



A-351-843  
Investigation  
**Public Document**  
E&C/I: HP

July 20, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

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

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## I. SUMMARY

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

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

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

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<sup>1</sup> See *Certain Cold-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 11754 (March 7, 2016) and the preliminary decision memorandum (*Preliminary Determination*).



- Comment 1: Duty Drawback
- Comment 2: Affiliated Party Sales
- Comment 3: Inventory Carrying Costs
- Comment 4: Credit Revenue
- Comment 5: Model Match
- Comment 6: Whether to Exclude Work-In-Process Quantities from CSN LLC's Per-Unit Cost Calculations
- Comment 7: Calculation of CSN LLC's G&A Expense Ratio
- Comment 8: Whether to Use a Consolidated or Non-Consolidated Financial Expense Ratio
- Comment 9: Financial Expense Ratio to be applied to Further Manufacturing Costs
- Comment 10: The Market Value for Affiliated Energy Inputs
- Comment 11: The Market Value for Affiliated Rail Freight Inputs
- Comment 12: The Market Value for Affiliated Port Management Services
- Comment 13: Whether to Include Certain Expenses Recorded Directly to Cost of Goods Sold (COGS)
- Comment 14: Calculation of CSN's G&A Expense Ratio

## II. BACKGROUND

On March 7, 2016, the Department published its preliminary determination of sales at LTFV in the antidumping duty investigation of certain cold-rolled steel flat products from Brazil.<sup>2</sup> The Department conducted sales and cost verifications of CSN. On April 7, 2016, we amended our *Preliminary Determination*.<sup>3</sup>

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from the petitioners<sup>4</sup> and CSN in June 2016.<sup>5</sup> Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, the weighted-average dumping margins determined in this final determination differ from those in the *Preliminary Determination*.

For a summary of the product coverage comments and rebuttal responses submitted to the record of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.<sup>6</sup>

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<sup>2</sup> *See Certain Cold-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 11754 (March 7, 2016) (*Preliminary Determination*).

<sup>3</sup> *See Certain Cold-Rolled Steel Flat Products From Brazil: Amended Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 20366 (April 7, 2016) (*Amended Preliminary Determination*).

<sup>4</sup> AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

<sup>5</sup> *See* U.S. Steel's case brief dated June 17, 2016 (U.S. Steel Brief); Steel Dynamics, Inc.'s case brief dated June 17, 2016 (SDI Brief); CSN's case brief dated June 17, 2016 (CSN Brief); U.S. Steel rebuttal brief dated June 22, 2016 (U.S. Steel Rebuttal Brief); CSN's rebuttal brief dated June 22, 2016 (CSN Rebuttal Brief).

<sup>6</sup> *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations" dated concurrently with this memorandum (Final Scope Decision Memorandum).

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

### III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-rolled steel from Brazil. For a complete description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of *Federal Register* notice.

### IV. MARGIN CALCULATIONS

For CSN, the Department calculated constructed export price (CEP) and normal value (NV) using the methodology described in the *Preliminary Determination*.<sup>7</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>8</sup>

1. We incorporated all verification-related corrections from the home-market and CEP sales verifications.
2. We excluded insurance expense incurred by CSN from our NV price calculation.
3. We revised the short-term interest rate in our recalculation of inventory carrying cost.
4. We adjusted CSN’s total cost of manufacturing to include the steel plant administrative costs, the steel plant stock and cost adjustments, and a portion of the corporate expenses that were excluded from the reported costs.
5. We revised the cost of yield losses experienced during the further processing that is performed at Prada<sup>9</sup> and at subcontractors to reflect the adjustments identified in number 4 above and the affiliated input adjustment 2 from the Preliminary Cost Calculation Memorandum.<sup>10</sup>
6. We adjusted CSN’s general and administrative (G&A) expense ratio denominator to exclude transportation and port expenses.

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<sup>7</sup> *See Preliminary Determination.*

<sup>8</sup> *See* Memoranda to the File: “Certain Cold-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderurgica Nacional,” dated May 20, 2016 (Sales Verification Report); “Certain Cold-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderurgica Nacional LLC USA,” dated June 2, 2016; Verification of the Further Manufacturing Response of Companhia Siderurgica Nacional S.A. in the Antidumping Duty Investigation of Cold-Rolled Steel Flat Products from Brazil,” dated June 3, 2016 (FMG Cost Verification); and, “Verification of the Cost of Production Response of Companhia Siderurgica Nacional S.A. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil,” dated June 8, 2016 (CSN Cost Verification Report).

<sup>9</sup> The record indicates that Companhia Metalurgica Prada (Prada) is CSN’s affiliated home-market resale customer.

<sup>10</sup> *See* Memorandum to Neal M. Halper, Director, Office of Accounting, from Heidi K Schriefer, Lead Accountant “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Companhia Siderurgica Nacional” dated February 29, 2016 (Preliminary Cost Calculation Memorandum).

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

## V. COMPARISONS TO FAIR VALUE

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

For CSN, based on the results of the differential pricing analysis, the Department finds that 74.03 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>11</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this final determination, the Department is applying the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for CSN.

As indicated above, we based its Usiminas margin on total adverse facts available (AFA).<sup>12</sup> We did not receive any comments from Usiminas on this matter.

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<sup>11</sup> See Memorandum to the File from Hermes Pinilla, "Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination Analysis Memorandum for Companhia Siderurgica Nacional" dated July 20, 2016 (CSN Final Analysis Memorandum) at margin program output.

<sup>12</sup> See *Preliminary Determination* and *Amended Preliminary Determination*.

## VI. DISCUSSION OF ISSUES

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

CSN argues that it qualifies for a duty drawback adjustment because the drawback it received passes the Department's two-prong test. CSN contends that the Department verified that CSN's reported adjustment was based solely on the exemption of duties CSN received on imported (as opposed to domestically-sourced) inputs and that CSN did not request an adjustment for duties and taxes exempted on domestically sourced inputs. Specifically, CSN asserts that the Department verified how CSN links its claimed duty drawback adjustment to actual U.S. sales. CSN contends that the SISCOMEX system (which governs CSN's drawback program), the *Ato Concessorio* (a license granted by the Government of Brazil (GOB) as part of its drawback program), import declarations, invoices, and export declarations, provide the required linkage between imported raw materials and exports to the United States. Citing *Carbon and Certain Alloy Steel Wire Rod from Brazil*,<sup>13</sup> CSN contends that the Department has previously determined that the operation of the Brazilian duty drawback system, through SISCOMEX and the duty drawback license, satisfies the requirements of the two-pronged test.

Further, CSN asserts that the Department verified that the ties between imported materials, upon which the duty exemption is claimed, and the exports of finished products are monitored and controlled by the GOB. CSN contends that it fulfills the second prong because it reported sufficient imported raw materials to correspond to the drawback claimed and that it provided evidence of these imports. CSN argues that the GOB ensures a proper balance of raw material imports/purchases and duty exemptions through the application process for the *Ato Concessorio* and the resulting monitoring through SISCOMEX. Citing *Carbon and Certain Alloy Steel Wire Rod from Brazil*,<sup>14</sup> CSN asserts that the Department has previously accepted Brazil's duty drawback system as adequate to establish the sufficiency of exports.

CSN argues that the Department should grant CSN the full amount of its reported duty drawback adjustment for the final determination. CSN argues further that, consistent with the Department's recent precedent, the duty drawback adjustment in this investigation should include Brazilian value-added taxes (VATs) (COFINS, ICMS, and PIS<sup>15</sup>) because those taxes function as import duties that are paid on goods that enter Brazil and are computed as a percentage of the customs value of imported goods. CSN contends that the Department's should not rely on *Silicon Metal from Brazil* to determine whether the Brazilian VATs should be removed from CSN's drawback adjustment because that methodology has been superseded by the Department's approach in *Welded Carbon Pipe From Turkey (2011-2012)*,<sup>16</sup> in which the

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<sup>13</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 70 FR 28271, May 17, 2005, and accompanying Issues and Decision Memo, at Comment 2 (May 9, 2005) (*Carbon and Certain Alloy Steel Wire Rod from Brazil*).

<sup>14</sup> *Id.*

<sup>15</sup> The Social Integration Program tax (PIS); the Social Security Financial Contribution (COFINS); the Tax Over Goods Transit, Interstate and Intercity Transportation and Communications (ICMS). See CSN's questionnaire response (QR) at B-20 and B-21.

<sup>16</sup> See *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 79665, December 31, 2013, and accompanying Issues and Decision Memorandum, at Comment 4 (*Welded Carbon Pipe From Turkey (2011-2012)*).

Department takes a more functional approach to determine what constitutes an import duty. CSN argues that since these taxes are calculated as a percentage of the imported goods' customs value and are due at entry, the taxes meet the Department's functional approach of determining an import duty. Additionally, CSN contends that even though these taxes are also applied to, and rebated on, domestic purchases, the Department determined in *Welded Carbon Pipe From Turkey (2013-2014)*<sup>17</sup> that the taxes would still be eligible for a drawback adjustment because the taxes function like an import duty.

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

With regard to the *Adicional de Frete para Renovação da Marinha Mercante* (or Additional Freight for the Renovation of the Merchant Marine - AFRMM) tax, CSN asserts that while the AFRMM is imposed upon unloading operations, this tax operates almost exclusively on imports. CSN argues that the Department previously classified the AFRMM as an import tax in *Carbon and Certain Alloy Steel Wire Rod from Brazil*.<sup>18</sup> CSN claims that the Department verified that CSN is able to isolate the freight expense paid only on imported raw material imported to calculate the AFRMM suspension that qualifies for duty drawback adjustment. Citing *Stainless Steel Sheet and Strip from Mexico* and the Department's decision to grant a duty drawback adjustment for a paper processing fee in that case, CSN asserts that the AFRMM tax is the type of import-related tax that has been consistently accepted by the Department as the basis for a duty drawback adjustment in past proceedings.

CSN contends that a duty drawback adjustment should apply to all of its reported sales during the POI. Citing the U.S. Court of International Trade's (CIT) unpublished decision in *U.S. Steel Corp. v. United States*, CSN argues that the linkage between imports and exports can be established through tying imports of inputs and exports of the finished goods to the same license and program. CSN contends that because each entry upon which it claims a duty drawback adjustment has been verified to fall under the *Ato Concessorio*, which ties the imported raw materials to reported exports, CSN has demonstrated that the Department should apply the drawback adjustment for the entire period under which CSN was eligible for drawback under the operation of its *Ato Concessorio*. Furthermore, CSN argues that the Department should calculate the drawback adjustment in the same manner that the Department calculates cost. CSN contends that, because it is the Department's practice to calculate cost based on the products sold during the POI, even if costs were incurred during production that occurred prior to the POI, the Department should calculate drawback similarly, and make the adjustment on POI sales.

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<sup>17</sup> See *Welded Carbon Steel Standard Pipe and Tube Products From Turkey*, Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 76674, December 10, 2015, and accompanying Issues and Decision Memorandum, at Comment 2 (*Welded Pipe from Turkey (2013-2014)*).

<sup>18</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 70 FR 28271, May 17, 2005, and accompanying Issues and Decision Memorandum, at Comment 2 (May 9, 2005) (*Carbon and Certain Alloy Steel Wire Rod from Brazil*).

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

U.S. Steel argues that CSN has not demonstrated that it qualifies for a duty drawback adjustment. Citing *Certain Oil Country Tubular Goods from India*<sup>19</sup> and the CIT's decision in *U.S. Steel Corp. v. United States*, U.S. Steel contends that the first prong of the Department's two-prong test is satisfied only if the respondent is able to link specific duty-exempt eligible imports to specific exports to the United States on an entry-by-entry basis. According to U.S. Steel, CSN has not demonstrated on the record or at verification how CSN's exports to the United States, as indicated on its export documents and its export registration records, actually tie to its U.S. entries and to its reported U.S. sales transactions. U.S. Steel argues that CSN's failure to document this connection makes it impossible for the Department to determine to what extent CSN received drawback suspensions relating to its U.S. sales during the POI and, therefore, CSN has failed the first prong of the two-prong test.

Once again citing *Certain Oil Country Tubular Goods from India*, U.S. Steel argues that CSN's ability to segregate eligible imports of raw materials from ineligible imports is not sufficient to satisfy the first prong of the Department's test because CSN has still not linked the claimed drawback to actual U.S. sales nor proven that it imported sufficient quantities of raw materials.

U.S. Steel contends that CSN fails the second prong of the two-prong test, as well, because CSN did not demonstrate that it imported sufficient quantities of inputs as required by the test. U.S. Steel notes that in order to receive benefits under Brazil's duty drawback program,<sup>20</sup> CSN must meet the imported inputs and exported goods requirements detailed in its *Ato Concessorio*. U.S. Steel contends that CSN relies solely on the nature of the Brazilian duty drawback program as evidence that it has imported sufficient quantities of raw materials, as required by the second prong. U.S. Steel argues that, because CSN's *Ato Concessorio* does not expire until October 25, 2016, and the GOB will not verify that CSN has met the requirements of the *Ato Concessorio* until that time, CSN has failed to provide evidence that it has imported sufficient quantities of raw material inputs and, thus, fails the second prong.

In addition to employing the two-prong test, U.S. Steel argues that the Department should also evaluate the nature of the underlying amounts that comprise CSN's claimed adjustment. Citing *Stainless Steel Sheet and Strip in Coils from Mexico*,<sup>21</sup> U.S. Steel contends that CSN has claimed an adjustment for taxes and fees that should not qualify for a duty drawback adjustment of import duties. According to U.S. Steel, the Department previously determined, in *Carbon and Certain Alloy Steel Wire Rod from Brazil*, that Brazilian PIS, COFINs and ICMS taxes (all of

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<sup>19</sup> See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981, July 18, 2014, and accompanying Issues and Decision Memorandum, at 15 (July 10, 2014) (*Certain Oil Country Tubular Goods from India*).

<sup>20</sup> In this matter, CSN is benefitting from a suspension benefit under the duty drawback program and, therefore, if the GOB determines that CSN has not met the terms of its *Ato Concessorio*, the GOB will collect the suspended taxes from the company and impose penalties.

<sup>21</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790, June 8, 1999 (*Stainless Steel Sheet and Strip in Coils from Mexico*).

which were claimed by CSN as part of its drawback adjustment) are VAT, which, if included in the reported home market gross unit price, are to be deducted from normal value, in accordance with section 773(a)(6)(B)(iii) of the Act. Citing *Silicon Metal from Brazil*,<sup>22</sup> U.S. Steel contends that the Department has determined that VATs adjusted in accordance with section 773(a)(6)(B)(iii) of the Act are not “import duties” and, therefore, do not qualify for a duty drawback adjustment under section 772(c)(1)(B) of the Act.

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

With regard to the AFRMM tax, U.S. Steel argues that the AFRMM tax is levied upon unloading operations and not on imports and, therefore, it is not a tax on imports and is not import-dependent. U.S. Steel contends that, although AFRMM is exempted upon exportation, an export contingency does not transform AFRMM into an import duty within the meaning of section 772(c)(1)(B) of the Act. Additionally, U.S. Steel contends that because AFRMM rates are applied to the freight value (not to the value of the imported good), and do not vary based on the type of good (they vary based on the method of transportation), the Department should exclude AFRMM from CSN’s drawback adjustment. U.S. Steel argues that although AFRMM is not a VAT, it is also not an import duty because it is a tax on unloading operations, not imports.

U.S. Steel posits that even if the Department were to find that CSN is entitled to a duty drawback adjustment, this adjustment should only be granted for CSN’s U.S. sales that could have potentially received a drawback during the POI, and not for, as CSN has reported, all U.S. sales during the POI.

Citing *Circular Welded Carbon Steel Pipes and Tubes from Turkey* and *Certain Corrosion-Resistant Steel Products from India*, U.S. Steel contends that it is the Department’s practice to make a corresponding adjustment to COP when it grants a duty drawback adjustment. U.S. Steel asserts that CSN has reported an offsetting drawback adjustment to its COP that is not on par with CSN’s claimed U.S. duty drawback adjustment.

Department’s Position: As discussed in the *Preliminary Determination*, section 772(c)(1)(B) of the Act states that CEP shall be increased by “the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States.” With respect to AFRMM tax, we find that this tax constitutes an import duty the exemption of which entitles CSN to an adjustment, in accordance

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<sup>22</sup> See *Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225, December 17, 2002, and accompanying Issues and Decision Memorandum (*Silicon Metal from Brazil*).

with section 772(c)(1)(B) of the Act. With respect to the COFINS, ICMS, and PIS taxes, we find that these taxes are not import duties within the meaning of section 772(c)(1)(B) of the Act.

We disagree with U.S. Steel that the AFRMM tax is not an import duty and, therefore, is not eligible for a duty drawback adjustment. In *Carbon and Certain Alloy Steel Wire Rod from Brazil*, the Department found that the AFRMM “meets the definition of an import duty.”<sup>23</sup> The Department found that the AFRMM operates like an “importation tax,” similar to the processing fees that the Department also approved for a drawback adjustment in *Stainless Steel Sheet and Strip from Mexico*.<sup>24</sup> As the Department learned at verification, the AFRMM is exempted on raw materials unloaded at Brazilian ports covered by CSN’s *Ato Concessorio* and the exemption is realized upon the exportation of the goods manufactured and covered by CSN’s *Ato Concessorio*.<sup>25</sup> As described below, CSN is able to link the imported inputs covered by the *Ato Concessorio* to its covered exports to the United States. In our second sections A-D supplemental questionnaire, we requested that CSN report a duty drawback adjustment that included only AFRMM in the reported variable DUTYDRAWAU, and we verified these amounts at verification.<sup>26</sup>

We disagree with U.S. Steel’s argument that the AFRMM does not qualify for a duty drawback adjustment because the AFRMM tax is levied upon unloading operations and not on imports and, therefore, it is not a tax on imports and is not import-dependent. In *Welded Carbon Pipe From Turkey (2013-2014)*, the Department granted a drawback adjustment for the KKDF tax determining that it operated as an import duty despite petitioners’ arguments the KKDF tax should not qualify because it is levied on financial transactions and not on the goods and services used to make the product. The Department determined that because “the respondents demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export contingent” and, thus, the KKDF taxes “function like import duties.”<sup>27</sup>

The AFRMM tax is similar to the KKDF tax in that AFRMM includes various rates that apply in specific circumstances, including rates that are imposed on purely domestic transactions. Similar to the KKDF, the AFRMM legislation separately stipulates these different rates and their conditions, including a 25 percent tax that is applied only to unloading of imported inputs.<sup>28</sup>

Additionally, similar to the KKDF tax, the suspension of the AFRMM tax is also import-dependent and export contingent. Article 15 of the AFRMM legislation states that the AFRMM tax is suspended on raw materials that are imported under special customs regimes and remains suspended until it is determined that the imports no longer comply with the special customs regime.<sup>29</sup> Specifically, Article 15 of the AFRMM legislation states that, “The payment of the AFRMM incident on the freight charges on the transport of goods subject to special customs procedure shall be suspended until the date of registration of the import declaration that start the

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<sup>23</sup> See *Carbon and Certain Alloy Steel Wire Rod from Brazil*, Issues and Decision Memorandum, at Comment 2.

<sup>24</sup> *Id.*

<sup>25</sup> See Sales Verification Report at 17.

<sup>26</sup> *Id.*

<sup>27</sup> See *Welded Pipe from Turkey (2013-2014)*, Issues and Decision Memorandum at Comment 2.

<sup>28</sup> See CSN’s second supplemental questionnaire response (SQR), dated February 10, 2016, at Exhibit S2C-6-E, Article 2 and Article 6.

<sup>29</sup> *Id.* at Article 15.

dispatch to the corresponding consumption.”<sup>30</sup> Thus, we find that AFRMM is import-dependent because suspension of the AFRMM tax only applies to imports and not to unloading of domestic shipments. As described in the verification report, the exemption of the AFRMM under the duty drawback regime is contingent on exportation.<sup>31</sup> Therefore, similar to *Welded Carbon Pipe From Turkey (2013-2014)*, the Department determines that the AFRMM functions as an import duty because it is import-dependent and export contingent.

In determining whether a respondent is entitled to an adjustment to U.S. price for duty drawback, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to CEP.<sup>32</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>33</sup>

In the *Preliminary Determination*, we found that CSN had not passed the first prong because it had not demonstrated that the exemption granted by the Brazilian government’s duty drawback program is import dependent and export contingent, but stated that we would examine at verification whether the duty drawback adjustment reported by CSN is based solely on the exemptions of duties it receives for imports of raw materials.<sup>34</sup> We found at verification that CSN was “able to segregate imports of raw material inputs eligible for drawback from imports of raw material inputs not eligible for drawback and all domestically sourced inputs because this information is entered separately into SISCOMEX.”<sup>35</sup> We also found at verification that CSN is able to link imported inputs to the finished goods that it sells to the United States through a combination of the SISCOMEX system, its *Ato Concessorio*, declarations of importation, bills of lading, cargo manifests, and export registration documents.<sup>36</sup>

We disagree with U.S. Steel’s argument, citing to *Certain Oil Country Tubular Goods from India* and the CIT’s decision in *U.S. Steel Corp. v. United States*, that CSN has not satisfied the first prong because it was unable to tie the claimed adjustment to specific U.S. sales on an entry-by-entry basis. Both *Certain Oil Country Tubular Goods from India* and *U.S. Steel Corp. v. United States* involve instances in which a respondent was denied a drawback adjustment because the respondent was unable to tie U.S. sales to an advance license granting duty drawback. In this instance, all of CSN’s U.S. sales during the POI are tied to an advance license,

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<sup>30</sup> *Id.* at Article 15.

<sup>31</sup> See Sales Verification Report at 17.

<sup>32</sup> See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

<sup>33</sup> See *id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2. See also, *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006).

<sup>34</sup> See *Preliminary Determination* at 12.

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

<sup>36</sup> *Id.* at 17-18.

the *Ato Concessorio*, and, as described above, CSN has demonstrated that it can link its eligible imported inputs to its exports to the United States.

With respect to the second prong, we disagree with U.S. Steel's argument that CSN has not provided evidence that it has imported sufficient quantities of raw material inputs. CSN submitted a technical report and annex as part of its application for an *Ato Concessorio*.<sup>37</sup> This technical report and annex outlines the amount of raw material inputs used to produce the products that are to be exported. Additionally, as part of its application for the *Ato Concessorio*, CSN submitted an export plan for the calendar year. As the Department found at verification, the GOB uses this information CSN provided as part of its application process to ensure that the imports and exports reported in SISCOMEX remain in balance. As the Sales Verification Report describes, "the Brazilian government must grant authorization before exports eligible for duty drawback are allowed to leave Brazil. This process involves CSN generating an export registration document through SISCOMEX and will occasionally include a physical inspection of the finished products at the port before the GOB will grant the exemption of duties or taxes" to ensure that CSN's exports comply with its *Ato Concessorio*.<sup>38</sup> We find that this is sufficient evidence that CSN has imported sufficient quantities of raw material inputs to satisfy the second prong. Similar to the Department's findings in *Carbon and Certain Alloy Steel Wire Rod from Brazil*,<sup>39</sup> we find that CSN has passed the two-pronged test.

We disagree with U.S. Steel's argument that the Department should restrict the drawback adjustment to sales after a certain date during the POI because certain reported U.S. sales could not have been covered by the duty drawback program due to CSN's reported carrying period. CSN demonstrated that its *Ato Concessorio* was in force prior to CSN's sales to the United States<sup>40</sup> and the Department verified that the GOB must grant an export registration through SISCOMEX before exports eligible for drawback are allowed to leave Brazil.<sup>41</sup> The review by the GOB before the export registration is granted ensures that duty drawback eligible exports comply with the terms of the applicable *Ato Concessorio*. At verification, the Department examined various export registration documents to ensure that they tied to CSN's reported sales to the United States and we found no discrepancies.<sup>42</sup> We agree with CSN that the Department does not require that each raw material import must be traceable to the corresponding export that incorporates that input, but that the linkage between imports and exports can be established through tying the imports and exports to the same duty drawback license and program. We find that CSN has demonstrated that its imports of eligible raw materials tie to its reported sales to the U.S. under its *Ato Concessorio* and through SISCOMEX. Thus, for the final determination, we find it appropriate to grant CSN a duty drawback adjustment for all of its reported U.S. sales.

We agree with U.S. Steel's argument that Department should make a corresponding adjustment to COP as a result of granting a duty drawback adjustment. In *Certain Corrosion-Resistant Steel Products from India*, the Department explained that "the application of the duty drawback

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<sup>37</sup> See CSN's questionnaire response (QR), dated November 13, 2015, at Exhibit C-15-A.

<sup>38</sup> See Sales Verification Report at 17.

<sup>39</sup> See *Carbon and Certain Alloy Steel Wire Rod from Brazil*, Issues and Decision Memo at Comment 2.

<sup>40</sup> See CSN's QR at Exhibit C-15-A.

<sup>41</sup> See Sales Verification Report at 17.

<sup>42</sup> *Id.*

adjustment which simply accepts a respondent's claimed adjustment for duty drawback with no consideration of what import duties are included in the respondent's costs of materials may result in an imbalance in the comparison of CEP with NV."<sup>43</sup> Thus, in order to address this imbalance and accurately determine an adjustment for the "amount of import duties imposed...which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States,"<sup>44</sup> we find it appropriate to make an upward adjustment to U.S. price based on the per unit amount of the import duty cost included in the COP for each control number. The mechanics of this adjustment are detailed in CSN's Final Cost Calculation Memorandum.<sup>45</sup>

We disagree with CSN's argument that an adjustment made to COP is inconsistent with section 772(c)(1)(B) of the Act. That provision requires that the CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise." The statute does not specify a particular methodology for making a duty drawback adjustment. When the statute is silent, the Department has the discretion to formulate a reasonable methodology to ensure a duty neutral dumping margin, as we have done here and in *Certain Corrosion-Resistant Steel Products from India*.<sup>46</sup>

We disagree with CSN that COFINS, ICMS, and PIS taxes are eligible for a drawback adjustment. In previous investigations, the Department has found that COFINS, ICMS, and PIS are VATs<sup>47</sup> and, in accordance with the Department's past practice, we do not find that VATs are duties under section 772(c)(1)(B) of the Act.<sup>48</sup> Additionally, as U.S. Steel argues, the Department previously granted a drawback adjustment for Brazilian VAT,<sup>49</sup> but, pursuant to a CIT remand, the Department recalculated its drawback adjustment to exclude the VAT.<sup>50</sup> The CIT affirmed the Department's recalculation of the duty drawback adjustment excluding VAT.<sup>51</sup>

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<sup>43</sup> See *Certain Corrosion-Resistant Steel Products from India*, Issues and Decision Memorandum at 8.

<sup>44</sup> See section 772(c)(1)(B) of the Act.

<sup>45</sup> See CSN's Final Cost Calculation Memorandum.

<sup>46</sup> See, e.g., *Union Steel v. United States*, 823 F. Supp.2d 1346, 1358 (CIT 2012) (holding that "because the statute is silent, it is within Commerce's discretion to adopt a new reasonable methodology...").

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

<sup>48</sup> See, *Silicon Metal from Brazil*, Issues and Decision Memorandum at 10 and also see *Carbon Steel Pipe and Tube from Turkey*, 62 FR 26287 (May 13, 1997), and accompanying Issues and Decision Memorandum at Comment 5. In Brazil, VAT are paid on inputs regardless of whether the inputs have been imported or purchased domestically. Section 772(c)(1)(B) of the Act states that EP will be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." Further, as stated in *Carbon Steel Pipe and Tube from Turkey*, we note that the aforementioned section of the statute makes no provision for an adjustment for VAT.

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

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

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

Because the CIT's decision is specific to this issue, we have not changed our policy concerning VAT and duty drawback. We disagree with CSN that the *Welded Carbon Pipe From Turkey* reviews apply in this instance because the tax at issue in those reviews was not a VAT.<sup>52</sup> Therefore, pursuant to the CIT decision, section 772(c)(1)(B) of the Act, and past determinations by the Department, we have excluded VAT from CSN's claimed duty drawback adjustment for purposes of the final determination.

**Comment 2: Affiliated Party Sales**

U.S. Steel explains that during the POI, CSN made home-market sales to a group of affiliated resellers known as Panatlantica S.A., and claims that these sales were not made on an arm's-length basis. According to U.S. Steel, when a respondent makes sales to affiliated resellers that are not at arm's length, the Department's longstanding practice is to require the respondent to report the downstream sales by the affiliated resellers. U.S. Steel argues that, as a result, CSN should have reported the downstream sales made by Panatlantica S.A. to the Department. U.S. Steel asserts that in failing to provide the downstream sales data, CSN did not fulfill its statutory duty to act to the best of its ability in providing data and information critical to accurate margin calculations. Citing *Light-Walled Rectangular Pipe and Tube from Mexico*,<sup>53</sup> U.S. Steel argues further that, because CSN did not report its downstream sales to the Department, the Department should apply partial adverse facts available to account for CSN's failure to report downstream sales.

U.S. Steel argues that the language found in the Department's questionnaire concerning affiliated-party sales indicated that CSN had to report sales to any affiliated resellers, and it had to report downstream sales by those affiliated resellers if CSN's sales to the affiliated resellers did not satisfy the Department's arm's-length test set forth in Appendix VI of the Department's original questionnaire. U.S. Steel asserts that if CSN believed that its sales to the affiliated resellers were at arm's length, it had to demonstrate how it determined that its sales to affiliated parties were made at arm's length, in accordance with the guidelines set forth in Appendix VI of the Department's original questionnaire.

According to U.S. Steel, CSN did not mention in its responses to the Department's initial questionnaire that a significant portion of its home-market sales were to affiliated resellers. U.S. Steel contends that, as detailed in its December 12, 2015, supplemental comments, CSN's responses to the Department's initial questionnaire were highly deficient, failing to provide even the most basic explanation, information, and data required by the Department's questionnaire. U.S. Steel contends that, as a result, the Department issued on December 8, 2015, a very lengthy, in-depth supplemental questionnaire to CSN. U.S. Steel claims that it was not until nearly four months after issuance of the Department's original questionnaire that CSN first revealed, in response to the Department's lengthy supplemental questionnaire, that it sold cold-rolled steel to an affiliate, Panatlantica S.A., that, in turn, resold foreign like product in the home market.

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

<sup>53</sup> See *Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677, September 2, 2004, and accompanying Issues and Decision Memorandum, at Comment 3 (August 26, 2004) (*Light-Walled Rectangular Pipe and Tube from Mexico*).

U.S. Steel contends that CSN first mentioned this critical issue only a little more than a month before the extended preliminary determination, which, according to U.S. Steel, significantly impeded the Department's ability to analyze the issue. U.S. Steel argues that CSN's sales to Panatlantica S.A. are significant, as they are well beyond the five percent reporting threshold the Department set in its initial questionnaire. U.S. Steel argues further that CSN, thus, had no valid reason for omitting this information from its responses to the Department's initial questionnaire. U.S. Steel asserts that, to this day, CSN has not reported its downstream sales made by its affiliated Panatlantica S.A. reseller, nor did CSN perform the Department's standard arm's-length analysis of its sales of cold-rolled steel to Panatlantica S.A., as set forth in Appendix VI of the Department's initial questionnaire. Instead, according to U.S. Steel, CSN provided its own nonstandard analysis, asserting that when price-list prices are compared, CSN's sales to Panatlantica S.A. were at arm's length. U.S. Steel argues that this comparison is misleading, overly simplistic, and broad, and that using price-list prices lacks detail, precision, and accuracy inherent to the Department's standard analysis, which according to U.S. Steel, examines actual net prices for actual home-market sales of cold-rolled steel. CSN argues that, although CSN's listed prices might be uniform for affiliated and nonaffiliated sellers, its actual prices reflect discounts and negotiations with individual customers. As a result, according to U.S. Steel, transactions that superficially appear to be at arm's-length based on listed prices can turn out to be not at arm's length when actual prices are examined. U.S. Steel contends that, as reflected in Appendix VI of the Department's questionnaire, the Department employs an arm's-length test that looks at actual net prices. U.S. Steel argues that, nevertheless, CSN relied on its erroneous analysis to decide unilaterally—without permission or guidance from the Department - to exclude downstream sales by Panatlantica S.A. entities from its home-market sales database.

U.S. Steel asserts that the Department issued a supplemental questionnaire that stated that, based on information it had received from CSN, it was not at that time requiring CSN to report downstream sales, but it once again warned CSN that it could apply AFA if it determined that the information CSN had provided was incorrect or could not be substantiated. U.S. Steel claims that the Department took no action against CSN in the *Preliminary Determination*, even though U.S. Steel conducted its own analysis finding that CSN's sales to Panatlantica S.A. failed the Department's standard arm's-length test.

U.S. Steel urges the Department to reconsider its decision to take no action on this issue in the *Preliminary Determination*. Citing section 776(a)(2)(A) of the Act, U.S. Steel argues that when the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, the Department may use an inference that is adverse to the interest of that party in selecting from among the facts otherwise available. U.S. Steel asserts that as the Court of Appeals Federal Circuit (CAFC) has explained, “[c]ompliance with the ‘best of its ability’ standard is determined by assessing whether respondent has put forth its maximum effort to provide. . . full and complete answers to all inquiries in an investigation.”<sup>54</sup> U.S. Steel argues that CSN's approach to its reporting obligations, including its failure to report any downstream sales by its affiliated resellers, is not putting forth its best effort. As such, U.S. Steel argues, the Department should apply partial adverse facts available. In *Light-Walled Rectangular Pipe and Tube from Mexico*, U.S. Steel

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<sup>54</sup> See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

argues, the Department faced a nearly identical situation and it applied partial adverse facts available to the respondent, Prolamsa, in that case.

U.S. Steel states that, like in this case, in *Light-Walled Rectangular Pipe and Tube from Mexico*, the Department informed the respondent, Prolamsa, that, it did not need to report downstream sales by its affiliated resellers, but it simultaneously warned Prolamsa that it may apply AFA if the information Prolamsa had supplied could not be substantiated. According to U.S. Steel, when Prolamsa's claim of arm's-length sales failed to hold up, the Department concluded the appropriate course was to apply facts available and draw an adverse inference to account for Prolamsa's failure to report the downstream sales of its affiliated resellers. U.S. Steel contends that everything the Department stated in *Light-Walled Rectangular Pipe and Tube from Mexico* applies to this case. U.S. Steel argues that, like Prolamsa, CSN has not met its burden of establishing its entitlement to a favorable adjustment. According to U.S. Steel, CSN failed to report a critical issue in a timely manner and when CSN finally revealed that it made sales to affiliated resellers, it failed to provide the required analysis and information as instructed, instead claiming that its sales to the affiliated resellers were at arm's length when record evidences demonstrates conclusively that they were not. For these reasons, U.S. Steel argues, the Department should apply partial AFA in this case, just as it did in *Light-Walled Rectangular Pipe and Tube from Mexico*.

As partial AFA, U.S. Steel suggests that the Department treat CSN's sales to the Panatlantica entities as downstream sales and apply to those sales the highest gross unit price of comparable merchandise as sold to unaffiliated customers.

Citing *Antidumping Proceedings*, CSN contends that U.S. Steel's argument fails because it is factually incorrect to conclude that CSN did not cooperate to the best of its ability and because U.S. Steel ignores the fact that the Department will consider "case-specific circumstances that might warrant additional considerations" when conducting the arm's-length analysis.<sup>55</sup> CSN argues that it also established, and the Department accepted, that such factors apply in this proceeding. More importantly, according to CSN, U.S. Steel never addresses the fact that CSN did not have the ability to compel Panatlantica to provide such sales.

CSN argues that it did not fail to make any mention of the existence of Panatlantica S.A., as U.S. Steel falsely suggests. According to CSN, in the original response to section A of the questionnaire, its affiliation chart showed that it is a minority shareholder in Panatlantica S.A. CSN argues further that in its original response to section B of the questionnaire, it also reported its sales of subject merchandise to the company during the POI. CSN asserts that in its supplemental questionnaire response, it elaborated the fact that out of the five members of the Panatlantica group, it was CSN's understanding, that one of the members was an end-user of CSN's cold-rolled steel products and that the other four members operated as both resellers and service centers.

CSN contends that it made three critical points to the Department in its supplemental questionnaire response that are ignored by U.S. Steel. The first point, according to CSN, is that

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<sup>55</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, November 15, 2002 (*Antidumping Proceedings*).

not all sales of cold-rolled steel sold by CSN to Panatlantica S.A. passed the Department's standard arm's-length test; the second point is that based on a true apples-to-apples comparison, sales to Panatlantica S.A. resellers accounting for a small percentage of total home market sales failed CSN's arm's-length analysis; and the third point is that the "{t}he small shareholding {11 percent} is the only affiliation factor common to Panatlantica and CSN, and that CSN is not in a position to control Panatlantica."<sup>56</sup>

CSN argues that with respect to the first point, it has been forthcoming with the Department that not all sales of cold-rolled steel to Panatlantica S.A. passed the Department's standard arm's-length test.<sup>57</sup> In addition, CSN asserts that, following the submission of its response to the Department's initial questionnaire, the Department sought further information regarding CSN's position regarding its request to be exempted from reporting downstream sales in the event that the Department preliminarily determined that CSN's sales to its affiliated parties were not made at arm's length. As such, according to CSN, it did not take unilateral action, as U.S. Steel claims. CSN states that it clarified to the Department that it was respectfully requesting an exemption from reporting Panatlantica S.A.'s downstream sales of cold-rolled steel because a true apples-to-apples arm's-length test (*i.e.*, comparing the prices of sales to Panatlantica S.A. to the prices of sales to unaffiliated customer groups) cannot be performed under the Department's standard arm's-length analysis and because it could not compel Panatlantica S.A. to provide such data.

According to CSN, it made it clear to all interested parties that if the Department found that such sales were not at arm's length, it was asking to be exempted from reporting such sales on the grounds that it could not compel Panatlantica to provide downstream sales. CSN asserts that the Department determined that it would not require CSN to provide Panatlantica's downstream sales of the domestic like product for the reasons outlined by CSN, as it clearly understood that CSN could not compel Panatlantica to report its downstream sales. CSN argues that, at verification, the Department found nothing that would call into question either the unfeasibility of an apples-to-apples arm's-length comparison or the lack of control that CSN could exercise over Panatlantica.

With regard to U.S. Steel's argument that CSN's use of price lists to conduct the arm's-length analysis is misleading, overly simplistic, and broad, CSN claims that U.S. Steel's observation is false. CSN argues that in its section A supplemental questionnaire response, it conducted an arm's-length analysis that compared actual prices of sales to Panatlantica S.A. to the actual prices of sales to unaffiliated companies. CSN asserts that it did not simply compare price lists as U.S. Steel claims. CSN argues also that U.S. Steel did not address the fact that CSN does not control the Panatlantica group and, therefore, could not compel the company to report its downstream sales. Citing *Certain Cut-To-Length Carbon Steel Plate From Brazil*,<sup>58</sup> CSN argues that the Department will not apply adverse facts available when a respondent cannot compel its affiliate to provide information.

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<sup>56</sup> See CSN's supplemental sections A-C questionnaire response (SQR), at S1A-14, dated January 14, 2016 (CSN's SQR A-C).

<sup>57</sup> *Id.*

<sup>58</sup> See *Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, (March 16, 1998) (*Certain Cut-To-Length Carbon Steel Plate From Brazil*).

CSN argues that U.S. Steel's reliance on the Department's determination in *Light-Walled Rectangular Pipe and Tube from Mexico* is inapposite. CSN asserts that, unlike in this case, the respondent in that proceeding (Prolamsa) never requested an exemption from reporting its affiliate's downstream sales. In addition, CSN contends that Prolamsa also told the Department in that proceeding that the sales at issue passed the Department's standard arm's length analysis and, accordingly, that the company would not provide its affiliate's downstream sales. According to CSN, that is not the case here where CSN never asserted that the sales at issue passed the Department's standard arm's-length test. Rather, CSN asserts, it sought an exemption based on its apples-to-apples arm's-length analysis and the fact that it could not compel Panatlantica S.A. to report downstream sales of cold-rolled steel.

CSN argues that for the reasons outlined above, the Department should reject U.S. Steel's argument that it should apply partial adverse-facts available in the final determination.

Department's Position: We agree with CSN that the application of partial AFA associated with its affiliated party sales to Panatlantica S.A. is not warranted. We disagree with U.S. Steel that CSN did not act to the best of its ability.

Section 776(a)(1) of the Act states that the Department shall, subject to section 782(d) of the Act, use facts otherwise available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act also provides that the Department shall, subject to section 782(d) of the Act, use facts otherwise available if an interested party or any other person: (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference in applying the facts otherwise available pursuant to section 776(a)(1)-(2) of the Act when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

We do not find, however, that the application of facts available or adverse facts available is warranted here. Necessary information is not missing from the record, as explained below, nor has CSN withheld requested information, failed to meet relevant deadlines, significantly impeded the proceeding, or provided unverifiable information. For example, in response to the Department's original questionnaire, CSN identified on the record that it held 11.40 percent of shares of Panatlantica S.A. during the POI.<sup>59</sup> In response to our December 8, 2015, supplemental questionnaire, CSN reported that it made home-market sales of cold-rolled steel during the POI to Panatlantica S.A.<sup>60</sup> CSN explained in its supplemental questionnaire response that it was a minority shareholder in Panatlantica S.A., and that the small shareholding in Panatlantica S.A. was the only affiliation factor common to Panatlantica S.A. and CSN. CSN explained further that, as result, it was not in a position to control Panatlantica S.A., or to compel it to provide information. Thus, a determination to rely on facts available pursuant to section

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<sup>59</sup> See CSN's QR at Exhibit A-4-B dated October 20, 2015.

<sup>60</sup> See CSN's SQR A-C.

776(a) is not warranted. Because we are not relying on facts available, we do not reach the inquiry of whether an adverse inference pursuant to section 776(b) is warranted.

On February 3, 2016, we contacted CSN to clarify its position regarding the sales it made to Panatlantica S.A. during the POI.<sup>61</sup> CSN clarified that it was requesting that the Department exempt it from reporting “downstream” sales, in the event that the Department preliminarily determined that CSN’s sales to its affiliated parties were not made at arm’s length, for the reasons outlined in its supplemental questionnaire response and based on the data it provided on the record concerning affiliated party sales.<sup>62</sup> After carefully considering the facts on the record, we explained to CSN in a second supplemental questionnaire that,

“{B}ased on the information provided on the record with regard to your affiliated party sales in the home market and your clarification via a phone conversation with the Department, we are not requiring CSN to report “downstream” sales at this time. In the event, however, that we later determine that the information you provided on the record concerning affiliated party sales is incorrect or cannot be substantiated by supporting documentation, we may apply facts available, including an adverse inference, pursuant to Sections 776(a) and (b) of the Act, in determining your dumping margin.”<sup>63</sup>

We find that CSN provided all of the information the Department requested and did so by the established deadlines by the Department, and the information was verified. Specifically, at the sales verification of CSN, we requested further information concerning Panatlantica S.A. and we confirmed that CSN is only a minority shareholder (11.4 percent) in Panatlantica S.A. Further, at the sales verification, we reviewed the company’s “Shareholders Agreement” as well as other related documents, and did not find any evidence that the information CSN provided on the record with respect to its sales to Panatlantica S.A. was incorrect or could not be substantiated by supporting documentation such that it would be appropriate to apply partial facts available, including an adverse inference.<sup>64</sup> Thus, we do not find that CSN has failed to cooperate to the best of its ability in this regard.

As stated in the *Preamble* to the Department’s regulations, the Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances, though the Department will require a respondent to demonstrate in each segment of a proceeding that the reporting of downstream sales is not necessary.<sup>65</sup> In addition, as we explained in *Antidumping Proceedings*, the Department will consider requests for exemptions from reporting “downstream” sales on a case-by-case basis.<sup>66</sup> Further, in *Antidumping Proceedings*, we stated that, “[i]f a respondent has cooperated to the best of its ability and is unable to obtain downstream sales, we will not use adverse facts available for those sales.”<sup>67</sup> In this instance,

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<sup>61</sup> See Memorandum to the File dated February 3, 2016.

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

<sup>63</sup> See the Department’s second supplemental questionnaire, dated February 3, 2016. See also, CSN’s February 10, 2016, second supplemental questionnaire response.

<sup>64</sup> See Sales Verification Report for CSN, at 3-4.

<sup>65</sup> See *Antidumping Duties; Countervailing Duties*, (May 19, 1997) (*Preamble*)

<sup>66</sup> See *Antidumping Proceedings*.

<sup>67</sup> *Id.*

we find that CSN's small equity ownership in Panatlantica S.A. is not significant enough to reach a reasonable conclusion that CSN could compel Panatlantica S.A. to report downstream sales.<sup>68</sup> Thus, we accepted CSN's argument that it is not in a position to compel Panatlantica S.A. and we exempted it from reporting "downstream" sales.

With regard to U.S. Steel's reliance on *Light-Walled Rectangular Pipe and Tube from Mexico*, we agree with CSN that the facts in that proceeding do not mirror the facts of this case. For example, in that proceeding, the respondent did not request to be exempted from reporting the downstream sales of its affiliated resellers, but simply stated that it was not going to submit data regarding its affiliated reseller's downstream sales because it asserted that its sales accounted for a small portion of total home-market sales and because it alleged that the sales were made at arm's length.<sup>69</sup> As we indicate above, CSN requested that it be exempt from reporting Panatlantica S.A.'s downstream sales because it claimed that it could not compel its affiliated reseller to report such sales and we granted its request. In addition, unlike the participating respondent in *Light-Walled Rectangular Pipe and Tube from Mexico*, CSN acknowledged that its sales to several entities within Panatlantica S.A. did not pass the Department's standard arm's-length test.<sup>70</sup> Thus, because the facts in this case are different and demonstrate CSN's cooperation with the Department, we do not find that the approach the Department took in *Light-Walled Rectangular Pipe and Tube from Mexico* is applicable or appropriate in this case.

### **Comment 3: Inventory Carrying Costs**

CSN argues that, consistent with standard reporting methodologies, it reported its transaction-specific imputed inventory carrying costs in both markets with reference to the relevant time the merchandise was held in inventory, the relevant short-term interest rate, and the relevant valuation of the merchandise in inventory. CSN contends that it valued the merchandise for each transaction based on the total cost of manufacturing (COM) for the relevant control number. Citing *Certain Orange Juice from Brazil*,<sup>71</sup> CSN argues that this is the established valuation approach utilized by respondents in nearly all antidumping duty investigations and reviews.

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

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<sup>68</sup> See *Certain Cut-To-Length Carbon Steel Plate From Brazil*, where the Department surmised that public data on the record of the proceeding indicated that a 15 percent stock ownership constituted a small portion of a company's operations; therefore, the respondent could not compel its affiliate to supply cost of production information.

<sup>69</sup> See *Light-Walled Rectangular Pipe and Tube from Mexico*.

<sup>70</sup> See CSN's SQR A-C.

<sup>71</sup> See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584, (August 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 5 (*Certain Orange Juice from Brazil*).

CSN argues that, for its final determination, the Department should calculate inventory carrying costs based on total COM, as reported by CSN, and the Department should not add costs associated with G&A expenses, interest expenses, and with placing the merchandise in inventory. CSN disagrees with the Department's approach in *Ball Bearings from France*,<sup>72</sup> in which the Department included additional costs in the inventory value when calculating inventory carrying costs. Citing *Stainless Steel Sheet and Strip in Coils from Taiwan*,<sup>73</sup> CSN argues that *Ball Bearings From France* is an isolated and dated instance that does not reflect the Department's normal practice and this practice inappropriately results in an overstatement of the imputed inventory carrying costs.

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

Citing *Paul Muller Industrie GmbH & Company v. United States*,<sup>74</sup> U.S. Steel argues that the CIT has held that "there is no methodology mandated by the statute for assessing inventory cost," so "Commerce has considerable discretion to determine its method of calculation." U.S. Steel argues further that the Department, therefore, has the legal discretion to compute inventory carrying costs by including G&A expenses, interest expenses, and transportation and packing costs associated with placing the merchandise in inventory.

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

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<sup>72</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 13 (*Ball Bearings From France*).

<sup>73</sup> See *Stainless Steel Sheet and Strip in Coils From Taiwan*; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7519 (February 13, 2006), and accompanying Issues and Decision Memorandum, at Comment 6 (*Stainless Steel Sheet and Strip in Coils from Taiwan*).

<sup>74</sup> See *Paul Muller Industrie GmbH & Company v. United States* 502 F. Supp. 2d 1271, 1276 (CIT 2007), affirmed without opinion, 283 Fed. App'x 789 (Fed. Cir. 2008) (*Paul Muller Industrie GmbH & Company v. United States*).

in the computation of inventory carrying costs is, therefore, not just within the Department's lawful discretion, but also sensible.

U.S. Steel argues that CSN's assertion that *Ball Bearings From France* is a "dated" and "isolated" case is telling since among the multiple decisions CSN cites as ostensibly representative of the Department's strict adherence to a COM-only methodology for calculating inventory carrying costs, none of the cases cited by CSN distinguish or reject the analysis in *Ball Bearing From France*. According to U.S. Steel, virtually all of the cases cited by CSN predate the Department's decision in *Ball Bearings From France*, and the only case that CSN cites that post-dates the *Ball Bearings From France* case does not mention the bearings case or address the components of inventory carrying costs. U.S. Steel contends that in *Ball Bearings From France*, the Department considered the earlier cases CSN cites and concluded that its refined methodology "does not contravene" them.<sup>75</sup> Moreover, the Department explained that the "issue in each of those cases was whether the inventory value we use to calculate ICCs should be a cost-based value or a price-based value...Which costs should be included in the inventory value was not at issue in any of these cases." U.S. Steel contends that *Certain Orange Juice from Brazil* also did not address which costs to include in inventory carrying costs; instead it was concerned with whether inventory carrying costs were product-specific or not. U.S. Steel argues that, therefore, CSN has not identified a single decision by the Department that has explicitly considered the issue and reached an outcome contrary to *Ball Bearings From France*. U.S. Steel argues further that there is no reason for the Department to break with its precedent, so it should reaffirm and continue to rely on *Ball Bearings From France*.

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

Department's Position: In the *Ball Bearings From France* case, we explained that, although we have had a practice of calculating inventory carrying costs on the COM of the merchandise in inventory, we determined it appropriate to refine the approach to measuring this imputed expense.<sup>76</sup> Specifically, we explained in *Ball Bearings From France* that inventory carrying costs are a measurement of the time value of money inherent in holding merchandise in inventory over a period time in which the respondent has not recovered the costs it incurred in manufacturing the merchandise and in placing the merchandise in inventory.<sup>77</sup> Therefore, we determined that the costs to the respondent of the merchandise sitting in inventory include not

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<sup>75</sup> See *Ball Bearings From France*.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

only the as-yet-unrecovered cost of manufacturing the merchandise but also those expenses associated with placing the merchandise in inventory. We concluded that these additional expenses include the freight and other movement expenses associated with transporting the merchandise from the factory to the warehouse as well as packing expenses.<sup>78</sup> As such, and consistent with *Ball Bearings From France*, for the *Preliminary Determination*, we recalculated CSN's inventory carrying cost to ensure that it includes not only COM but also other costs associated with placing the merchandise in inventory, which include transportation costs, packing costs, G&A expenses, and interest expenses.<sup>79</sup>

We disagree with CSN's contention that *Ball Bearings From France* is an "isolated" and "dated" Departmental decision. As we indicate above, the Department has utilized this methodology in other cases since *Ball Bearings From France*.<sup>80</sup> Further, all of the decisions cited by CSN predate *Ball Bearings From France* and therefore, we find CSN's argument that this is not our practice to be misguided. CSN has not identified a single decision subsequent to *Ball Bearings From France* in which inventory carrying costs was calculated without the additional expenses at issue. Thus, we find CSN's argument in this regard to be unpersuasive.

We agree with CSN's argument that, in the event we continue to follow our inventory carrying cost methodology for the final determination, we should adjust Prada's inventory carrying cost calculation to include all pre-warehouse movement expenses. Although CSN provided one home-market sales database that includes both CSN's sales to unaffiliated customers and sales made by its affiliate, Prada, it calculated CSN's inventory carrying cost separately from Prada's inventory carrying cost calculation.<sup>81</sup> Thus, for the final determination we have included in our revised inventory carrying cost calculation all pre-warehouse movement expenses in our valuation of merchandise for Prada.

#### **Comment 4: Credit Revenue**

CSN argues that the Department should cap credit revenues by credit expenses, which is, according to CSN, consistent with the Department's treatment of freight and warehousing revenue in the *Preliminary Determination*. Citing *Ferrosilicon from the Russian Federation*,<sup>82</sup> CSN asserts that, while it recognizes that the Department has not capped credit revenues by credit expenses in other proceedings, there is no valid conceptual reason to distinguish the Department's treatment of credit revenue from the Department's consistent treatment of other revenue streams associated with sales such as freight revenue and warehousing revenue. Citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand*,<sup>83</sup> CSN argues that just as it is

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

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

<sup>80</sup> *Id.*

<sup>81</sup> See CSN's QR at Exhibits S1B-24.1 and S1B-24.3.

<sup>82</sup> See *Ferrosilicon From the Russian Federation: Final Determination of Sales at Not Less Than Fair Value*, 79 FR 44393 (July 31, 2014), and accompanying Issues and Decision Memorandum at Comment 7 (*Ferrosilicon from the Russian Federation*).

<sup>83</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 64170 (October 28, 2014), and accompanying Issues and Decision

inappropriate to increase the gross unit selling price as a result of profit earned on the provision of freight or warehousing services, it is also inappropriate to increase the gross unit selling price as a result of profits earned on extending additional financing to customers.

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

CSN contends that the invoice price issued to the customer reflects CSN’s pricing behavior for steel, taking into consideration the payment period granted to the customer. CSN argues that the customer’s decision to pay financing charges for deferred payment beyond the initial payment period is a decision the customer makes that is separate from its decision to purchase steel from CSN, and the corresponding credit revenue should not factor into the net price derived by the Department for purposes of its margin calculations.

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

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

U.S. Steel contends that, in arguing to the contrary, CSN is simply rehashing the arguments raised by the respondents in *Ferrosilicon from the Russian Federation* and in countless other decisions.<sup>84</sup> U.S. Steel asserts that the Department has considered those arguments and it has rejected them because it considers credit revenues as price adjustments that do not warrant being capped by credit expenses. According to U.S. Steel, CSN offers nothing original to this argument, nor has it provided any specific evidence in this proceeding that would justify the Department’s reversal from its established practice. U.S. Steel, therefore, recommends that the

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Memorandum at Comment 4 (*Circular Welded Carbon Steel Pipes and Tubes From Thailand*).

<sup>84</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum; *Gray Portland Cement and Clinker from Mexico*, 71 FR 2909 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 9.

Department continue to follow its established practice by not capping CSN's credit revenue by its credit expenses.

**Department's Position:** The Department's practice is to treat credit revenue when received for late payments as a post-sale price adjustment and not as an offset to a specific expense. As the Department explained in *Orange Juice from Brazil* and in *Ball Bearings from France, Germany and Italy*<sup>85</sup> "the statute does not speak to the treatment of fees associated with late payments. In such circumstances, the Department must determine the most appropriate methodology to use," referencing *U.S. Steel Group v. United States*, 225 F.3d 1284, 1290 (Fed. Cir. 2000) and *Smith-Corona Group v. United States*, 713 F.2d 1568, 1582 (Fed. Cir. 1983) *cert. denied*, 465 U.S. 1022 (1984). Additionally, we clarified in *Orange Juice from Brazil* that revenue earned as late payment fees is a different type of revenue than movement- or packing-related revenues, citing *Cement from Mexico*,<sup>86</sup> where we explained that our longstanding practice of treating early payment discounts as an adjustment to price leads us to the same determination concerning late payment increases to the price. In the instant case, where CSN claims fees charged for late payments as credit revenue, the revenue is appropriately treated a post-sale price adjustment. In addition, as CSN has acknowledged in citing *Ferrosilicon from the Russian Federation*,<sup>87</sup> the Department's well-established practice is not to cap such fees (credit revenue) because the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment; this price adjustment may or may not be equivalent to any reduction or increase in CSN's actual or imputed interest expenses. Thus, for the final determination, we have continued to treat CSN's credit revenue as a post-sale adjustment and we have not capped such fees by credit expenses.

#### **Comment 5: Model Match**

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

CSN explains that blanks produced by CSN include "press blanks" that are further manufactured from steel coils by cutting into customer-specified shapes (other than rectangles or squares), which may or may not be symmetrical, and "tailored welded blanks" that include two or more

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<sup>85</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 76 FR 50176 (August 12, 2011) and accompanying Issues and Decision Memorandum at comment 2 (*Orange Juice from Brazil*). See also, *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum, at Comment 6 (*Ball Bearings From France, Germany and Italy*).

<sup>86</sup> See *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909 (January 18, 2006) and accompanying Issues and Decision Memorandum at comment 9 (*Cement from Mexico*).

<sup>87</sup> See *Ferrosilicon From the Russian Federation*.

pieces of steel of different physical characteristics that are cut to customer-specified shapes and welded together. According to CSN, steel blanks require substantial additional manufacturing steps after the flat-rolled coil is initially produced, using specialized manufacturing equipment such as transverse slitters, stamping machines, and even welding apparatus. CSN explains that it produces blanks at service centers using specialized manufacturing equipment and customer application-specific custom dies that are dedicated to this purpose.

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

U.S. Steel argues that in CSN’s model match rebuttal comments,<sup>88</sup> CSN recognized that blanks are arguably already identified in the Department’s proposed Field 3.7 (FORMH/U) under code “4” for “Not in coil (not squares or rectangles),” but that it nevertheless recommended that a separate code under the FORMH/U characteristics should be created to explicitly segregate blanks from other forms of material to ensure that blanks are not compared to material in coil form, rectangular cut-to-length sheet form, or other standard, non-coil, symmetrical shapes.

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

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

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<sup>88</sup> See CSN’s Rebuttal Comments on Model Match Criteria, dated September 16, 2015.

CSN argues that the Department must be certain not to match U.S. sales of non-blank products to home-market sales of blanks, because it claims that doing so would result in distortive or inappropriate model matches. However, CSN has not identified whether, in fact, any matches of U.S. sales of non-blank products to home-market sales of blanks products have occurred in the Department's margin calculation for the *Preliminary Determination*. Thus, CSN has not pointed to any evidence on the record indicating that such model matches or other distortion and the alleged resulting distortion, actually occurred as a result of comparing CSN's U.S. sales of subject merchandise with its home market models of the foreign like product. As CSN acknowledges, the Department's model match hierarchy already segregates what CSN describes as "blanks" from coils and from square and rectangular non-coil products in Field 3.7 (FORMH/U) under code "4" for "Not in coil (not squares or rectangles)."<sup>89</sup> Furthermore, even if there were a reason to distinguish "blanks" products from non-blanks products reported under code "4" to avoid inappropriate model matches as CSN contends, we would not be able to do so as CSN did not identify on the record those particular "blank" products it asserts should not be matched to its U.S. sales. Absent this information, CSN's arguments on this subject are wholly speculative. Indeed, what CSN would have the Department do absent this information is not apparent.

The Department, however, is not persuaded by CSN's assertion that matching non-blanks merchandise sold in the United States to "blanks" sold in the home market would somehow provide inappropriate model matches. In the vast majority of market-economy proceedings, the Department's practice has been that any and all comparison-market models that are within the class or kind of merchandise are possible similar comparisons, as long as they meet the criteria of sections 771(16)(B) or (C) of the Act.<sup>90</sup> In other words, if models meet the description of the scope of an antidumping duty investigation or order, we consider such products to be like the subject merchandise in component material or materials and in the purposes for which used.<sup>91</sup> Thus, in our view, it could be appropriate to match sales of blanks with sales of non-blanks in light of our normal practice and our interpretation of section 771(16) of the Act.

CSN argues that "blanks" have higher manufacturing costs and higher prices and, therefore, would distort any comparisons with U.S. sales. Section 771(16)(B)(iii) of the Act instructs that the comparison market model must be approximately equal in commercial value to the subject merchandise. In antidumping duty proceedings, section 773(a)(6)(C)(ii) instructs the Department to make an adjustment to normal value to account for a difference between normal value and export price, or constructed export price, where such difference is due to the fact that similar merchandise (compared with identical merchandise) is used as the basis for the NV. Therefore, where appropriate the Department makes a "difference-in-merchandise" adjustment. Further, we use the 20-percent "cap" on the difference-in-merchandise adjustment to determine whether two different models are approximately equal in commercial value. Because we applied our normal methodology of disregarding potential matches with a difference-in-merchandise adjustment of greater than 20 percent, all the matches we actually made are approximately equal

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<sup>89</sup> *Id.*

<sup>90</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>91</sup> *Id.*

in commercial value and adjusted for a difference-in-merchandise, pursuant to section 773(a)(6)(C)(iii), where appropriate. In this context, CSN's argument could be applied to a wide range of different physical characteristics. For example, CSN's argument could essentially be used to argue that the Department should never compare models with different specifications.

Although CSN argues that "blanks" are very different products manufactured from cold-rolled material in coil form, rectangular cut-to-length sheet form, or other standard, non-coil, symmetrical shapes, CSN has not articulated why such differences would be sufficient to render "blanks" so dissimilar to the subject merchandise that the Department's 20-percent "cap" could not account for and eliminate any potential inappropriate matches. Typically, we set no limits on the comparisons between the subject merchandise and the foreign like product beyond not considering models whose difference-in-merchandise adjustment is greater than 20 percent of total COM. In a normal market-economy case, the fact that a model meets the definition of "foreign like product" is enough to make it "similar" for purposes of sections 771(16)(B) and (C) of the Act as long as the difference-in-merchandise is 20 percent or less.<sup>92</sup>

#### **Comment 6: Whether to Exclude WIP Quantities from CSN LLC's Per-Unit Cost Calculations**

Referencing specific cost calculation worksheets, the petitioners argue that CSN LLC, CSN's U.S. affiliate that further manufactured certain merchandise, understated its reported further manufacturing costs by including work-in-process (WIP) production quantities in the denominator used to calculate the per-unit costs. The petitioners assert that the Department considers WIP a production input; therefore, only finished good production quantities should be used to calculate the reported costs. Noting that the WIP production quantities are not on the record, the petitioners recommend, as facts available, that the Department increase CSN LLC's per-unit costs using a ratio of the average WIP inventory balance to the average WIP and finished inventory goods balances combined.<sup>93</sup>

CSN refutes the petitioners' contentions. According to CSN, both the further manufacturing cost verification report and the cost verification exhibits demonstrate that only finished good production quantities were used in the denominator of the per-unit further manufacturing cost calculations for finished products.<sup>94</sup>

**Department's Position:** We agree with CSN that only finished good production quantities were used in the denominator of the per-unit further manufacturing cost calculation and, therefore, we have not adjusted CSN LLC's costs for the petitioners' allegations regarding WIP production quantities. CSN LLC uses a process costing methodology that accumulates the production costs at each major stage of production and allocates them to the products processed on that equipment.<sup>95</sup> These products may go on to receive further processing, *i.e.*, they are WIP, or they may not need any further processing, *i.e.*, they are finished goods. In the calculated costs for finished goods in their normal books and record, and in reporting to the Department, CSN LLC accumulated the processing costs allocated to each product from each processing stage and then

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<sup>92</sup> *Id.*

<sup>93</sup> See U.S. Steel Brief at 27.

<sup>94</sup> See CSN Rebuttal Brief at 26-27.

<sup>95</sup> See CSN's January 19, 2016 supplemental section D and section E response at E-8.

divided this total accumulated cost by the product's finished production quantity.<sup>96</sup> Thus, we do not agree with the petitioners' allegations. We do note, however, that one of the worksheets on which the petitioners may have based their conclusion refers to the POI finished production quantity as "POI Final Produced WIP & FG LBs." However, the description on this one worksheet is a misprint. In the verification report, we clearly identify the figure as finished goods production and, as can be seen in the verification exhibits, we traced the amount to the underlying accounting and production reports.<sup>97</sup>

### **Comment 7: Calculation of CSN LLC's G&A Expense Ratio**

The petitioners argue that, in the *Preliminary Determination*, the Department incorrectly accepted CSN LLC's allocation of G&A expenses to its further manufacturing activities only. According to the petitioners, the Department's longstanding practice is to treat all G&A expenses incurred by an affiliated importer as U.S. indirect selling expenses. For example, in *Citric Acid from Canada*, the Department included all G&A expenses in the indirect selling expense ratio because the expenses support the affiliated importer's selling functions.<sup>98</sup> Thus, where further manufacturing activities take place, the petitioners claim that the affiliated importer's G&A expenses should be allocated to all company activities, *i.e.*, to further manufacturing and to re-selling. Furthermore, the petitioners point out that the Department's *Preliminary Determination* conflicts with *Line Pipe from Korea*,<sup>99</sup> where the Department assigned G&A expenses not only to further manufacturing costs, but also to the cost of the merchandise prior to further-manufacturing and to the cost of all non-further manufactured merchandise.<sup>100</sup>

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

CSN rebuts that the petitioners' proposal to apply the reported G&A expense ratio to the total costs for both further manufactured and non-further manufactured products creates a mismatch between the denominator of the calculation (further processing costs only) and the per-unit costs to which the ratio would be applied (the full cost of each transaction, which includes the further processing costs and the costs of the imported coils). While CSN disagrees with the necessity of this adjustment, CSN argues that the Department must ensure that any revision to the reported ratios, whether applied as G&A or indirect selling expense (INDIRSU), must be calculated and applied in a consistent manner.<sup>101</sup>

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<sup>96</sup> See, e.g., FMG Cost Verification Exhibit 8 at 7.

<sup>97</sup> See, e.g., FMG Cost Verification Report at 13 and 15. See also FMG Cost Verification Exhibit 6 at 13-22.

<sup>98</sup> See *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 37286 (July 1, 2014) (*Citric Acid from Canada*), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>99</sup> See *Welded Line Pipe from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*), and accompanying Issues and Decision Memorandum at Comment 20.

<sup>100</sup> See SDI's Brief at 1-5.

<sup>101</sup> See CSN's Rebuttal Brief at 27-30.

Department's Position: We agree with the petitioners, in part. Specifically, we agree that G&A activities support the general activities of a company as a whole, including its sales and manufacturing functions.<sup>102</sup> Therefore, consistent with our decision in *Line Pipe from Korea*, we find it is appropriate to allocate G&A expenses to all company activities where the company engages in both further manufacturing and reselling activities.<sup>103</sup> However, we also agree with CSN that the denominator to the G&A expense ratio and the per-unit costs to which it is applied must be on the same basis. Thus, if we are now applying the G&A expense ratio to the total cost of all further manufactured and non-further manufactured goods, then the denominator of the ratio, which as reported includes only further processing costs, must be revised to include not only the further processing costs, but also the cost of the imported coils that were further processed, as well as the cost of all non-further manufactured products.

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

**Comment 8: Whether to Use a Consolidated or Non-Consolidated Financial Expense Ratio**

CSN argues that the Department should calculate its U.S. further manufacturing costs using CSN LLC's company-specific financial expenses, rather than CSN's consolidated financial expenses. In support, CSN submits that the Department is under no statutory or legal requirement to calculate financial expenses based on a company's consolidated financial statements and has declined to do so where appropriate.<sup>104</sup> The Department is, however, generally obligated to base its cost calculations on records that "reasonably reflect the costs associated with the production and sale of the merchandise."<sup>105</sup> Yet, CSN asserts that the financial and regulatory environment in which CSN LLC operates is drastically different from that in Brazil where its parent operates. According to CSN, this point is illustrated by the disparate short-term interest rates between the two countries, *i.e.*, 2.62 percent in the United States and 11.77 percent in Brazil. Considering these stark differences, CSN questions how basing financial expenses for operations in the

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<sup>102</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 35, where the Department stated that G&A expenses "relate to the general operations of the company as a whole"; and, *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (C.I.T. 1998) where the CIT agreed with the Department that G&A expenses are those which relate to the general operations of the company as a whole.

<sup>103</sup> See *Line Pipe from Korea* and accompanying Issues and Decision Memorandum at Comment 20.

<sup>104</sup> See *E.I. DuPont de Nemours & Co., v. United States*, 4 F. App'x 929, 932 (Fed. Cir. 2001) (*E.I. DuPont de Nemours & Co*) stating that "[t]he statute is silent on whether the interest expenses of the exporter or producer 'reasonably reflect' the actual costs of production where the exporter or producer is part of a consolidated group of companies under the control of a single member" and *Final Results of the Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico; 2012-2013*, 80 FR 33482 (June 12, 2015) (*Copper Pipe and Tube from Mexico*) and accompanying Issues and Decision Memorandum at Comment 3, where the Department declined to use consolidated financial expenses.

<sup>105</sup> See section 773(b)(1)(A) of the Act.

United States on the financial expenses for operations in Brazil advances the Department's duty to accurately reflect CSN LLC's costs of production.

Furthermore, CSN contends the Department's usual rationales for calculating a consolidated financial expense ratio, *i.e.*, the fungibility of money and control of capital, are not applicable here as evidenced by the fact that there was no intercompany borrowing between CSN and CSN LLC. In fact, CSN points out that the courts have ruled that, when there is no intercompany borrowing, the Department cannot assume that the parent company can control the subsidiary company's cost of money.<sup>106</sup> "In those instances, the individual financial statements will more accurately reflect the actual financing costs of producing and exporting the subject merchandise."<sup>107</sup> Consequently, CSN argues that CSN LLC is a separate and distinct legal entity operating exclusively in the United States with both short- and long-term financial transactions in the U.S. financial sector, and as such, CSN LLC should receive its own financial expense ratio.

CSN also asserts that the financial expenses at issue are not foreign market production costs, but rather U.S. price adjustments to CEP; therefore, the proper measurement for U.S. further manufacturing costs is more analogous to the question of what interest rate should be applied in calculating U.S. imputed credit expenses. The Department's own policy bulletin recognizes that the courts have rejected the use of home-market borrowing rates to impute U.S. credit expenses where the respondent had actual U.S. based borrowings.<sup>108</sup>

Finally, CSN claims the Department has recognized in the past that, in certain circumstances, such as in non-market economies (NMEs), it is inappropriate to base financial expenses on the financial statements of foreign parent companies operating in different financial environments.<sup>109</sup> Accordingly, the Department must calculate CSN LLC's financial expenses in a manner that reflects the actual operating environment and actual activities in financing its operations.

The petitioners respond that the Department should reject CSN's request to use CSN LLC's company-specific financial expenses rather than CSN's consolidated financial expenses in the calculation of the further manufacturing costs. According to the petitioners, it is the Department's long-standing practice to base financial expenses on the audited financial statements that represent the highest level of consolidation.<sup>110</sup> Furthermore, the petitioners point

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<sup>106</sup> See *AIMCOR v. United States*, 69 F. Supp. 2d 1345, 1354 (CIT 1999) (*AIMCOR*), finding that the Department could not rely on consolidated financial statements to calculate financial expense factors when there was an absence of intercompany borrowing between a particular group of companies; and, *E.I. DuPont de Nemours & Co.*, 4 F. App'x at 933.

<sup>107</sup> See *E.I. DuPont de Nemours & Co.*, 4 F. App'x at 933.

<sup>108</sup> See Policy Bulletin 98.2: Imputed Credit Expenses and Interest Rates (February 23, 1998); and *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F. 2d 455, 460-61 (Fed. Cir. 1990) "{w}hile the government argues that it would normally be expected that an Italian company would seek financing from a financial institution in Italy, we agree with LMI that it is not reasonable to presume that a commercial enterprise would borrow at almost twice the available rate. In addition, LMI provided evidence that it had obtained dollar-denominated loans."

<sup>109</sup> See *Copper Pipe and Tube from Mexico* and accompanying Issues and Decision Memorandum at Comment 3.

<sup>110</sup> See, *e.g.*, *Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, 72 FR 9924, (March 6, 2007), and accompanying Issues and Decision Memorandum at 19-20.

out that this practice has been upheld by the Court on numerous occasions over the past two decades.<sup>111</sup>

The petitioners also claim that CSN's support for abandoning the consolidated financial expense ratio is unavailing. According to the petitioners, CSN references non-precedential opinions that have been superseded by the Federal Circuit's more recent binding opinion in *American Silicon Technologies*, in which the Court expressly upheld the Department's practice of using consolidated financial expenses.<sup>112</sup> Furthermore, in *American Silicon Technologies*, the Federal Circuit also explicitly rejected the argument that "adequate intercompany financial transactions" were necessary for the Department to rely on consolidated financial statements. Conversely, the Department's practice, which has been confirmed by the Court, is to consider majority ownership evidence of a parent's control that justifies the use of consolidated financial statements.<sup>113</sup> Here, CSN LLC is wholly-owned by CSN, as such, CSN has sufficient control over CSN LLC to make the debt and equity of the corporate group fungible.

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

Department's Position: We disagree with CSN. Section 773(b)(3)(B) of the Act, provides that, for purposes of calculating COP, the Department shall include an amount for general expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question. When the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of the Department. Although the Act does not specify a particular method for calculating financial expenses, the Department's long-standing practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available.<sup>114</sup> Therefore, we have continued to calculate CSN LLC's net financial expense ratio for the final determination based on the consolidated financial statements of its parent, where CSN LLC is a subsidiary, in accordance with this established practice.

This methodology recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies.<sup>115</sup> It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and

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<sup>111</sup> See, e.g., *Elkem Metals Co. v. United States*, 28 CIT 508, 510-12 (2004); *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. 630, 647-49 (CIT 1997); *Camargo Correa Metais, S.A. v. United States*, 17 CIT 897, 902 (1993); *American Silicon Technologies v. United States*, 334 F.3d 1033 (Fed. Cir. 2003).

<sup>112</sup> See *American Silicon Technologies v. United States*, 334 F.3d 1033 (Fed. Cir. 2003).

<sup>113</sup> See *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. at 649.

<sup>114</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 25 (*Certain Frozen Warmwater Shrimp from India*); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) (*Steel Wire Rod from Mexico*) and accompanying Issues and Decision Memorandum at Comments 21-22.

<sup>115</sup> See *Steel Wire Rod from Mexico*, and accompanying Issues and Decision Memorandum at Comments 21-22.

financial costs of each member within the group.<sup>116</sup> There is a presumption that consolidated financial statements are more meaningful than separate and unconsolidated financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity.<sup>117</sup> As the Department stated in *Low Enriched Uranium from France*:

Companies finance operations through various forms of debt transactions, stock transactions, cost sharing and reimbursement schemes, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. In such circumstances, the controlling management of the group coordinates these activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to, debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; sharing or undertaking strategic costs such as research and development; or conversions of debt into equities (or vice versa) to present a group member in a more favorable financial position. The important point here is that the corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions.<sup>118</sup>

Thus, the consolidated financial statements of CSN LLC's parent group are more meaningful than CSN LLC's own separate financial statements, and the consolidated financial statements are necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. We find in this case that CSN has a controlling interest in CSN LLC.<sup>119</sup> As the Department stated in *Certain Frozen Warmwater Shrimp from India*:

Financial expenses recorded on a respondent's own financial statements, or a lower level consolidation, only reflect the financial position that the management of the group wishes to present for that particular subsidiary. Because the majority of the board of directors, and by extension management, of each group member is ultimately controlled by each successive board of directors, up to the highest level board of directors and management, it is reasonable to conclude that the overall strategic operations are guided from above. The Department recognizes that the very purpose of creating a corporate group is to leverage the strategic and competitive advantages of individual group companies for the betterment of the whole. Thus, the financial position of one group member will not properly reflect the actual financial position of that company. It cannot be ignored that the company is operating as a member of a larger entity, with the support (direct or indirect) to which it is entitled from the group.<sup>120</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> See Article 3A - Consolidated and Combined Financial Statements, 35,281, Reg. §210.3A-02, SEC Handbook, Rules and Forms for Financial Statements and Related Disclosures, as of December 1997.

<sup>118</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Low Enriched Uranium From France*, 66 FR 65877 (December 21, 2001) (*Low Enriched Uranium from France*) and accompanying Issues and Decision Memorandum at Comment 14.

<sup>119</sup> See CSN's October 20, 2015 section A response at exhibit A-12A, page 172.

<sup>120</sup> See *Certain Frozen Warmwater Shrimp from India*, and accompanying Issues and Decision Memorandum at Comment 26.

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

The CAFC has sustained “as reasonable Commerce’s well-established practice of basing interest expense and income on fully consolidated financial statements.”<sup>121</sup> Moreover, the CAFC affirmed “Commerce’s well-established practice of acknowledging the role of consolidated statements.”<sup>122</sup> We note that the CAFC in *American Silicon Technologies* determined that Commerce reasonably calculated interest expense based on the consolidated financial statements of the parent.

In the first place, this court notes that standard accounting principles acknowledge consolidated financial statements as a fair presentation of the financial position of a group. *See*, Floyd A. Beams, *Advanced Accounting* 74, 77, 91 102-03 (5<sup>th</sup> ed. 1992). Following those practices, Commerce has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible. Commerce’s policy recognizes that consolidated financial statements indicate that a corporate parent controls a subsidiary. These consolidated statements represent the financial health of parent company operations in view of subsidiary operations. In addition, fungible financial assets invite manipulation. In other words, if Commerce only used a single division of a group as the source of financing costs, the controlling entity could shift borrowings from one division to another division to defeat accurate accounting.<sup>123</sup>

Citing *AIMCOR* and *E.I. Dupont de Nemours & Co.*, CSN argues that CSN LLC had no inter-company borrowings; therefore, the Department cannot assume parent company control and resort to using consolidated financial statements.<sup>124</sup> However, these cases are more than 15 years old, and subsequent CAFC decisions have made it clear that evidence of intercompany borrowing is not a requirement for using the financial statements of the ultimate corporate parent.<sup>125</sup> The CAFC further explained that it was unnecessary for Commerce to assess intercompany financial transactions in calculating finance expenses in a dumping margin since this would create “a new kind of test {which} would impose significant new administrative burdens on Commerce and invite potential manipulation {which} might take the form of a controlling company selecting a financial cost ratio by directing one its subsidiaries with a low

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<sup>121</sup> *See American Silicon Technologies*, 334 F. 3d at 1037-1038.

<sup>122</sup> *Id.*

<sup>123</sup> *See American Silicon Technologies*, 1037.

<sup>124</sup> *See AIMCOR*, 69 F. Supp. 2d 1345, and *E.I. DuPont de Nemours & Co.*, 4F. App’x at 933.

<sup>125</sup> *See E.I. DuPont de Nemours & Co.*, 4F. App’x at 933.

ratio to lend to the exporter.”<sup>126</sup> Thus, we find CSN’s arguments regarding intercompany borrowing to be unpersuasive.

CSN also compares the financial expense rate used to calculate financial expenses for the COP to the short-term borrowing rate used for calculating credit expenses. We disagree that this is a valid comparison as these are two distinct rates. Credit expenses are imputed amounts that rely on the short-term interest rates associated with the currency in which sales are denominated, whereas a company’s financial expense for COP relates to the company’s actual borrowing costs (*i.e.*, interest expense) as a percentage of its total COGS. As the Department explained in *Welded Carbon Pipe from Turkey*, it calculates credit expenses using the short-term interest rate tied to the currency in which the sales are denominated based on the respondent’s weighted-average short-term borrowing experience in that currency. The Department affirmed in that case that “the fact that the Department uses the highest level of consolidation to calculate interest expense used in the cost of production calculation has no bearing on the short-term borrowing rate used to calculate credit expense.”<sup>127</sup>

Citing *Copper Pipe and Tube from Mexico*, CSN also contends that the Department has recognized that basing financial expense calculations on the expenses of the foreign parent companies operating in different environments is inappropriate in certain circumstances.<sup>128</sup> However, in *Copper Pipe and Tube from Mexico*, the Department was faced with a different fact pattern where the consolidated entity operated in an NME. Because we do not rely on the financial statements of companies operating in NMEs, we did not consider it appropriate to use the consolidated financial statements. Here, no such fact pattern exists. Therefore, for the reasons enumerated above, the Department has continued to rely on the consolidated financial expense ratio in calculating CSN LLC’s further manufacturing costs.

**Comment 9: Financial Expense Ratio to be applied to Further Manufacturing Costs**

The petitioners argue that CSN LLC’s financial expenses are understated because the consolidated financial expense ratio is calculated on a different basis (includes all material costs) than the per-unit FURCOM to which it is applied (includes only further processing costs). Therefore, the Department should revise the denominator of the financial expense ratio to exclude material costs, or alternatively, apply the financial expense ratio to FURCOM plus the imported coil costs.<sup>129</sup>

CSN rebuts that the further manufacturing costs would be significantly overstated if the consolidated financial expense ratio is applied to FURCOM plus the cost of the imported coils because the cost of producing those coils in Brazil already includes financial expenses. Furthermore, there is no conceptual or legal justification for the Department to subtract any portion of home market (*i.e.*, Brazil) production costs from the net U.S. prices. However, CSN notes that if the Department were to rely on CSN’s alternative further manufacturing financial expense ratio, which is based on CSN LLC’s standalone financial statements, the petitioners can

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<sup>126</sup> *Id.*

<sup>127</sup> See *Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76,939 (December 9, 2011), and accompanying Issues and Decision Memorandum at 28 (Comment 10).

<sup>128</sup> See *Copper Pipe and Tube from Mexico* and accompanying Issues and Decision Memorandum at Comment 3.

<sup>129</sup> See U.S. Steel brief at 27-28.

be satisfied that the ratio is derived and applied on the same basis (*i.e.*, further processing costs only).<sup>130</sup>

Department's Position: We disagree with the petitioners. CSN calculated the reported financial expense ratio based on the audited consolidated financial statements for the CSN group.<sup>131</sup> These consolidated financial statements include the activities of CSN and CSN LLC, along with multiple other CSN subsidiaries that meet the criteria for consolidation.<sup>132</sup> The process of consolidating the activities of multiple companies includes the elimination of activities between the companies that are consolidated to avoid any double-counting of revenues or expenses. For example, when CSN sells coils to CSN LLC, CSN recognizes revenue for the sales price charged and cost of sales for the production cost of the coils sold. When CSN LLC in turn sells the same coils to a third party, CSN LLC also recognizes revenue for the sales price charged and cost of sales for the purchase price plus further processing cost of the coils sold. However, both sales are of the same coils. Thus, when CSN prepares its consolidated income statement, the sale between CSN and CSN LLC will be eliminated leaving only the sale that reflects the final transaction. The cost of sales on the consolidated income statement would then reflect CSN's actual cost to produce the coils in Brazil plus any further processing costs incurred by CSN LLC in the United States.

If the foreign producer and the affiliated U.S. further manufacturer are not part of a consolidated entity that prepares consolidated financial statements, two separate financial rates are calculated. Hence, the foreign producer and the U.S. further manufacturer each calculate a financial expense ratio that reflects their separate standalone financial statements. Using the above example, this would mean that the cost of the imported coils that CSN sold to CSN LLC is included in both CSN's and CSN LLC's cost of sales denominators to their company-specific financial expense ratios. If the CSN LLC financial expense ratio is applied only to the further manufactured costs, the result would be that financial expenses are not fully absorbed and the per-unit costs are understated. Therefore, in such circumstances, it would be appropriate either to eliminate the cost of the imported coils from the U.S. further manufacturer's cost of sales denominator in calculating the ratio or to apply the unrevised financial expense ratio to the further processing costs plus the cost of the imported coils.

Here, because we have a consolidated financial expense ratio, there is no double-counting in the cost of sales denominator. The double-counting was eliminated when the consolidated financial statements were prepared. Therefore, we find that CSN's consolidated financial expense ratio itself is not understated and does not need to be adjusted. We also disagree that the financial expense ratio should be applied to FURCOM plus the imported coil cost. The financial expenses related to the imported coils have already been accounted for in CSN's cost database where the consolidated financial expense ratio is applied to the per-unit costs for the imported coils. Thus, the financial expenses related to the production costs incurred in Brazil have been reported in CSN's cost database, while the financial expenses related to the further processing performed in the United States have been reported in CSN LLC's further manufacturing cost database.

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<sup>130</sup> See CSN rebuttal brief at 30-31.

<sup>131</sup> See CSN Cost Verification Report at 24.

<sup>132</sup> See CSN's October 20, 2015 section A QR at Exhibit A-12A, page 172.

Therefore, for the final determination, we have continued to apply the consolidated financial expense ratio unadjusted to FURCOM.

**Comment 10: The Market Value for Affiliated Energy Inputs**

CSN argues that in the *Preliminary Determination*, the Department inappropriately adjusted the average transfer price for the electricity inputs that CSN obtained from its affiliates ITASA, Igarapava, and CSN Energia, to reflect what the Department asserted was a market value. However, according to CSN, the record clearly demonstrates that the average transfer price paid by CSN is consistent with the amount usually reflected in sales of the subject merchandise in Brazil pursuant to section 773(f)(2) of the Act.<sup>133</sup>

CSN points out that its transfer price is well above the maximum rate of 30.26 Brazilian reais per megawatt hour (BRL/MWh) that hydroelectric facilities such as those operated by CSN's affiliates ITASA and Igarapava may legally charge consumers in the captive market (*i.e.*, households and small companies). Contrary to the Department's skepticism reflected in the cost verification report regarding the applicability of a captive market rate to industrial users, CSN argues that the Department has previously recognized that "utility companies typically charge residential customers a higher rate than industrial users because they require additional lines and converters to supply the electricity."<sup>134</sup> Therefore, CSN concludes that the market rate for industrial users would be well below the 30.26 BRL/MWh captive market rate, and as such, CSN's average affiliated transfer price is above both the captive and industrial market rates.<sup>135</sup>

CSN also argues that the market price used by the Department in its *Preliminary Determination* adjustment is not comparable to the transfer prices paid by CSN to its affiliates. According to CSN, the market rate used by the Department reflects a price in a different geographical region and, unlike its hydro-electric affiliates ITASA and Igarapava, it is a price that does not reflect an exclusively lower-cost hydro power producer.<sup>136</sup>

Continuing, CSN alleges that the market rate used by the Department is also an inappropriate comparison for its affiliate CSN Energia since the company is an energy trader rather than a producer. CSN notes that in *Coated Free Sheet Paper from Indonesia*, the Department distinguished between affiliates producing electricity as opposed to merely reselling electricity.<sup>137</sup> Where the affiliate generated the electricity as a service to the respondent, the Department declined to compare the transfer price to a market price for a reseller. Instead, the Department looked to the affiliate's financial statements to see if the company was profitable during the POI, and because it was, the Department did not apply the transaction disregarded rule. Similarly, CSN argues that the Department should not adjust the prices from CSN Energia, an energy trader, using the non-comparable prices from an electricity producer. Indeed, CSN states that as an energy trader, CSN Energia is required under Brazilian law to charge a price that

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<sup>133</sup> See CSN brief at 12-15.

<sup>134</sup> See *Notice of Final Determination of Sales at Less Than Fair Value; Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756 (July 19, 1999).

<sup>135</sup> See CSN brief at 12-15.

<sup>136</sup> *Id.*

<sup>137</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) (*Coated Free Sheet Paper from Indonesia*) and accompanying Issues and Decision Memorandum at Comment 5.

covers the cost of acquiring the electricity. CSN points out that CSN Energia was profitable during the POI and, therefore, in accordance with *Coated Free Sheet Paper from Indonesia*, no adjustment is needed.<sup>138</sup>

On rebuttal, CSN argues that the petitioners' fabricated benchmark electricity rate should be rejected because it is calculated on a different basis, *i.e.*, CSN Energia's unaffiliated purchase prices plus overhead, SG&A, and financial expenses, than the rates to which it is compared, *i.e.*, CSN's affiliated purchase prices. Furthermore, CSN contends that the overhead and SG&A ratios calculated by the petitioners are grossly overstated as they include income and social contribution taxes. CSN also argues that the petitioners have failed to explain why SG&A expenses should include consolidated interest expenses. Finally, if the Department chooses to adjust the company's affiliated electricity costs, CSN concludes that the relevant comparison is CSN's unaffiliated electricity purchases, not CSN Energia's purchases.<sup>139</sup>

The petitioners contend that there are comparable electricity prices on the record that can be used for the transactions disregarded rule. Specifically, the petitioners point out that CSN's affiliate CSN Energia had long-term power contracts with both affiliated and unaffiliated parties during the POI. Therefore, the petitioners argue that for the final determination the Department should increase CSN's average affiliated transfer price for electricity inputs to reflect the average price CSN paid to unaffiliated parties plus amounts for CSN Energia's overhead, SG&A, and financial expenses.<sup>140</sup>

The petitioners assert that in *Coated Free Sheet Paper from Indonesia* the Department was unable to find a market price for the unique services provided by the respondent's affiliated electricity supplier. Here, there is no evidence to suggest that CSN's arrangements with its affiliated electricity suppliers are so unique that there are no comparable market prices. Therefore, the Department should rely on its standard transactions disregarded analysis, *i.e.*, transfer price versus market price.<sup>141</sup>

Department's Position: In the *Preliminary Determination*, the Department increased CSN's affiliated electricity transfer prices to reflect the electricity prices CSN paid to unaffiliated parties, *i.e.*, market values, in accordance with section 773(f)(2) of the Act.<sup>142</sup> The Department continues to find that a comparison of CSN's average affiliated and unaffiliated electricity prices provides the best information on the record that is consistent with both the statute and Department practice.

Section 773(f)(2) of the Act states that "{a} transaction directly or indirectly between affiliated persons may be disregarded, if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for

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<sup>138</sup> See CSN brief at 12-15

<sup>139</sup> See CSN rebuttal brief at 19-21.

<sup>140</sup> See U.S. Steel Brief at 28-20.

<sup>141</sup> See U.S. Steel Rebuttal Brief at 12-14.

<sup>142</sup> See Preliminary Cost Calculation Memorandum.

consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.” Thus, the statute directs the Department to test the arm’s-length nature of affiliated transactions to determine whether they reflect a market value. Because this section of the statute does not specify a particular methodology for determining market value, the Department has established a hierarchy for establishing market value in the application of section 773(f)(2) and (3) of the Act. The Department’s express preference for market value is a respondent’s own purchases of the input from unaffiliated suppliers. When no such purchases are available, the Department looks to the affiliated supplier’s sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.<sup>143</sup>

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

Even so, CSN argues that its unaffiliated purchases should not be used because they are not comparable to the company’s affiliated purchases. We disagree. As the Department has remarked in previous cases, “[a] respondent’s own purchases from its unaffiliated suppliers inherently represent consumption by a comparably sized company, in the same industry, and in the market under consideration.”<sup>144</sup> Thus, absent evidence of unusual circumstances surrounding such unaffiliated purchases, the Department finds CSN’s own unaffiliated purchases to be the preferable source for market prices.<sup>145</sup> As the record shows in this case, the inputs are identical (*i.e.*, electricity). Although CSN submits that the company’s affiliated and unaffiliated prices are not comparable because they reflect varying geographical regions, electricity production methods, or supply chains (producer versus trader), we do not find these to be unusual circumstances that render unreasonable the Department’s preferred methodology for determining market value. The market price at question is for the same input, electricity, consumed by the respondent in the market under consideration, thus, we find that CSN’s unaffiliated electricity purchases are a reasonable reflection of market value for the purpose of the transactions disregarded rule.

We also find that CSN’s reliance on *Coated Free Sheet Paper from Indonesia* is misplaced. In that case, the Department found that there were no unaffiliated purchases of the unique service provided by the affiliated supplier (*i.e.*, electricity generation rather than electricity). Consequently, the Department declined to use its preferred methodology and instead looked to another source for the market price of electricity generation.<sup>146</sup> Here, however, that specific fact

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<sup>143</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerators from Korea*) and accompanying Issues and Decision Memorandum at Comment 17; and, *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004) (*Silicomanganese from Brazil*) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>144</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>145</sup> *Id.*

<sup>146</sup> See *Coated Free Sheet Paper from Indonesia* and accompanying Issues and Decision Memorandum at Comment 5.

pattern is not present because we have identical inputs – electricity – purchased from unaffiliated suppliers. Therefore, for the final determination, we find that the prices paid by CSN to unaffiliated suppliers represent the appropriate market price for testing the arm’s-length nature of CSN’s affiliated electricity transactions.

**Comment 11: The Market Value for Affiliated Rail Freight Inputs**

The petitioners argue that CSN’s affiliated rail transfer prices should be adjusted in accordance with the transactions disregarded rule. According to the petitioners, CSN’s contentions that the prices paid to its affiliated and unaffiliated rail service providers are not comparable should be disregarded, because the efficiencies and other competitive advantages of affiliated providers are not relevant to the Department’s analysis under 773(f)(2) of the Act. As such, the petitioners argue that the Department should increase CSN’s weighted-average ton per kilometer useful (TKU) for affiliated rail freight services to reflect the weighted-average TKU paid for unaffiliated rail freight services.<sup>147</sup>

CSN rebuts that the prices charged by CSN’s affiliated and unaffiliated rail freight service providers are not comparable because the types of materials shipped by CSN’s affiliate can be transported using larger equipment, unlike the type of material transported by CSN’s unaffiliated freight service provider. Pointing to *Coated Free Sheet Paper from Indonesia*, where the Department declined to compare the transfer price from an affiliate that provided electricity generation services to a market price from an unaffiliated electricity reseller, CSN maintains that the Department does not compare unlike inputs for purposes of applying the transactions disregarded rule.<sup>148</sup> Under this guidance, CSN points out that its freight service provider was profitable during the POI; therefore, the companies transacted at market price and no adjustment is needed.<sup>149</sup>

**Department’s Position:** We agree with CSN, and we have not adjusted the company’s affiliated rail freight prices for the final determination. We found that CSN’s transactions with its affiliated and unaffiliated freight service providers were for the transport of varying materials and varying distances.<sup>150</sup> Consequently, there was no specific overlap of affiliated and unaffiliated services that would provide for a comparison of like inputs. However, we note that the unaffiliated transport TKU (*i.e.*, per ton cost divided by distance travelled) falls within the range of affiliated transport TKUs.<sup>151</sup> Furthermore, as an alternative benchmark under the Department’s hierarchy for market price,<sup>152</sup> we examined the affiliate’s financial statements and we found that the revenues earned were higher than the costs incurred.<sup>153</sup> Based on these

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<sup>147</sup> See U.S. Steel Brief at 30-31.

<sup>148</sup> See *Coated Free Sheet Paper from Indonesia* and accompanying Issues and Decision Memorandum at Comment 5.

<sup>149</sup> See CSN’s Rebuttal Brief at 22-23.

<sup>150</sup> See CSN’s January 19, 2016 supplemental section D and section E response at exhibit SID-10-A.

<sup>151</sup> *Id.*

<sup>152</sup> See, e.g., *Refrigerators from Korea* and accompanying Issues and Decision Memorandum at Comment 17; and, *Silicomanganese from Brazil* and accompanying Issues and Decision Memorandum at Comment 7, both noting that the Department’s preference for market value is a respondent’s own purchases of the input from unaffiliated suppliers. When no such purchases are available, the Department looks to the affiliated supplier’s sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.

<sup>153</sup> See CSN’s October 20, 2015 section A response at Exhibit A-16-A.

considerations, we find that there is no evidence to suggest that CSN's affiliated transfer prices for transporting inputs do not reflect market values. Therefore, we have not adjusted CSN's affiliated rail freight prices for the final determination.

**Comment 12: The Market Value for Affiliated Port Management Services**

The petitioners argue that CSN only provided data for one of its two affiliated port management service providers, and submitted no market price data for unaffiliated port management service providers. Nevertheless, the petitioners allege that the data provided by CSN demonstrate that the affiliated port management costs do not reflect either market prices or full costs, as they are merely the total direct costs accumulated for the Itaguaí port and they exclude overhead, SG&A, and financial expenses. Therefore, for the final determination, the Department should assume that CSN's affiliated port management transfer prices are understated by the same percentage that CSN understated its affiliated rail freight transfer prices.<sup>154</sup>

On rebuttal, CSN contends that no adjustment is needed. Contrary to the petitioners' assertions, CSN states that it did not transact with unaffiliated companies for port management services; therefore, it provided to the Department the only information available. Furthermore, the Department did not request additional information, nor did the Department list any findings in its sales and cost verification reports with regard to port expenses.<sup>155</sup>

Department's Position: We agree with CSN, and we have not adjusted the company's affiliated port management prices for the final determination. During the POI, CSN did not obtain port management services from unaffiliated parties.<sup>156</sup> Furthermore, we find that there is no readily available market price for such minor ancillary services. Consequently, under the Department's hierarchy, we looked for a reasonable alternative for a market price benchmark.<sup>157</sup> Specifically, at verification, we examined the financial statements for selected affiliated companies that provided ancillary services such as loading, transferring materials etc., to CSN. We found that the selected companies operated at a profit; thus, CSN's transfer prices with its affiliated ancillary service providers appeared to be above the providers' costs.<sup>158</sup> Therefore, consistent with section 773(f)(2) of the Act, we determined that it is inappropriate to make an adjustment to CSN's affiliated port management prices.

**Comment 13: Whether to Include Certain Expenses Recorded Directly to COGS**

CSN argues that the Department should not continue to apply the adjustment used in the *Preliminary Determination*, which increased the reported per-unit costs for expenses that CSN normally records, directly to the COGS. CSN asserts, however, that if the Department continues to believe that an adjustment is necessary, the expenses identified by the Department at the cost

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<sup>154</sup> See U.S. Steel Brief at 31-32.

<sup>155</sup> See CSN Rebuttal Brief at 24.

<sup>156</sup> See CSN's January 19, 2016 supplemental section D and section E response at SID-11 and SID-12 showing that at the Department's request CSN provided costs where there were no unaffiliated transactions.

<sup>157</sup> See, e.g., *Refrigerators from Korea* and accompanying Issues and Decision Memorandum at Comment 17; and, *Silicomanganese from Brazil* and accompanying Issues and Decision Memorandum at Comment 7, both noting that the Department's preference for market value is a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, the Department looks to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.

<sup>158</sup> See Cost Verification Report at 5.

verification as unrelated to the production of subject merchandise should be excluded from the adjustment.<sup>159</sup>

The petitioners argue that the Department should increase CSN's reported per-unit costs in accordance with the findings discussed in the cost verification report, *i.e.*, include the expenses related to steel production, *i.e.*, steel plant administration costs, steel plant stock and cost adjustments, and a portion of the corporate duty expenses.<sup>160</sup>

Department's Position: CSN excluded from the reported costs several expenses that are related to production, but that are directly expensed to COGS rather than incorporated in the company's inventoried product costs. Of these expenses, we find it appropriate to adjust the reported costs to include the steel plant administrative costs, the steel plant stock and cost adjustments, and the portion of the excluded costs that were designated as related to corporate duties. Based on our findings at the cost verification,<sup>161</sup> we have revised our adjustment from the *Preliminary Determination* to include only those expenses that were found to be related to the merchandise under consideration.

#### **Comment 14: Calculation of CSN's G&A Expense Ratio**

The petitioners argue that the Department should adjust the denominator to CSN's G&A expense ratio in accordance with its findings at the cost verification, *i.e.*, exclude the transportation and port expenses that have been reported as selling expenses.<sup>162</sup>

CSN maintains that if the Department excludes the sales-related transportation and port expenses from the COGS denominator to the G&A expense ratio, the expenses should likewise be excluded from the per-unit costs of manufacturing.<sup>163</sup>

Department's Position: Based on our findings at the cost verification,<sup>164</sup> we have revised the denominator to CSN's G&A expense ratio to exclude the transportation and port expenses that have been reported as selling expenses. This adjustment is consistent with our adjustment to CSN's reported per-unit costs of manufacturing, as the transportation and port expenses at issue have been excluded from both the G&A expense ratio denominator and from the per-unit costs to which the ratio is applied.<sup>165</sup>

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<sup>159</sup> See CSN's Brief at 19.

<sup>160</sup> See SDI's Brief at 9.

<sup>161</sup> See Cost Verification Report at 2.

<sup>162</sup> See U.S. Steel Brief at 32.

<sup>163</sup> See CSN's Rebuttal Brief at 25.

<sup>164</sup> See Cost Verification Report at 23.

<sup>165</sup> See Final Cost Calculation Memorandum.

**VII. RECOMMENDATION**

We recommend applying the above methodology for this final determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

20 July 2016  
\_\_\_\_\_  
(Date)