sales Verification Exhibit 18. Universal argues that DSS explained these corrections to the Department, which verified the revised amounts and the reasoning behind the assumptions made in the allocation. Therefore, Universal asserts, the Department should rely upon the revised freight expenses for DSS for the final determination.

Department's Position: We agree with Universal and have used DSS's revised inland freight expenses for the final determination. For further information regarding this change, *see* the Final Analysis Memorandum.

H. Packing Expenses

Universal states that the Department noted in the verification report that there were certain discrepancies in the calculation of UTP-JA's packing expenses. Universal's Case Brief at 10, citing the Home Market Sales Verification Report at 3 and 59. Universal contends the verification report indicates the Department traced total packing material costs on the worksheet to accounting records and other support documentation and did not note any discrepancies related to material costs. *Id*. Regarding the allocation of these expenses, Universal maintains the Department questioned two aspects. First, Universal states, the Department queried whether caps are used for threaded only and threaded and coupled pipe as reported, or just threaded and coupled pipes, and how many caps are needed for threaded and coupled pipes. Universal asserts it was correct to allocate the cost of caps over both threaded only and threaded and coupled pipes, since threaded pipes do need caps, and threaded and coupled pipes have a cap on one end (*i.e.*, the end that does not have a coupling). *Id*. at 11, citing *Id*. at 59. Thus, Universal argues, no revision is required to the packing expense calculation with respect to caps. Second, Universal states, the Department inquired whether web slings and polyester wrapping should be allocated over total exports or only over exports shipped overseas. Universal claims UTP-JA agreed with the Department at verification that these materials are only used on exports shipped overseas, and indicates the quantity over which these expenses should thus be allocated. *Id*.

Department's Position: The Department noted in the verification report that there were several discrepancies in the calculation of UTP-JA's packing expenses. *See* the Home Market Sales Verification Report at 3. Thus, for the final determination, we have revised UTP-JA's packing expenses as follows.

First, based on the Department's finding at the home market sales verification, with which Universal agrees, we have allocated the cost of web slings and polyester wrapping to exports shipped overseas.

Second, with respect to caps, Universal claims its reported costs are accurate. The Department does not agree with this claim because based on record information, it appears the pipe quantity used to calculate per-ton cap costs may just consist of threaded only pipe rather than both threaded only and threaded and coupled pipe, in which case the cap portion of the reported packing costs would be overstated. However, we were unable to make a definitive conclusion regarding these costs following verification and therefore will not revise the per-ton cap cost portion of packing costs downward. *See* the Home Market Sales Verification Report at 59.

Finally, we have reallocated the reported expenses for the other packing materials (steel strapping, ink cartridges, wood, labels and stretch film, and "other") over the total quantity of pipe sales (both subject and non-subject). In allocating these expenses, Universal had also included the quantities related to other materials, such as raw materials (*i.e.*, coils) sold between the affiliated producers and steel scrap. However, at verification, Universal explained that coils sold between the affiliated producers are not subject to repacking, and that no packing was used for steel scrap. *See* the Home Market Sales Verification Report at 21. Therefore, it is appropriate to exclude these other items from the quantity over which these packing expenses are allocated.

For further information regarding these revisions to packing expenses, *see* the Final Analysis Memorandum.

I. Billing Adjustments and Warranty Expenses for Three U.S. Invoices

Universal states that in verifying the minor correction at the U.S. verification related to billing adjustments, the Department asked Prime Metal to provide a printout from the U.S. database listing the sales for which the company was continuing to report billing adjustments and/or warranty expenses. Universal's Case Brief at 14, citing U.S. Verification Exhibit 11 at 13. Universal contends the Department examined this list and it was obvious that the same amount had been mistakenly reported in both the billing adjustment and warranty expense fields for three invoices. Universal asserts the Department does not mention these in the U.S. verification report because there is no question these are double-counted and need to be revised. Universal maintains the Department decided not to verify any of these invoices even though Prime Metal was ready to do so. For the final determination, Universal argues the Department should remove the amounts in one of the fields to prevent any double-counting.

Department's Position: At the outset of the U.S. verification, Prime Metal reported a number of minor corrections, one of which pertained to billing adjustments. In the course of discussing this correction, we asked Prime Metal to provide a list of sales for which it was continuing to report billing adjustments (and/or warranty expenses). Universal claims that for three of the invoices on the list, the amounts in the billing adjustment and warranty expense fields are the same, and thus have been double-counted. While it may appear from that list that the amounts are double-counted, the record does not contain sufficient information that would allow us to determine we should eliminate one of the adjustments. As such, we have not made any changes for final determination.

J. Destination for One U.S. Sale

Universal states that it agrees with the destination indicated for one of the U.S. pre-selected sales traces in the U.S. verification report.

Department's Position: For the final determination, we have revised the destination for this certain U.S. sale in accordance with the information we examined at verification and thus noted in the U.S. verification report. For further information regarding this change, *see* the Final Analysis Memorandum.

Comment 7: UTP-JA's Other Material Costs

UTP-JA reported negative other material costs in its submitted cost file in the field named DIRMAT7. At the preliminary determination, the Department disallowed this amount. Universal asserts that the negative other material costs are mainly caused by the reversals of hypothetical customs markups which were recorded with raw material costs when UTP-JA purchased hot rolled coils. Universal contends that the hypothetical customs markups were not actual costs, were reversed as adjustments to cost of sales in the normal course of business, and have no relationship to duty payments on the sales of merchandise in the domestic market. Thus, Universal argues that the Department should allow the negative other material costs for the final determination.

Petitioners did not comment on this issue.

Department's Position: We agree with Universal. As explained in the Memorandum to the File from Ji Young Oh, Senior Accountant through Neal M. Halper, Office Director, "Verification of the Cost Response of Universal Tube and Plastic Industries, Ltd. in the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the United Arab Emirates," dated August 14, 2012 (Cost Verification Report) at 7-8, UTP-JA records a reserve for hypothetical customs markup as a part of hot rolled coil costs in its inventory accounts when it purchases imported coil. For reporting purposes, UTP-JA calculated the reported hot rolled coil cost based on the actual hot rolled coil consumption quantity and the purchase value recorded in its production report. However, the hot rolled coil costs recorded in the production report include the hypothetical customs markup. Thus, excluding the negative other material costs would result in the overstatement of UTP-JA's reported costs by the amount of the hypothetical customs markup, which is not an actual cost. As such, we allowed UTP-JA to offset the reported costs by the negative other material costs for the final determination.

Comment 8: UTP-JA's General and Administrative Expense Ratio Calculation

At the preliminary determination, the Department increased UTP-JA's reported general and administrative (G&A) expenses for the net realizable value inventory provision. The information on the record at that time did not clearly illustrate that this amount was reclassified from the cost of manufacturing (COM) and was already included in the reported G&A expenses. Universal argues that the Department verified that the net realizable value inventory provision was reclassified from the COM and included in the reported G&A expenses and thus, the Department should disregard this adjustment for the final determination. Universal also points out that during the verification, the Department found that UTP-JA overstated its G&A expense ratio by reducing the cost of goods sold denominator by the scrap revenue twice. Universal contends that the Department should correct the cost of goods sold figure in the calculation of the G&A expense ratio for the final determination.

Petitioners did not comment on this issue.

Department's Position: We agree with Universal. Subsequent to the preliminary determination, UTP-JA provided further information regarding the net realizable value inventory provision in response to the Department's May 15, 2012 section D supplemental questionnaire and the Department verified that this amount was reclassified from the COM and was included in UTP-JA's reported G&A expenses. *See* Cost Verification Report at 26. Also, as explained in the Cost Verification Report at 25, even though the cost of goods sold amount in the financial statements was already reduced by scrap sales revenue, UTP-JA inadvertently deducted the scrap sales revenue again from the cost of goods sold denominator used in the G&A expense ratio calculation. For the final determination, the Department recalculated the G&A expense ratio exclusive of the net realizable value inventory adjustment made at the preliminary determination. We also excluded the additional deduction of scrap sales revenue from the cost of goods sold denominator for the final determination. For more information, *see* Memorandum to Neal M. Halper, Director, Office of Accounting, through Theresa C. Deeley, Lead Accountant, from Ji Young Oh, Senior Accountant, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Universal Tube and Plastic Industries, Ltd.," dated October 15, 2012.

Comment 9: KHK's Un-reconciled Difference

Universal's June 12 DSQR showed an un-reconciled difference between KHK's reported COM and the costs from KHK's accounting system. Universal asserts that KHK's role is limited in this proceeding and thus, the Department should only increase KHK's reported costs by the un-reconciled difference between the reported total COM and the cost from the accounting system for the final determination.

Petitioners argue the Department should increase KHK's reported costs by the un-reconciled difference between the reported total COM and the cost from the accounting system.

Department's Position: We agree with both petitioner and respondent that the Department should adjust KHK's reported costs to account for the un-reconciled difference between the reported total COM and the total costs recorded in KHK's accounting system. Thus, for the final determination, we increased KHK's reported COM for the full amount of the un-reconciled difference to reflect the costs as recorded in KHK's financial accounting system.

Comment 10: KHK's General and Administrative Expense Ratio Calculation

At the preliminary determination, the Department adjusted KHK's G&A expenses to include the annual management fee cost reflected in the company's audited financial statements. Universal argues that the management fee is a device to shift profits away from the local UAE partner to the foreign shareholder and has nothing to do with a fee for services performed or compensation. Universal contends that as such, the management fee should not be treated as a COP for the final determination. According to Universal, UAE law requires foreign investors who wish to operate in the UAE to have a local UAE partner that holds at least fifty-one percent of the equity ownership of the company. Universal argues that the local UAE partner neither invests in the business nor is involved in the day-to-day operations of the company and normally, a fixed annual sponsorship fee is paid to the local UAE partner. Universal asserts that given this legal arrangement, companies in the UAE have devised a management fee mechanism to avoid profit sharing with the local UAE partner. Universal contends that the management fee is a means of distributing dividends to the foreign investor and is a way to shift the company profits and reduce the profit shared with the local UAE partner.[5]

Universal also notes that the management fee is waived or reduced by the foreign investor if the profits are insufficient to allow for the full recovery of the management fee. Universal argues that the management fee operates just like a dividend to the foreign investor and should be treated like a dividend by the Department. Universal cites *Honey from Argentina: Final Results of New Shipper Review*, 72 FR 19177 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 7 (*Honey from Argentina*), and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 2011 (January 13, 2011) and accompanying Issues and Decision Memorandum at Comment 9 (*S^4 from Mexico*) and asserts that these fees should be considered dividends and thus, excluded from the G&A expense ratio calculation for the final determination.

Petitioners did not comment on this issue.

Department's Position: We disagree with Universal. During the POI, KHK incurred the annual management fee and recognized this fee as an expense in its audited financial statements which were prepared in accordance with UAE generally accepted accounting principles (GAAP) which are based on International Financial Reporting Standards (IFRS).[6] Pursuant to section 773(f)(1)(A) of the Act, the Department's normal practice for calculating COP and constructed value (CV) is to rely upon a company's normal books and records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflect the cost of producing and selling the subject merchandise. *See Final Results of Antidumping duty Administrative Review: Stainless Steel Bar from Japan*, 65 FR 13717 (March 14, 2000) and accompanying Issues and Decision Memorandum at Comment 7 (*Stainless Steel Bar from Japan*).

We find that Universal's argument that the annual management fee represents the distribution of dividends to its foreign investor unpersuasive for the following reasons. First, KHK characterized this payment as a management fee in its audited financial statements. Independent auditors review, test, and express an audit opinion on a company's financial statements so that users can rely on the audited financial statements. As a user of the financial statements, the

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[5] To support its position, Universal points to an article written by the law firm of Allen & Overy which describes how the management fee is constructed. Universal's Case Brief at 20, citing its June 12 DSQR at Exhibit D-61.
[6] KHK maintains its normal books and records and prepares audited financial statements based on the IFRS in the normal course of business. *See* Universal's March 20 ASQR at Exhibit A-31.

Department relies on the unqualified audit opinion in each of the respondent's audited financial statements. Therefore, the Department considers the classification of the management fee payment in KHK's financial statements to be accurate and reliable. Second, KHK has historically recognized this expense as an annual management fee and nowhere in the company's financial records was this item shown as a dividend distribution (*i.e.*, general ledger and financial statements). *See* Universal's March 20 ASQR at Exhibit A-31. Also, the Department notes that dividends are generally distributed to the owners in proportion to their shareholdings. However, the records of this case did not illustrate that the management fee payment made to the foreign investor was in proportion to his/her shareholdings.

Furthermore, respondent's reliance on *Honey from Argentina* and *S^4 from Mexico* is misplaced. In *Honey from Argentina*, the Department determined that the profit withdrawals by company owners were dividend distributions based on the review and the verification of the records. While Universal correctly points out that it is the Department's practice not to include dividend payments in the COP and CV calculation by citing *S^4 from Mexico*,[7] the expense at issue in this case is recorded as a management expense, not dividends, on KHK's financial statements. Thus, as in *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002), accompanying Issues and Decision Memorandum at Comment 3 and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 67, the Department determined that the management fee is a period expense, rather than a dividend, and has included it in the calculation of KHK's G&A expense ratio.

Comment 11: Universal's Financial Expense Ratio Calculation

At the preliminary determination, the Department adjusted Universal's financial expenses to include the interest expense incurred on its shareholder loan. Universal argues that the shareholder loan is a device for demonstrating sufficient equity to meet the bank's liquidity requirements and that the Department should exclude the associated interest expense from the financial expense ratio. Universal claims that the shareholder loan has none of the attributes of a loan because the loan was given to the company without a repayment schedule, at an above market interest rate, and the bank treats this loan as tangible net worth. Universal contends that this type of instrument was developed to avoid equity claims by the local UAE partner. Universal also argues that the interest payment is structured to transfer profits to the foreign investor and by-pass the local UAE partner. Universal contends that the shareholder loan and the associated interest expenses are recorded as such to maintain the net worth valuation required in the bank loan covenants. Universal argues that if the Department decides to include the shareholder loan's interest expense in the financial expense ratio calculation, the Department's recalculation should also reflect the short-term interest income and the foreign exchange gains which were inadvertently excluded by the Department in the cost verification report calculation.

[7] In *S^4 from Mexico*, the Department distinguished the dividend payments to owners from the employee profit sharing (EPS) expenses and included the EPS expenses in the calculation of respondent's G&A expense.

Petitioners argue that the Department should include the interest expense associated with the shareholder loan in the financial expense ratio calculation for the final determination.

Department's Position: We disagree with Universal. During the POI, Universal incurred interest expense on the shareholder loan and it recognized this amount as a financial expense in its audited financial statements which were prepared in accordance with UAE GAAP. Pursuant to section 773(f)(1)(A) of the Act, the Department's normal practice for calculating COP and CV is to rely upon a company's normal books and records where those records are prepared in accordance with the GAAP of the exporting country and reasonably reflect the cost of producing and selling the subject merchandise. *See Stainless Steel Bar from Japan* at Comment 7.

We disagree with Universal's claim that the shareholder loan represents equity, rather than a liability, and that the interest payment represents a device for allocating the profits to the foreign investor. Despite its claims, Universal characterized the shareholder loan as a liability and the associated interest expense as financial expenses in its audited financial statements. *See* Universal's May 16, 2012 section A supplemental questionnaire response at Attachment 1 for the highest consolidated audited financial statements for the company group (*i.e.*, Taurani Holdings Limited). Independent auditors review, test, and express an audit opinion on a company's financial statements so that users can rely on the audited financial statements. As a user of the audited financial statements, the Department relies on the unqualified audit opinion in each of the respondent's audited financial statements. Therefore, the Department considers the classification of this loan and the associated interest expense in Universal's financial statements to be accurate and reliable. Accordingly, the Department included the interest expense incurred on the shareholder loan in the financial expense ratio calculation for the final determination. Also, we included the short-term interest income and the foreign exchange gains offset in the financial expense ratio calculation for the final determination.

Comment 12: Targeted Dumping/Zeroing

Petitioners affirm the Department's findings of targeted dumping in the preliminary determination and argue these findings should remain unchanged for the final determination. However, if targeted dumping is not applied, or if positive margins on any U.S. sales are offset by negative margins for any other reason, petitioners urge the Department to consider the following argument for the final determination. Petitioners' Case Brief at 2 and 18-19.

Petitioners note the Department recently instituted new regulations under which it now calculates weighted-average cash deposit and assessment rates by offsetting positive margins by negative margins in administrative reviews. *Id*. at 16, citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). Petitioners state that in recent years, the Department has been offsetting positive margins with negative margins in calculating cash deposit rates in investigations, but prior to the

Final Modification for Reviews has never offset positive margins with negative margins in calculating assessment rates. Petitioners contend that while the instant investigation does not involve the assessment of antidumping duties, certain provisions of the Tariff Act concerning the collection and assessment of antidumping duties prohibit the offsetting of positive margins by negative margins in determining cash deposit rates for investigations.

Petitioners assert that section 736(a)(1) of the Act requires that the Department assess antidumping duties equal to the amount by which normal value exceeds the export price. Because of this explicit statutory requirement, petitioners argue that positive margins cannot be offset by negative margins in calculating the assessment rate, because doing so would result in an assessment rate that does not equal the amount by which normal value exceeds export price. *Id*. at 19-20.

In addition, petitioners cite section 736(a)(3) of the Act, which "requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited." *Id*. at 21. Petitioners assert the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) found that cash deposits from an antidumping duty investigation must be adequate to cover the eventual assessment of antidumping duties. *Id*. at 21, citing *Udine & All Belg. v. United States*, 551 F.3d 1339, 1341-42 (Fed. Cir. 2009). Petitioners argue that if the Department offsets positive margins with negative margins in calculating the cash deposit rate, then the cash deposit rate does not estimate the assessment nor does it provide security that is adequate to cover payment of the assessment. Petitioners also note that, in an investigation, if positive margins are offset with negative margins and a foreign producer is assigned a zero dumping margin, that producer will be exempt from any resulting antidumping duty order or future proceedings under such order. Petitioners contend such an exemption "is contrary to the aforementioned duty collection and assessment provisions of the Tariff Act." *Id*. at 23. Petitioners further argue the Department does not have the discretion to calculate an inaccurately-estimated cash deposit rate in a case in which it can make a more accurate calculation. *Id*. at 23-24, citing *Badger-Powhatan v. United States*, 633 F. Supp 1364 (CIT 1986). Therefore, petitioners assert cash deposit rates must be based only on positive margins to provide reasonably accurate estimates of the assessment and security for payment of the assessment.

Similarly, petitioners aver section 751(a)(2) of the Act, and the Federal Circuit's interpretation of that statute, stipulate that the same positive difference between normal value and export price on which assessment is based serves as the basis for the cash deposit rate. *Id*. at 24-25, citing *Torrington v. United States*, 44 F.3d 1572, 1578 (Fed. Cir. 1995). Reiterating that section 736(a)(1) of the Act provides that the assessment equals the amount by which normal value exceeds export price, petitioners argue the difference must be a positive amount. Thus, petitioners assert, the positive difference between normal value and export price which serves as the basis for assessment must also serve as the basis for the cash deposit. *Id*. at 25-26. While noting section 751(a)(2) of the Act relates to administrative reviews, petitioners contend that statute also applies to investigations. *Id*. at 26. As such, petitioners aver sections 751(a)(2) and

736(a)(1) of the Act "require that the positive difference between the normal value and export price (or constructed export price) serves as the basis for both assessed duties and cash deposits of estimated duties, including cash deposits from investigations." *Id*.

Petitioners claim the logic for requiring cash deposit rates to be a close estimation of assessment rates is identical for both investigations and reviews. In support of their claim, petitioners cite *Daewoo Electronics v. United States*, 712 F Supp 931 (CIT 1989). *Id*. at 26-27. Petitioners argue the delay between entry and final assessment is lengthy, and thus it is vital that cash deposits are a close approximation of assessed duties. Given this delay, petitioners maintain it is not surprising that several provisions of the statute involving both investigations and administrative reviews require that security and cash deposit rates estimate the actual duty assessment and provide security for payment of that assessment. *Id*. at 27-28, citing 733(d), 735(c), and 736(a)(3) of the Act.

Petitioners argue the offsetting of positive margins by negative margins in calculating the cash deposit rate effectively "under-collects the security needed for payment of antidumping assessments." *Id*. at 29. Petitioners contend this does not deter continued dumping, but rather encourages it, because it relieves foreign producers and exporters from paying cash deposits and assessments and thus allows them "to dump their goods on the U.S. market with impunity." *Id*. Petitioners further assert the 'under-collection' of cash deposits also allows importers to avoid paying the appropriate level of antidumping duties. *Id*. Thus, petitioners aver, negative margins should be disregarded in calculating cash deposit rates in the instant investigation.

Petitioners state that they are mindful of the Federal Circuit's ruling in *U.S. Steel v. United States* that the Department had the discretion to offset positive margins by negative margins in certain investigations. *Id*. at 31, citing *U.S. Steel v. United States*, 621 F.3d 1351 (Fed. Cir. 2010) (*U.S. Steel*). Petitioners state they do not dispute the language of section 771(35) of the Act (addressed in *U.S. Steel*) is unambiguous or prohibits the Department from offsetting positive margins with negative margins. On the other hand, petitioners aver, section 736(a)(1) of the Act, which was not addressed in *U.S. Steel*, is unambiguous and does not grant the Department discretion to offset positive margins with negative margins for assessment purposes. Petitioners compare the two sections of the statute, stating that:

> The statutory definition of the antidumping duty assessment at 19 U.S.C. § 1673e(a)(1) contains the words '**equal to**' followed by the phrase 'the amount by which the normal value exceeds the export price.' In contrast, the statutory definition of the dumping margin at 19 U.S.C. § 1677(35)(A) contains the word '**means**' followed by essentially the same phrase. The rationale provided by the Federal Circuit in *U.S. Steel vs. United States* for allowing Commerce to subtract negative margins from positive margins for investigation cash deposits is based on the silence of the statute as to what to do when the amount calculated by Commerce pursuant to § 1677(35)(A) is negative. But this rationale does not apply to the statutory definition of the antidumping duty assessment at 19 U.S.C. § 1673e(a)(1) which requires the assessment to be 'equal to' the amount by which the normal value exceeds the export price.

Id. at 33 (emphasis added by petitioners).

Likewise, petitioners argue there is no ambiguity in the meaning of the term "exceeds" in section 736(a)(1) of the statute. *Id*. at 34-35. Petitioners assert the amount equal to the amount by which normal value exceeds export price can only be positive, and therefore the statute must be construed as requiring the use of positive margins without any offsets by negative margins. For these reasons, petitioners urge the Department not to offset positive margins with negative margins for the final determination.

Universal asserts the targeted dumping methodology used in the preliminary determination is unlawful for three reasons and should be modified for the final determination. First, Universal contends that if the Department finds targeted dumping in an investigation, the Department may utilize the average-to-transaction (A-T) comparison methodology only if there is a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and the Department explains why the average-to-average (A-A) methodology or transaction-to-transaction (T-T) methodologies do not account for the differences. Universal's Case Brief at 30, citing section 777A(d)(1)(B) of the Act. According to Universal, Congress intended that the A-T methodology be used only where there is targeted dumping, but the Department applied the A-T methodology to both targeted and non-targeted sales. *Id*., citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. I (1994) (SAA) at 843. Moreover, Universal avers the Department cannot meet the statutory requirement that it explain why the A-A or T-T methodologies do not account for the significant price differences, because there is no logical explanation for non-targeted sales. Universal asserts that "{b}y definition, sales that are not targeted are not suspected of targeted dumping and thus do not trigger the exception" to use the A-T methodology. *Id*. at 30-31. Noting the Department explained in the preliminary determination that the price differences could not be taken into account because the A-T methodology yields a material difference in the margin, Universal argues it is distortive to compare margins computed under the A-T and A-A methodologies because any differences probably result from zeroing, not a failure to unmask targeted dumping. *Id*. at 31, citing *Preliminary Determination*, 77 FR at 32546. As such, Universal concludes the Department's application of A-T methodology to both targeted and non-targeted sales is contrary to the statute and Congressional intent.

Second, Universal argues, even if the statute permitted the Department to use the A-T methodology for all sales, the statute does not allow the Department to apply zeroing to any sales. Universal claims the pertinent provision for zeroing is section 771(35) of the Act, which the Department has interpreted as not allowing zeroing in antidumping investigations. *Id*. at 31, citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification for Investigations*). Universal notes the Department has also eliminated zeroing in administrative reviews. *Id*. at 31-32, citing *Final Modification for Reviews*. Universal argues the Department cannot resume zeroing in investigations where there is targeted dumping because the targeted dumping statute does not provide any authority for zeroing. Furthermore, Universal contends, the Federal Circuit has held that the Department cannot interpret section 771(35) inconsistently with respect to zeroing in administrative reviews, which were previously based on A-T comparisons, and investigations without a legally sound explanation. *Id*. at 32, citing *Dongbu Steel Co. Ltd. v. United States*, 635 F.3d 1363, 1373 (Fed. Cir. 2011) and *JTEKT Corp. v. United States*, 642 F.3d 1378, 1384-1385 (Fed. Cir. 2011).[8] Since it is unlawful to utilize zeroing in the A-T context for reviews, Universal asserts, the Department is barred from using zeroing in the A-T context in an investigation with targeted dumping unless it can offer a legally reasonable basis for interpreting the same provision inconsistently. According to Universal, there is no such explanation. *Id*. at 32-33.

Third, noting the statute does not specify the methodology the Department must use to conclude whether there is targeted dumping, Universal argues the Department must use a reasonable methodology that does not produce arbitrary results. Universal contends, however, that the Department's methodology "is unreasonable and arbitrary because it is not grounded in valid statistical techniques and is biased toward an affirmative finding of targeted dumping in virtually every investigation other than those in which all sales are made at identical prices." *Id*. at 33. Universal first takes issue with the Department's standard deviation test. Universal maintains the 33 percent threshold is based on the fact that in a normal database, one standard deviation would cover 68 percent of the data points, but the Department does not examine whether the database actually passes the mathematical test for normality. Universal claims the CIT has found that when performing a statistical analysis, the Department may not just presume the data conform to specific mathematical models, but also must test those models against the data. *Id*. at 34, citing *Daewoo Electronics v. United States*, 760 F. Supp. 200, 206-207 (Ct. Int'l Trade 1991), *rev'd on other grounds,* 6 F.3d 1511 (Fed. Cir. 1993). Universal avers that instead of merely assuming a normal distribution, "the Department should adopt a statistical analysis that accounts for the underlying properties of the database in determining the statistical significance of deviations from the mean." *Id*. at 35. As an example, Universal suggests the Department could use a confidence interval based on a t-distribution.

Universal also argues the Department's methodology is arbitrary because even though section 777A(D)(1)(B)(i) of the Act requires export prices to be analyzed in determining whether there is targeted dumping, the Department does not base its analysis on individual sales prices, but on the weighted-average price of those prices by CONNUM. Universal contends there is a great difference between using individual prices and weighted-average prices, because the more disperse a database is, the larger the standard deviation and gap will be. Universal maintains that by weight averaging prices, "the Department unnecessarily shrinks the results of these two

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[8] Universal notes the latter case has been remanded. *Id*., citing *JTEKT Corp. v. United States*, 2011 Ct. Intl. Trade LEXIS 158, Slip Op. 11-158, 35 CIT _ (Dec. 15, 2011). It also notes the U.S. Court of International Trade (CIT) subsequently upheld the use of zeroing in administrative reviews. *Id*., citing *Union Steel v. United States*, 36 CIT _, 823 F. Supp. 2d 1346 (2012), *appeal docketed*, No. 12-1248 (Fed. Cir. March 20, 2012).

mathematical functions, thereby greatly increasing the chance that outlying sales will be found targeted." *Id*.

Next, Universal argues the Department's gap test is arbitrary. Stating the objective of the gap test is to ascertain whether the prices differed significantly, Universal claims the Department has never explained how the Department's gap test achieves the stated objective. In a database that is more or less evenly dispersed, Universal contends it is entirely random whether the gap between the alleged target's price and the next higher non-targeted price will be higher or lower than the weighted-average gap of the non-targeted prices, and, as such, one would anticipate the gap to be lower 50 percent of the time and higher 50 percent of the time. Universal asserts that using a five percent threshold virtually ensures the gap test will not preclude a finding of targeted dumping.

Finally, Universal argues the Department's methodology leads to results which are inconsistent with a finding of targeted dumping. Universal claims the most incredible aspect of the Department's methodology might be that sales which were not even dumped can be found to be targeted. Universal also refers to the following example which the Department provides with respect to the gap test: "if the weighted-average price to the alleged targeted group is $7.95 and the weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25 because this is the next higher price in the non-targeted group above $7.95 (the average price to the targeted group)." *Id*. at 36-37, citing *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 4, footnote 122. According to Universal, it is astounding that the Department recognizes there could be one or more sales below the allegedly targeted price which would just be disregarded for purposes of the gap test. As a result, Universal avers, "the Department's methodology does not establish a pattern of prices which differ significantly from non-targeted prices. In fact, the alleged targeted sale price might be right in line with the other prices, or even higher, and still pass the gap test with flying colors." *Id*. at 37.

In their rebuttal brief, petitioners argue the Department properly applied the A-T methodology to all U.S. sales. Petitioners contend neither the statute nor the SAA stipulate that the Department may only use the A-T methodology for sales found to be targeted, and application of A-T methodology to all U.S. sales precludes the prices of any U.S. sales from being masked. In addition, petitioners argue the Department met the statutory requirement that it explain why the significant price differences cannot be accounted for using the A-A or T-T methodologies. Petitioners contend the Department clearly explained that averaging of U.S. prices masks dumping if there is a substantial difference between the margins calculated under the A-A and A-T methodologies. Petitioners claim this, coupled with evidence of a pattern of price differences, is sufficient to warrant application of the A-T methodology to all U.S. sales. As for Universal's claim that it is distortive to compare margins using the A-A and A-T methodologies because any differences likely stem from zeroing, petitioners counter that zeroing negative margins (or disregarding them) is implicit in the A-T methodology. Petitioners state that if negative margins are not zeroed or disregarded in the A-T methodology, then the overall weighted-average margin will be the same under both the A-A and A-T approaches. Petitioners aver the statute acknowledges the two methodologies are different, and thus the choice between A-A and A-T methodologies is the choice between offsetting and zeroing, respectively.

Petitioners also assert the Department's targeted dumping methodology is reasonable and not arbitrary and is based upon valid statistical techniques. First, petitioners assert the standard deviation from the arithmetic mean "is a basic and universally accepted statistic of dispersion." Petitioner's Rebuttal Brief at 5. Petitioners argue most human behavior, such as pricing behavior, is reasonably reflected by the normal distribution which shows an equal dispersion of observations before and after the mean, with varying concentrations around the average measured by the variance and standard deviation. Petitioners also take issue with Universal's suggestion that the Department adopt a different statistical test, such as a confidence interval based on a t-distribution. Petitioners maintain that confidence intervals are based on the same assumption of normal distribution, and upon the same standard deviation, on which the Department's *Nails* test is based. Petitioners contend the Department's standard deviation test and confidence intervals are merely different ways of conveying the same information. Petitioners argue the Department's test concludes from the pricing data that if one-third or more of a customer's sales are greater than one standard deviation below the mean, then it is unlikely that such sales do not happen by chance but rather are targeted.

Second, petitioners aver that the use of weighted-average prices by CONNUM in the Department's statistical test makes it harder to find targeted dumping. Specifically, petitioners state that "comparing individual sale prices of a particular customer to the overall average of the CONIUM {*sic*} to all U.S. customers would reveal more instances of customer-specific prices below the overall average than a comparison of the average of sales to the customer to the overall average of all U.S. sales, and since any finding of targeting meets the statutory threshold for applying the A-T method to all U.S. sales, the averaging of prices reduces these instances of targeting." Id. at 7-8. Similarly, petitioners contend that the Department's gap test also makes it more difficult to find targeted dumping.

Lastly, petitioners contend Universal's argument that sales which were not dumped can be found to be targeted is based on a basic misunderstanding of the Department's statistical test for determining if there is a pattern of price differences. Petitioners maintain that test merely deals with U.S. sales prices, but the calculation of a dumping margin considers both U.S. sales prices and the normal value of sales in the home market. Petitioners assert that since the Department's targeted dumping methodology only deals with U.S. sales, it does not identify dumping but rather reveals the potential for masking sale prices that may be dumped. As such, petitioners argue it is possible for targeted sales not to be dumped, and *vice versa*.

In its rebuttal brief, Universal contends the Department must reject the argument in petitioners' case brief because it is precluded by binding Federal Circuit precedent. Universal claims the

Federal Circuit found in *U.S. Steel* that zeroing is not required in investigations and that the Department's practice of not zeroing negative margins in investigations using the A-A methodology is keeping with law. Universal asserts the Federal Circuit made its ruling in *U.S. Steel* under the confines of its earlier decisions in *Timken Co. v. United States,* 354 F.3d 1334 (Fed. Cir. 2004) (*Timken*) and *Corus Staal BV v. United States*, 395 F.3d 1343 (Fed. Cir. 2005) (*Corus I*), which held that 771(35)(A) does not require the Department to utilize zeroing, and endorsed those previous decisions. Universal's Rebuttal Brief at 13-14, citing *U.S. Steel*, 621 F.3d at 1361.

Universal argues that while petitioners' argument is based on section 736(a)(1) of the Act whereas section 771(35)(A) of the Act was at issue in *U.S. Steel*, this distinction is immaterial. Citing the language of both provisions, Universal claims the key word in both is "exceeds." According to Universal, the Federal Circuit has repeatedly found that "exceeds" does not necessitate that only positive dumping margins be considered. *Id*. at 14, citing *Timken*, 354 F.3d at 1341. Universal asserts the fact that section 736(a)(1) of the Act includes the additional words "equal to" does not differentiate this case from this binding precedent. *Id*., citing *Grobest* & *I-Mei Industrial (Vietnam) Co., Ltd. v. United States*, 2012 Ct. Int'l Trade LEXIS 102 (July 31, 2012) at *12 (*Grobest*).

In addition, Universal avers that petitioners' reliance on the *Final Modification for Reviews* is inapposite because the *Final Modification for Reviews* only applies to antidumping duty administrative reviews for which preliminary determinations were issued subsequent to April 16, 2012. Universal maintains the assessment policy announced in the *Final Modification for Reviews* does not directly affect the instant investigation because it does not involve the assessment of duties, and thus petitioners' argument "is not ripe for adjudication" in the framework of this investigation. *Id*. at 15, citing *Texas* v. *United States,* 523 U.S. 296, 300 (1998).

In conclusion, Universal argues the Department should not apply its targeting dumping methodology in the final determination but rather should use its average-to-average comparison methodology without zeroing in accordance with the *Final Modification for Investigations.*

Department's Position: Prior to the *Preliminary Determination*, petitioners submitted an allegation of targeted dumping with respect to Universal, asserting the Department should apply the A-T methodology to all of Universal's reported U.S. sales in calculating the dumping margin. *See Preliminary Determination*, 77 FR at 32546. Petitioners argued there were patterns of U.S. sales prices for comparable merchandise that differed significantly among customers, time periods, and regions. We conducted customer, time-period, and regional targeted dumping analyses using the methodology adopted in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (*Nails*) and accompanying Issues and Decision Memorandum at Comments 1-9, and more recently articulated in *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 4. Our methodology is discussed in detail in the *Preliminary Determination* and in the memorandum entitled "Analysis of Data Submitted by Universal Tube and Plastic Industries, Ltd. for the Preliminary Determination of the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates," dated May 23, 2012. In the *Preliminary Determination*, we found there was a pattern of prices that differed significantly among certain customers, time periods, and regions, and that these differences could not be taken into account using the A-A methodology. *See Preliminary Determination*, 77 FR at 32546. Accordingly, we applied the A-T methodology to all of Universal's reported U.S. sales. *Id*.

In this final determination, we have not changed our calculation methodology of the weighted-average dumping margin from that used in the *Preliminary Determination*. Based on the updated U.S. sales database and the revisions to our calculations discussed in this Decision Memorandum and in the Final Analysis Memorandum, we have continued to find that, pursuant to section 777A(d)(1)(B) of the Act, the use of an average-to-transaction methodology is warranted. Consistent with our practice and the statute, we have applied the *Nails* test, as modified in *Wood Flooring*, to determine whether Universal engaged in targeted dumping, and, in making average-to-transaction comparisons, we have not granted an offset for non-dumped transactions in aggregating the comparison result for purposes of calculating the weighted-average dumping margin. Our methodology and findings are further discussed below.

When calculating dumping margins in an investigation, section 777A(d)(1)(B) of the Act allows the Department to employ the alternative A-T comparison methodology if: (i) there is a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or periods of time and (ii) such differences cannot be taken into account using the standard (*i.e.*, A-A or T-T) methodology. The targeted dumping test in *Nails*, as modified in *Wood Flooring*, provides a two-stage analysis to determine whether there is a pattern of export prices or constructed export prices that differs significantly among purchasers, regions, or periods of time. The first stage addresses the "pattern" requirement, and the second stage addresses the "significant difference" requirement. Although the following example refers to a pattern of prices that differs among purchasers (*i.e.*, customers), the procedures are the same for analyzing customer, regional, or time-period targeted-dumping allegations.

In the first stage of the targeted dumping test, the "standard deviation test," the Department determines the share of the alleged targeted-customer's purchases of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price to all customers, targeted and non-targeted. The Department performs the standard deviation test on a product-specific basis (*i.e.*, CONNUM by CONNUM) using the POI-wide, weighted-average prices for each alleged targeted customer, and for customers not alleged to have been targeted. If that share exceeds 33 percent of the total volume of a respondent's sales of subject merchandise to the alleged targeted customer, then the pattern requirement has been met and the Department proceeds to the second stage of the test.

In the second stage of the targeted dumping test, the Department examines all sales of identical merchandise (*i.e.*, by CONNUM) by a respondent to the allegedly targeted customer which passed the first stage. From those sales, the Department determines the total volume of sales for which the difference between the weighted-average price of sales to the allegedly targeted customer and the next higher weighted-average price of sales of identical merchandise to a non-targeted customer exceeds the average price gap (weighted by sales volume) for sales of identical merchandise between the non-targeted customers.[9] The Department weights each of the price gaps between the non-targeted customers by the combined sales volume associated with the pair of prices to the non-targeted customers that make up the price gap. In doing this analysis, the allegedly targeted customers are not included in the non-targeted group; each allegedly targeted customer's average price is compared only to the average prices to non-targeted customers. If the share of the sales that meets this test exceeds five percent of the total sales volume of subject merchandise to the allegedly targeted customer, the significant-difference requirement is met and the Department determines that customer targeting has occurred.[10] In such a case, the Department will evaluate the extent to which applying the alternative A-T methodology to all U.S. sales unmasks targeted dumping not accounted for using the standard A-A methodology.

Based on our final analysis, we found that Universal met both of the above-described stages of the *Nails* test. As a result, we determine that there was a pattern of prices that differed significantly by certain customers, time periods, and regions. Our analysis shows that the standard A-A methodology does not take into account the price differences because the alternative A-T methodology yields a material difference in the margin. Accordingly, we find that these differences cannot be taken into account using the A-A methodology because the A-A methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. We therefore applied the A-T methodology to all of Universal's reported U.S. sales in calculating the dumping margin for Universal. *See* Final Analysis Memorandum for more information.

We disagree with Universal's arguments that the Department improperly applied the A-T methodology to all U.S. sales, both targeted and non-targeted, that the Department improperly used zeroing in average-to-transaction comparisons, and that the Department's targeted dumping test is unreasonable and arbitrary. We discuss each of these arguments in turn below. Because we did not depart from the methodology used in the *Preliminary Determination*, petitioners' arguments on the use of offsetting are moot.

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[9] The next higher price is the weighted-average price to the non-targeted group that is above the weighted-average price to the alleged targeted group. For example, if the weighted-average price to the alleged targeted group is $7.95 and the weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25 because this is the next higher price in the non-targeted group above $7.95 (the average price to the targeted group).

[10] For example, if non-targeted customer A's weighted-average price is $1.00 with a total sales volume of 100 kg and non-targeted customer B's weighted-average price is $0.95 with a total sales volume of 120 kg, then the difference of $0.05 ($1.00 - $0.95) would be weighted by 220 kg (*i.e.*, 100 kg + 120 kg).

The Department's Use of the Average-to-Transaction Methodology for All U.S. Sales

The Department has previously determined that the language of section 777A(d)(1)(B) of the Act does not preclude adopting a uniform application of the A-T methodology for all transactions when satisfaction of the statutory criteria suggests that application of the alternative average-to-transaction methodology is appropriate. The only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the A-T method are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the A-T methodology to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average normal values to the export prices (or constructed export prices) of individual transactions. While the Department does not find the language of section 777A(d)(1)(B) of the Act mandates application of the A-T methodology to all sales, it does find that this interpretation is a reasonable one and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act more generally.

As for Universal's contention that the Department cannot meet the second criterion of section 777A(d)(1)(B) of the Act because there is no logical explanation why non-targeted sales cannot be accounted for by use of the A-A or T-T methodologies, we disagree. The Department has explained that the averaging of U.S. prices conceals dumping if there is a significant difference between the margins computed under the A-A and A-T methodologies. Universal's argument is based on a flawed assumption that profitable sales are not involved in masked dumping. The Federal Circuit has explained that "masked" dumping occurs when "profitable sales serve to 'mask' sales at less than fair value." *U.S. Steel*, 621 F.3d at 1361. An exporter from the UAE, who competes with U.S. producers, could gain U.S. customers either by dumping to all customers at once or by dumping to a specific customer (or customers). In the latter scenario, the UAE exporter uses its profitable sales to mask its dumped sales to a particular customer by "offsetting" its dumped sales to one customer with its profitable sales to other customers. In other words, the masked or targeted dumping involves both profitable and dumped sales. The Department reasonably addresses such dumping by applying the A-T methodology to all sales involved in masked dumping, *i.e.*, both the masked sales and the sales that are used for masking. When the Department applies the A-T methodology to all of the exporter's sales (including the profitable sales that the exporter used to mask its dumping through offsetting), it eliminates the offsetting that masks dumping. Accordingly, the Department's current methodology of making A-T comparisons for all transactions where targeted dumping occurs reasonably addresses the problem of masked dumping by eliminating the offsetting. And when the conditions set forth in section 777A(d)(1)(B) are satisfied, the Department will use A-T comparisons without offsets, *i.e.*, the Department will use zeroing. The CIT and the Federal Circuit repeatedly have recognized that zeroing combats the targeted, or masked, dumping, which section 777A(d)(1)(B) addresses. *See*, *e.g.*, *Timken*, 354 F.3d 1343; *see also Serampore Industries Pvt. Ltd. v. United States Dep't of Commerce, Int'l Trade Admin.*, 675 F.Supp. 1354, 1360-1361 (Ct. Int'l Trade 1987) (*Serampore*); *see also Bowe Passat v. United States*, 926 F.Supp. 1138, 1150 (Ct. Int'l

Trade 1996) (*Bowe Passat*). As a result, the Department reasonably used the A-T comparison methodology for all transactions.

Finally, if Congress had intended for the Department to apply the A-T methodology only to a subset of transactions and use a different methodology for the remaining sales of the same respondent, Congress could have explicitly said so, but it did not. Instead, Congress expressed its intent with the language of section 777A(d)(1)(B), which imposes a general preclusion from using A-T comparisons and withdraws that preclusion entirely if the two criteria are satisfied. In the absence of a preclusion, the Department is free to apply the A-T methodology to all transactions. The Department may choose any method or methods that are appropriate. In this case, the Department determined that the two criteria are satisfied. The statute does not preclude the Department's decision to apply the A-T methodology to all of Universal's transactions, and the Department has explained its reasons for doing so.

Thus, because the criteria of section 777A(d)(1)(B) of the Act are satisfied in this investigation, the Department will continue to apply the alternative A-T methodology to all of Universal's U.S. sales in calculating the weighted-average dumping margin.

<u>Zeroing Under the Average-to-Transaction Comparison Methodology in Investigations</u>

In light of the comparison methods provided for under the statute and regulations, and for the reasons set forth in detail below, the Department finds that the offsetting method is appropriate when aggregating the results of A-A comparisons, and is not appropriate when aggregating the results of A-T comparisons, such as were applied in this investigation.

Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act and 19 CFR 351.414 provide the methods by which normal value may be compared to export price (or constructed export price). Specifically, the statute and regulations provide for three comparison methods: A-A, T-T, and A-T. These comparison methods are distinct from each other, and each produces different results. When using T-T or A-T comparisons, a comparison is made for each export transaction to the United States. When using A-A comparisons, a comparison is made for each group of comparable export transactions for which the export prices (or constructed export prices) have been averaged together (*i.e.*, averaging group).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The definition of "weighted-average dumping margin" calls for two aggregations which are divided to obtain a percentage. The numerator aggregates the results of the comparisons. The denominator aggregates the value of all export transactions for which a comparison was made.

The issue of "zeroing" versus "offsetting" involves how certain results of comparisons are treated in the aggregation of the numerator for the "weighted-average dumping margin" and relates back to the ambiguity in the word "exceeds" as used in the definition of "dumping margin" in section 771(35)(A) of the Act. Application of "zeroing" treats comparison results where normal value is less than export price or constructed export price as indicating an absence of dumping, and no amount (zero) is included in the aggregation of the numerator for the "weighted average dumping margin." Application of "offsetting" treats such comparison results as an offset that may reduce the amount of dumping found in connection with other comparisons, where a negative amount may be included in the aggregation of the numerator of the "weighted-average dumping margin" to the extent that other comparisons result in the inclusion of dumping margins as positive amounts.

The Department interprets the application of A-A comparisons to contemplate a dumping analysis that examines the pricing behavior on average of an exporter or producer with respect to the subject merchandise, whereas under the A-T comparison methodology the Department undertakes a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the A-A comparison methodology allows for an overall examination of pricing behavior on average. The Department's interpretation of section 771(35) of the Act to permit zeroing in A-T comparisons, as in this investigation, and to permit offsetting in A-A comparisons reasonably accounts for differences inherent in the distinct comparison methodologies.

Whether "zeroing" or "offsetting" is applied, it is important to note that the weighted-average dumping margin will reflect the value of all export transactions, dumped and non-dumped, examined during the POI; the value of such sales is included in the aggregation of the denominator of the weighted-average dumping margin. Thus, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin under either methodology.

The difference between "zeroing" and "offsetting" reflects the ambiguity the Federal Circuit has found in the word "exceeds" as used in section 771(35)(A) of the Act. *See Timken*, 354 F.3d 1341-45. The courts repeatedly have held that the statute does not speak directly to the issue of zeroing versus offsetting.[11] For decades, the Department interpreted the statue to apply zeroing

[11] *See PAM, S.p.A. v. United States*, 265 F. Supp. 2d 1362, 1371 (CIT 2003) (*PAM*) ("{The} gap or ambiguity in the statute requires the application of the *Chevron* step-two analysis and compels this court to inquire whether Commerce's methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute."); *Bowe Passat*, 926 F. Supp. 1150 ("The statute is silent on the question of zeroing negative margins."); and *Serampore*, 675 F. Supp. 1360 ("A plain reading of the statute discloses no provision for Commerce to offset sales

in the calculation of the weighted-average dumping margin, regardless of the comparison method used. In view of the statutory ambiguity, on multiple occasions, both the Federal Circuit and other courts squarely addressed the reasonableness of the Department's zeroing methodology and unequivocally held that the Department reasonably interpreted the relevant statutory provision as permitting zeroing.[12] In so doing, the courts relied upon the rationale offered by the Department for the continued use of zeroing, *i.e.*, to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: "Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales. Commerce's interpretation is reasonable and is in accordance with law."[13] The Federal Circuit explained in *Timken* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." *See Timken*, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner applied by the Department.

In 2005, a panel of the World Trade Organization (WTO) Dispute Settlement Body found that the United States did not act consistently with its obligations under Article 2.4.2 of the WTO AD Agreement when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations. *See* Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/R (October 31, 2005) (*EC-Zeroing Panel*). The initial WTO Dispute Settlement Body Panel Report was limited to the Department's use of zeroing in average-to-average comparisons in antidumping duty investigations. *See EC-Zeroing Panel*, WT/DS294/R. The Executive Branch determined to implement this report pursuant to the authority provided in Section 123 of the Uruguay Round Agreements Act (URAA) (19 USC § 3533(f), (g)) (Section 123). *See Final Modification for Investigations*; and *Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification*, 72 FR 3783 (June 26, 2007). Notably, with respect to the use of zeroing, the Panel found that the United States acted inconsistently with its WTO obligations only in the context of average-to-average comparisons in antidumping duty investigations. The Panel did not find fault with the use of zeroing by the United States in any other context.

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made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter's home market as having a zero percent dumping margin.").

[12] *See, e.g., Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007) (*NSK*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); *Corus I*, 395 F.3d 1347; *Timken*, 354 F.3d at 1341-45; *PAM*, 265 F. Supp. 2d at 1370 ("Commerce's zeroing methodology in its calculation of dumping margins is grounded in long-standing practice."); and *Bowe Passat*, 926 F. Supp. at 1149-50; and *Serampore*, 675 F. Supp. at 1360-61.

[13] *See Serampore*, 675 F. Supp. at 1361 (citing *Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value*, 51 FR 9089, 9092 (Mar. 17, 1986)); *see also Timken*, 354 F.3d at 1343; *PAM*, 265 F. Supp. 2d at 1371.

Without an affirmative inconsistency finding by the Panel, the Department did not propose to alter its zeroing practice in other contexts, such as in investigations using average-to-transaction comparisons. As the Federal Circuit recently held, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance. *See Thyssenkrupp Acciai Speciali Terni S.p.A. v. United States*, 603 F. 3d 928, 934 (Fed. Cir. 2010). The Department began to apply offsetting in the limited context of average-to-average comparisons in antidumping duty investigations. *See Final Modification for Investigations*, 71 FR at 77722. With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department did not change its practice of zeroing in other types of comparisons, including average-to-transaction comparisons in investigations. *Id.*, 71 FR at 77724.

The Federal Circuit subsequently upheld the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations while recognizing that the Department limited its change in practice to certain investigations and continued to use zeroing when making average-to-transaction comparisons in certain investigations and administrative reviews. *See U.S. Steel*, 621 F. 3d. at 1355 n.2, 1362-63. In upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the Federal Circuit accepted that the Department likely would have different zeroing practices between A-A and other types of comparisons in antidumping duty investigations. *Id.*, at 1363 (stating that the Department indicated an intention to use zeroing in A-T comparisons in investigations to address concerns about masked dumping). The Federal Circuit's reasoning in upholding the Department's decision relied, in part, on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type. *Id.*, at 1361-63.

The Federal Circuit acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, allowing the Department to make average-to-transaction comparisons where certain patterns of significant price differences exist. *Id.*, at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that the Department may use in investigations); see also section 777A(d)(1)(B) of the Act. The Federal Circuit also expressly recognized that the Department intended to continue to address targeted or masked dumping through continuing its use of average-to-transaction comparisons and zeroing. *See U.S. Steel*, 621 F. 3d at 1363. In summing up its understanding of the relationship between zeroing and the various comparison methodologies that the Department may use in antidumping duty investigations, the Federal Circuit acceded to the possibility of disparate, yet equally reasonable interpretations of section 771(35) of the Act, stating that "{b}y enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the export prices do *not* exist." *Id*. (emphasis added). Furthermore, we note that where A-T comparisons are used in situations of targeted dumping, the results of not applying zeroing methodology in those comparisons as well as in A-A comparisons would be the same. Therefore, the provision for different comparison methodologies under section 777A(d) of the Act would be meaningless. This outcome could not have been intended by Congress in providing for different comparison methodologies under section 777A(d) of the Act.

The Department's interpretation of section 771(35) of the Act reasonably resolves the ambiguity inherent in the statutory text for multiple reasons. First, outside of the context of A-A comparisons, the Department has maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which the Department does not consider a sale to the United States as dumped if normal value does not exceed export price. Pursuant to this interpretation, the Department treats such a sale as having a dumping margin of zero, which reflects that no dumping has occurred, when calculating the aggregate weighted-average dumping margin. Second, adoption of an offsetting methodology in connection with A-A comparisons was not an arbitrary departure from established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the URAA for such changes in practice with full notice, comment, consultations with the Legislative Branch, and explanation. Third, the Department's interpretation reasonably resolves the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an A-A comparison and the result of an A-T comparison.

In the *Final Modification for Investigations,* the Department adopted a possible construction of an ambiguous statutory provision, consistent with the *Charming Betsy* doctrine, to comply with certain adverse WTO dispute settlement findings.[14] Even where the Department maintains a separate interpretation of the statute to permit the use of zeroing in certain dumping margin calculations, the Charming Betsy doctrine bolsters the ability of the Department to apply an alternative interpretation of the statute in the context of A-A comparisons so that the Executive Branch may determine whether and how to comply with international obligations of the United States. Neither section 123 nor the *Charming Betsy* doctrine require the Department to modify its interpretation of section 771(35) of the Act for all scenarios when a more limited modification will address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of Commerce's legitimate policy choices in this case – *i.e.*, to abandon zeroing only with respect to A-A comparisons – is not subject to judicial review. *Suramerica de*

[14] According to *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804), "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." The principle emanating from the quoted passage, known as the *Charming Betsy* doctrine, supports the reasonableness of the Department's interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department's interpretation of the domestic law accords with international obligations as understood in this country.

Aleaciones Laminadas, C.A. v. United States, 966 F. 2d 660, 665 (Fed. Cir. 1992). These reasons alone sufficiently justify and explain why the Department reasonably interprets section 771(35) of the Act differently in A-A comparisons relative to all other contexts.

Moreover, the Department's interpretation reasonably accounts for inherent differences between the results of distinct comparison methodologies. The Department interprets section 771(35) of the Act depending upon the type of comparison methodology applied in the particular proceeding. This interpretation reasonably accounts for the inherent differences between the result of an A-A comparison and the result of an A-T comparison.

The Department may reasonably interpret section 771(35) of the Act differently in the context of the A-A comparisons to permit negative comparison results to offset or reduce positive comparison results when calculating "aggregate dumping margins" within the meaning of section 771(35)(B) of the Act. When using an A-A comparison methodology, *see, e.g.*, section 777A(d)(1)(A)(i) of the Act, the Department usually divides the export transactions into groups, by model and level of trade (averaging groups), and compares an average export price or constructed export price of transactions within one averaging group to an average normal value for the comparable merchandise of the foreign like product. In calculating the average export price or constructed export price, the Department averages all prices, both high and low, for each averaging group. The Department then compares the average export price or constructed export price for the averaging group with the average normal value for the comparable merchandise. This comparison yields an average result for the particular averaging group because the high and low prices within the group have been averaged prior to the comparison. Importantly, under this comparison methodology, the Department does not calculate the extent to which an exporter or producer dumped a particular sale into the United States because the Department does not examine dumping on the basis of individual U.S. prices, but rather performs its analysis "on average" for the averaging group within which higher prices and lower prices offset each other. The Department then aggregates the comparison results from each of the averaging groups to determine the aggregate weighted-average dumping margin for a specific producer or exporter. At this aggregation stage, negative, averaging-group comparison results offset positive, averaging-group comparison results. This approach maintains consistency with the Department's A-A comparison methodology, which permits export prices above normal value to offset export prices below normal value within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated.

In contrast, when applying an A-T comparison methodology in a targeted dumping analysis in an investigation under 777A(d)(1)(B) of the Act, the Department determines dumping on the basis of individual U.S. sales prices. Under the A-T comparison methodology, the Department compares the export price or constructed export price for a particular U.S. transaction with the average normal value for the comparable merchandise of the foreign like product. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an export price or constructed export price less than its normal value. The Department then aggregates the results of these comparisons – i.e., the amount of dumping found for each individual sale – to calculate the weighted-average dumping margin for the period of review or investigation. To the extent the average normal value does not exceed the individual export price or constructed export price of a particular U.S. sale, the Department does not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific dumping margins.[15] Thus, when the Department focuses on transaction-specific comparisons in its targeted dumping analysis, the Department reasonably interprets the word "exceeds" in section 771(35)(A) of the Act as including only those comparisons that yield positive comparison results. Consequently, in transaction-specific comparisons, the Department reasonably does not permit negative comparison results to offset or reduce other positive comparison results when determining the "aggregate dumping margin" within the meaning of section 771(35)(B) of the Act.

Put simply, the Department interprets the application of A-A comparisons to contemplate a dumping analysis that examines the pricing behavior, on average, of an exporter or producer with respect to the subject merchandise, whereas under the A-T comparison methodology the Department continues to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the A-A comparison methodology allows for a reasonable examination of pricing behavior, on average. The A-A comparison method inherently permits non-dumped prices to offset dumped prices before the comparison is made. This offsetting can reasonably be extended to the next stage of the calculation where A-A comparison results are aggregated, such that offsets are (1) implicitly granted when calculating average export prices and (2) explicitly granted when aggregating averaging-group comparison results. This rationale for granting offsets when using A-A comparisons does not extend to situations where the Department is using A-T comparisons because no offsetting is inherent in the average-to- transaction comparison methodology.

The CIT recently has sustained the Department's explanation for using zeroing in administrative reviews using an average-to-transaction comparison methodology, while not using zeroing in certain types of investigations. *See Far Eastern New Century Corp. v. United States*, 2012 WL 3715105 (CIT Aug. 29, 2012); *Grobest*, 2012 Ct. Int'l Trade LEXIS 102 (July 31, 2012) at *12; *Union Steel v. United States*, 823 F. Supp. 2d 1346 (CIT 2012). Because the Department's explanation in both situations relies, in part, on the inherent differences between average-to-transaction comparisons and A-A comparisons, the explanation is also relevant to the context of

[15] As discussed previously, the Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, any non-dumped transactions results in a lower weighted-average dumping margin.

investigations using average-to-transaction comparisons as a result of a targeted dumping analysis.

With respect to other WTO reports finding the denial of offsets by the United States to be inconsistent with the WTO AD Agreement, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. *See Corus I*, 395 F.3d at 1347-49; *accord Corus II*, 502 F.3d at 1375; and *NSK*, 510 F.3d 1375. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute. *See* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. *See* 19 U.S.C. 3533(g).

Accordingly, and consistent with the Department's interpretation of the Act described above, the Department employed the average-to-transaction comparison methodology for Universal in this investigation, and if any of the U.S. sales transactions examined in this investigation are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other transactions.

<u>Methodologies Underlying the Department's Targeted Dumping Test</u>

We disagree with Universal's assertions that the Department's targeted dumping methodology is unreasonable and arbitrary. The Act does not mandate a specific test for determining whether a pattern of prices that differ significantly among purchasers, regions or time periods exists. Congress has left the discretion to the Department how to make such a determination. The Department's recent practice is to utilize the targeted dumping test in *Nails*, as modified in *Wood Flooring*, to identify targeted dumping and, if targeted dumping is determined to exist, then the Department determines whether the standard comparison methodology can account for the identified targeted dumping. If the Department finds that the standard comparison methodology cannot account for the identified targeted dumping then the weighted-average dumping margin is based on the alternative comparison methodology instead of the standard comparison methodology. In exercising this discretion, for purposes of the final determination, the Department has used the test adopted in *Nails*, as modified in *Wood Flooring*, and applied in several subsequent cases. *See, e.g., High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying Issues and Decision Memorandum at Comment IV and *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comments 1-5.

With respect to the Department's standard deviation test, the Department has consistently held the one-standard-deviation threshold to be a distinct and reasonable "bright line" to quantitatively measure significant price differences. *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 1. As from the onset, the use of one standard deviation limits the number of sales that could be considered targeted because no more than 16 percent of all prices would typically be found to be more than one standard deviation below the mean, assuming a normal distribution of prices. In addition, the use of the 33 percent threshold ensures that the volume of those sales for which the prices are more than one standard deviation below the mean must exceed 33 percent of sales considered targeted.

In addition, as we have stated, we find the price threshold of one standard deviation below the average market price to reasonably show a price difference that indicates targeted dumping because: (1) it is a distinguishing measure relative to the spread or dispersion of prices in the market in question; and (2) it strikes a balance between two extremes, the first being where any price below the average price is sufficient to distinguish the alleged target from others, and the second being where only prices at the very bottom of the price distribution are sufficient to distinguish the alleged target from others. *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

Regarding Universal's argument to calculate a confidence interval based on a t-distribution, we note the approach that Universal proposes is conceptually no different than the standard deviation test currently employed by the Department. The only substantive difference between the two is the threshold for what constitutes a "sufficiently low" price. In the case of the standard deviation test, that threshold is one standard deviation; in the case of the confidence interval proposed by respondent, that threshold would depend on sample size and a chosen confidence level. Since the threshold level is the only substantive difference between the two approaches, the Department has not adopted Universal's proposal.

With respect to the second stage of the test, the price gap test determines whether the price gap associated with the alleged target is significant relative to the price gaps in the non-targeted group "above" the alleged target price gap. The significance in this context is determined based on whether the price gap associated with the alleged target is greater than the average price gap in the non-targeted group. In this regard, we have not set a bright-line standard or threshold, such as a fixed percentage, for measuring the price gap. If the difference exceeds the average price gap found in the group of non-target prices, then the difference in the price to the alleged target for a specific product is found to be significant. In essence, the price gap test qualifies whether a degree of separation between a low targeted price and the next lowest non-targeted prices is sufficient in determining the significant difference in prices with respect to the targeted sales. Further, we consider a five-percent share of sales to the alleged target, by volume, that are found to be at prices that differ significantly to be a reasonable indication of whether or not the alleged targeting has occurred. This threshold must be considered with the standard deviation test and the 33-percent sales volume threshold for determining whether there is a pattern of prices that differ significantly, as required by the statute.

Furthermore, the CIT has upheld our use of the *Nails* test, finding it reasonable and consistent with the statute and regulations. Specifically, in *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1378 (CIT 2010) (*Mid Continent*), the court found that our use of one standard deviation was not in violation of Section 777 A(d)(1)(B)(i) of the Act. Further, the court upheld our use of the five percent threshold. In particular, the court stated that, "{i}n other AD contexts, and for a long period of time five percent tests have been used to measure significance for AD purposes." *See Mid Continent*, 712 F. Supp. 2d at 1378-79. In short, the court concluded that "{t}he various aspects of the nails test do not violate the statutory language of 1 9 U.S.C. § 1677f- l(d)(1)(B)(i)" and the Department's tests are "not otherwise arbitrary and capricious." *Id.*

With respect to Universal's argument concerning the use of weighted-average prices in our targeted dumping test, the Department has previously considered and rejected identical arguments. *See Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 4; *see also Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 3 (*Coated Paper from the PRC*). We previously stated that, in exercising our discretion, we interpret "export prices" in section 777A(d)(1)(B)(i) of the Act to mean an average of the individual prices to the alleged target. In *Coated Paper from the PRC*, we stated that "the relevant price variance, in the Department's view, is the variance in prices across customers, not transactions. For this reason, the Department approached the problem by analyzing the variance in the average price paid by each customer."

Turning to Universal's argument that sales which were not dumped can be found to be targeted, the Department's statistical test for determining whether there is a pattern of price differences only considers U.S. sales prices, while the calculation of the dumping margin considers both U.S. sales prices and normal values. The intent of the former is to reveal the potential for masking sale prices that may be dumped, while the intent of the latter is to determine whether dumping has occurred. Since Universal's contention is based on an "apples-to-oranges" comparison, we therefore find it irrelevant.

Finally, we do not agree with Universal's argument that our gap test is arbitrary because it does not consider the weighted-average prices of non-targeted groups that are below the weighted-average price of the targeted group. Universal does not demonstrate why the significant difference requirement can only be met by the use of gaps that both "look up" and "look down."

Comment 13: Application of Total Adverse Facts Available

Petitioners maintain ADPICO did not respond to the Department's questionnaires in an adequate or timely manner, and thus the Department applied adverse facts available in determining ADPICO's margin for the *Preliminary Determination*. Petitioners' Case Brief at 15, citing the

Preliminary Determination, 77 FR at 32541-32544. Petitioners assert the Department should make the same finding for the final determination as there have been no changes since the *Preliminary Determination*.

ADPICO contends it submitted responses to the Department's questionnaires for sections A, B, and C and also to the Department's supplemental questionnaires. In making this assertion, ADPICO cites to a log of its submissions attached to its case brief as Appendix 1. ADPICO claims it filed only one section of its responses slightly late, and that was due to problems with IA ACCESS. ADPICO argues that as a result of this minor delay, it was unjustly penalized by not being permitted to submit a response to section D of the Department's questionnaire, which led to the application of an 11.71 percent margin for ADPICO as opposed to a 3.29 percent margin for other UAE respondents. According to ADPICO, this slight delay does not alter the fact that it has never sold subject merchandise in the U.S. market at dumped prices.

ADPICO maintains the volumes (in metric tons) it manufactured for export to the United States are small compared to the other exporters subject to this investigation, the demand in the U.S. market, and the actual production by U.S. producers. ADPICO asserts that based on these volumes and its sales prices, it is obvious that petitioners have never suffered injuries. In addition, ADPICO avers the sales prices included in the original petition were overstated, as were import volumes and the capacity of ADPICO's facilities. ADPICO contends it has never dumped its products in any market and that it has been able to compete with petitioners by manufacturing better quality products with lower production costs due to efficient management and not hiring costly law firms.

In conclusion, ADPICO asserts that for the final determination, the Department should find ADPICO's responses to the Department's original and supplemental questionnaires to be sufficient so as to wholly reject petitioners' allegations of dumping.

Department's Position: Despite ADPICO's contentions, we agree with petitioners that nothing has changed since the *Preliminary Determination* and that we should continue to apply total adverse facts available in determining ADPICO's dumping margin.

ADPICO argues that it responded to the Department's questionnaires and supplemental questionnaires, and that it filed only one part of its response slightly late due to technical difficulties. ADPICO claims that due to this minor delay, it was not permitted to file a response to Department's questionnaire for section D, leading to the application of an 11.71 percent dumping margin. However, in making this argument, ADPICO has mischaracterized the facts which led to our application of total adverse facts available in the *Preliminary Determination*. Below is a summary of those facts and our resulting determination.

After filing multiple requests for extensions to submit its response to sections B and C of the Department's questionnaire, we informed ADPICO in a letter that it must submit any future questionnaire or supplemental questionnaire responses, and any requests for an extension to submit such responses, in a timely manner. In that same letter, we indicated that future untimely filings may result in the application of facts available, which may include adverse inferences. *See Preliminary Determination*, 77 FR at 32542.

ADPICO filed its response to sections B and C of Department's questionnaire in a timely manner, but despite being given nearly one month of extensions from the original deadline, ADPICO's response contained countless significant deficiencies. Specifically, ADPICO's narrative response for sections B and C totaled only one page; ADPICO did not provide a database detailing its home market sales; it did not submit its U.S. sales database in the format requested, and some of the requested data were missing; and ADPICO did not include any worksheets showing how it calculated the expenses incurred in making its home market and U.S. sales. In that condition, ADPICO's responses could not be relied upon to calculate a dumping margin. *Id*. at 32542-32543.

On March 5, 2012, the Department issued a supplemental questionnaire to ADPICO to provide it an opportunity to remedy the significant deficiencies in its section B questionnaire response, to correct deficiencies, and to provide additional information regarding its responses to sections A and C of the original questionnaire. *See* section 782(d) of the Act. Because the Department had not yet received a home market database or even a narrative response to section B of the questionnaire at that point in the investigation, we established a deadline for ADPICO to submit its section B database that was earlier than the deadline for the rest of ADPICO's response to the supplemental questionnaire. Specifically, the Department set a due date of March 12, 2012 for ADPICO to submit its section B database, and a deadline of March 19, 2012 to submit the remainder of its supplemental questionnaire response. In the cover letter of its March 5, 2012 supplemental questionnaire, the Department notified ADPICO of the need to file its response, or any request for an extension to file that response, in a timely manner. We also stated:

> If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. The Department will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Id. at 32543.

ADPICO did not submit its section B database by the established deadline of March 12, 2012. On March 19, 2012, ADPICO requested an extension until March 20, 2012 to respond to the entire supplemental questionnaire, stating in its letter that it been experiencing problems with the Department's electronic filing system, IA ACCESS. However, the Department considered this explanation insufficient because by that point, ADPICO's section B database was already one week overdue, and ADPICO had not attempted to contact the Department on or around the deadline of March 12, 2012 to address the alleged technical difficulties. As such, ADPICO's request on March 19, 2012 for additional time to submit its home market sales database was untimely. The Department did not extend the deadline for any portion of ADPICO's supplemental questionnaire. ADPICO filed a supplemental questionnaire response on March 20 and 21, 2012. Subsequently, we informed ADPICO that its submissions of March 20 and 21, 2012 were untimely and, therefore, we were rejecting those submissions in their entirety and deleting them from the record. *See* section 782(d) of the Act. The Department also informed ADPICO it would not consider the information contained in those submissions in the preliminary determination. *Id.*

Because ADPICO failed to provide requested information by the established deadline and significantly impeded the proceeding, pursuant to section 776(a)(2) of the Act, the Department relied upon the facts otherwise available in determining ADPICO's antidumping duty margin for the preliminary determination. *Id.* Further, the Department found that ADPICO failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, preliminarily determined an adverse inference was warranted, pursuant to section 776(b) of the Act. *Id*. at 32544.

The single late filing that ADPICO refers to in its case brief is the section B database which the Department had requested in its March 5, 2012 supplemental questionnaire. Because ADPICO had not yet submitted a section B database at that point in this proceeding, we established a deadline of March 12, 2012 for it to submit that database, and a deadline of March 19, 2012 for it to file the remainder of its supplemental questionnaire response. Although ADPICO contends it submitted its section B database only "slightly late," by the time ADPICO filed a request for an extension to submit its supplemental questionnaire response on March 19, 2012, ADPICO's section B database was already one week overdue. The Department was quite clear in the cover letter of its March 5, 2012 supplemental questionnaire that it would not accept any requested information submitted after the deadline and that any such submissions would be rejected as untimely. As such, any technical difficulties ADPICO allegedly experienced with IA ACCESS on March 19, 2012, the date on which ADPICO requested an extension to file its entire supplemental questionnaire response, are irrelevant with respect to its section B database, as that information was already one week overdue.

Therefore, we find that ADPICO misrepresents the facts in suggesting a slight delay in submitting one part of its response caused the Department to prohibit ADPICO from submitting a response to section D of the Department's questionnaire, which in turn led to the Department's application of adverse facts available. As we stated in the *Preliminary Determination*:

> ADPICO's repeated failure to submit information in a proper and timely manner has precluded the Department from performing the necessary analysis and

> verification of ADPICO's questionnaire responses required by section 782(i)(1) of the Act and within the time required to complete an investigation.
>
> For the reasons discussed above, the Department has preliminarily determined that ADPICO has failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted, pursuant to section 776(b) of the Act.

Id.

Based on the analysis laid out in the *Preliminary Determination*, we are continuing to apply total adverse facts available in determining ADPICO's dumping margin for the final determination. In addition, as adverse facts available, we are selecting the same rate we selected in the *Preliminary Determination*, 11.71 percent, which is the highest rate in the petition. *Id*.; *see also Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 76 FR 72164 (November 22, 2011) (*Initiation Notice*). In the *Preliminary Determination*, we stated that we had corroborated this rate because we had found it to be reliable and relevant to ADPICO. *See Preliminary Determination*, 77 FR at 32545. For the same reasons specified in the *Preliminary Determination*, we continue to find the margins in the petition and in the *Initiation Notice* are reliable for purposes of this investigation. With respect to the relevance aspect of corroboration, we compared the transaction-specific margins we calculated in the final determination for Universal to the petition rate of 11.71 percent in order to determine whether the rate of 11.71 percent is probative. We found that a number of transaction-specific margins calculated for Universal in this final determination were higher than or within the range of the 11.71 percent margin alleged in the petition. *See* Final Analysis Memorandum for more information. Accordingly, we find the adverse facts available rate is relevant as applied to ADPICO for this investigation because it falls within the range of transaction-specific margins we calculated for Universal in this investigation. Therefore, we have corroborated the adverse facts available rate of 11.71 percent "to the extent practicable" as provided in section 776(c) of the Act. *See also* 19 CFR 351.308(d). Therefore, for ADPICO we have continued to use, as adverse facts available, the margin in the petition of 11.71 percent, as set forth in the *Initiation Notice*.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If these recommendations are accepted, we will publish the final determination, including the final dumping margins, for this investigation in the *Federal Register*.

Agree ✓ Disagree ___________

Paul Piquado
Assistant Secretary
for Import Administration

15 October 2012
Date