Nos. 10-1433 and 10-1439

In the Supreme Court of the United States

UNITED STATES STEEL CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

NUCOR CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Secretary of Commerce employed an impermissible methodology for determining whether certain foreign merchandise "is being, or is likely to be, sold in the United States at less than its fair value," 19 U.S.C. 1673(1), such that a tariff may be warranted.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a)[1] is reported at 621 F.3d 1351. The opinion of the United States Court of International Trade (Pet. App. 37a-76a) is reported at 637 F. Supp. 2d 1199.

[1] All citations to the "Pet. App." refer to the appendix to the petition for a writ of certiorari in No. 10-1433.

JURISDICTION

The judgment of the court of appeals was entered on October 4, 2010. Petitions for rehearing were denied on February 23, 2011 (Pet. App. 31a-34a). The petitions for a writ of certiorari were filed on May 24, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Anti-Dumping Act, 1921, 19 U.S.C. 1673 *et seq.*, and the Tariff Act of 1930, 19 U.S.C. 1001 *et seq.*, authorize the imposition of a tariff known as an "antidumping duty." 19 U.S.C. 1673. The duty is imposed when two conditions are met: (1) the Secretary of Commerce determines that "foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value"; and (2) the United States International Trade Commission determines that domestic industry is, or is likely to be, harmed. *Ibid.*; see 19 U.S.C. 1677(1) and (2). The question presented in this case concerns the manner in which the Secretary of Commerce determines whether the first condition is satisfied.

The statutory scheme describes three alternative methods by which the Secretary of Commerce can evaluate whether foreign merchandise is being sold in the United States at less than fair value. See 19 U.S.C. 1677f-1(d)(1). Each method relies on a comparison of "normal values" to "export prices." *Ibid.*[2] The "normal value" represents the price at which the merchandise is

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[2] The statute, and other statutes discussed herein, permit the substitution of a "constructed export price" for an "export price" under certain circumstances. See 19 U.S.C. 1677a(b). Because the distinction between "export price" and "constructed export price" is irrelevant to the issues presented here, this brief refers simply to "export price."

sold for use in the originating country. 19 U.S.C. 1677b(a)(1)(B)(i). The "export price" represents the price at which the merchandise is sold for export to the United States. 19 U.S.C. 1677a(a). Both values are adjusted somewhat in order to achieve a "fair comparison" between the two. 19 U.S.C. 1677b(a); see, *e.g.*, 19 U.S.C. 1677a(c), 1677b(a)(6) and (7) (subtracting transportation costs and import duties from the export price).

The three methods of examining the fair value of sales differ in the level of granularity at which they view sales—*i.e.*, in whether they consider transactions individually or instead average out multiple transactions. The first method is the "[a]verage-to-average method," which is the method that the agency most commonly uses in its initial investigations to determine whether to impose an antidumping duty. 19 C.F.R. 351.414(b)(1) and (c)(1). Under this method, the agency "compar[es] the weighted average of the normal values to the weighted average of the export prices * * * for comparable merchandise." 19 U.S.C. 1977f-1(d)(1)(A)(i); see 19 C.F.R. 351.414(d)(2) (explaining that the relevant set of comparable merchandise consists of "subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade"). The second method is the "[t]ransaction-to-transaction method," which is used in investigations "only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made." 19 C.F.R. 351.414(b)(2) and (c)(1). Under this method, the agency "compar[es] the normal values of individual transactions to the export prices * * * of individual transactions for comparable merchandise." 19 U.S.C. 1977f-1(d)(1)(A)(ii). The third method is the "average-to-transaction method," which can be used in original investigations in certain statutorily-defined circumstances, and which is the method typically employed when the agency conducts periodic administrative reviews of previously imposed antidumping duties. 19 C.F.R. 351.414(b)(3) and (c)(2). Under this method, the agency "compar[es] the weighted average of the normal values to the export prices * * * of individual transactions for comparable merchandise." 19 U.S.C. 1977f-1(d)(1)(B).

The statute does not specify precisely how the agency should "compar[e]" the normal value (or average normal value) to the export price (or average export price) in each of these methods. As a matter of practice, the Secretary implements the comparison by reference to a statistic mentioned elsewhere in the statute, called the "weighted average dumping margin." See, *e.g.*, *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 Fed. Reg. 77,722 (2006) (*Final Modification*). A "dumping margin" is defined as "the amount by which the normal value exceeds the export price." 19 U.S.C. 1677(35)(A).[3] The "weighted average dumping margin," in turn, is defined as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices

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[3] In conducting average-to-average comparisons, the agency computes a dumping margin for a group of similar transactions as a whole, rather than for each transaction individually. When the agency conducts average-to-transaction comparisons, the price for each export transaction of the subject merchandise is compared to the average normal value.

* * * of such exporter or producer." 19 U.S.C. 1677(35)(B).

For certain purposes, the antidumping statute requires the calculation of a weighted average dumping margin. For example, the statute instructs that, in determining whether merchandise is being sold at less than fair value, the agency "shall disregard any weighted average dumping margin that is de minimis." 19 U.S.C. 1673d(a)(4); 19 U.S.C. 1673b(b)(3). The agency implements that requirement by declining to find that merchandise has been sold at less than fair value in cases where the weighted average dumping margin falls below a defined minimum threshold. See 19 U.S.C. 1673b(b)(3) (explaining when a weighted average dumping margin should be considered de minimis).

2. a. In 2001, following an investigation, the Secretary of Commerce issued an order imposing an antidumping duty on respondent Tata Steel Ijmuiden BV (then known as Corus Staal BV, and hereinafter referred to as Corus) for certain steel products. Pet. App. 4a; see *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands*, 66 Fed. Reg. 59,565 (2001). The agency had computed a weighted average dumping margin of 2.59%. *Id.* at 59,566.

The agency had arrived at that result through a methodology known as "zeroing." Pet. App. 4a-5a. Under the agency's then-longstanding construction of the statute, a "dumping margin" would be attributed to a particular export sale only when the normal value at which the product was sold in the exporting country was greater than the export price to the United States. 19 U.S.C. 1677(35)(A); see Pet. App. 4a-5a. If the export price was the same as or higher than the normal value, the agency would use zero as the "dumping margin" when summing the "dumping margins" that the statute specifies as the numerator in the "weighted average dumping margin" ratio. 19 U.S.C. 1677(35)(B); Pet. App. 4a-5a.

b. In 2005, a dispute-resolution panel of the World Trade Organization (WTO) held that the United States was out of compliance with certain Executive agreements signed in 1994, known as the Uruguay Round Agreements (Agreements), because the United States had used zeroing in investigations where the average-to-average method of price comparison was being employed. Pet. App. 5a-6a, 47a. The panel determined in particular that, in conducting the Corus investigation (along with certain other specified investigations), the United States had failed to comply with its obligations under the Agreements. *Ibid.* The WTO panel's determination was upheld on appeal. *Ibid.*

The implementing legislation for the Agreements specifies that domestic law takes precedence over the Agreements or a WTO decision interpreting them. See 19 U.S.C. 3512(a) ("No provision of any of the [Agreements], nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."). Failure to comply with a WTO decision has consequences, however, since benefits that the United States enjoys under the Agreements may be suspended for the duration of the United States' noncompliance. See General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Annex 2, Art. 22, Apr. 15, 1994, 33 I.L.M. 1125, 1239-1240.

The Agreements' implementing legislation establishes two methods for bringing the United States into compliance with WTO decisions. The first method, set forth in 19 U.S.C. 3533(g), addresses the amendment, rescission, or modification of an agency regulation or practice that the WTO determines to be inconsistent with the Agreements. That provision authorizes the agency to make such a change after a consultation and comment process involving the appropriate congressional committees, the United States Trade Representative, private industry, and the public. 19 U.S.C. 3533(g)(1). The second method, set forth in 19 U.S.C. 3538, is narrower in scope than the first and applies, *inter alia*, when a WTO report indicates that a specific action by the Department of Commerce in an antidumping proceeding has violated the Agreements. See 19 U.S.C. 3538(b)(1). That provision allows the United States Trade Representative, after consultation with stakeholders including relevant congressional committees, to instruct the Secretary of Commerce to take a new action that conforms with the WTO determination. 19 U.S.C. 3538(b). Interested parties have the opportunity to submit comments on the proposed corrective agency action. 19 U.S.C. 3538(d).

c. The government employed both of the above-described procedures in response to the 2005 WTO decision. First, after receiving public comments and consulting with the appropriate congressional committees, the Secretary of Commerce determined to stop zeroing in the calculation of the weighted average dumping margin in new investigations in which the agency uses the average-to-average comparison methodology. *Final Modification*, 71 Fed. Reg. at 77,722; see *Antidumping Proceedings: Calculation of the Weighted-Average*

Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification, 72 Fed. Reg. 3783 (2007) (changing the effective date to February 22, 2007). The Secretary declined, however, to adopt changes to any other comparison methodologies, or to proceedings other than new investigations (such as the Secretary's periodic review of cases in which an antidumping duty already has been imposed, see 19 U.S.C. 1675). See 71 Fed. Reg. at 77,724.

Under the modified methodology, sometimes referred to as "offsetting," the agency no longer treats the dumping margin as zero when merchandise is sold at an export price higher than the normal price. See *Final Modification*, 71 Fed. Reg. at 77,722. Instead, the Secretary treats the dumping margin in such circumstances as a negative number (the normal price minus the export price) that, when aggregated in the calculation of the weighted average dumping margin, can offset positive dumping margins generated in circumstances where the export price is lower than the normal price. See *ibid.* In response to comments questioning the permissibility of the change, the agency explained that the statutory scheme vests the Secretary with discretion to use either zeroing or offsetting. See *id.* at 77,723.

The Secretary then revisited certain investigations, including the Corus investigation, that had been at issue in the WTO proceedings. *Implementation of the Findings of the WTO Panel in US Zeroing (EC): Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures,* 72 Fed. Reg. 9306 (2007). The agency recalculated the weighted average dumping margins using offsetting, rather than zeroing. *Ibid.*; see *Implementation of the*

Findings of the WTO Panel in US-Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 Fed. Reg. 25,261, 25,262 (2007). Under the offsetting formula, Corus's weighted average dumping margin was zero. *Ibid.* The agency therefore revoked the order imposing an antidumping duty on Corus. *Ibid.*

3. Petitioners became plaintiffs in a suit in the United States Court of International Trade (CIT) challenging the Secretary's revocation of the Corus antidumping duty. Pet. App. 40a n.2; see 28 U.S.C. 1581. As relevant here, they argued that the statutory scheme requires zeroing and prohibits offsetting. Pet. App. 52a-53a. The CIT rejected that argument, concluding that the agency's methodology reflected a reasonable construction of an ambiguous statute and was therefore permissible under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 842 (1984). Pet. App. 55a-70a.

Addressing the first step of the *Chevron* analysis—"whether Congress has directly spoken to the question at issue," 467 U.S. at 842—the CIT recognized that the Federal Circuit had already rejected the contention that the antidumping laws unambiguously require zeroing. Pet. App. 57a-58a. In *Timken Co.* v. *United States*, 354 F.3d 1334, cert. denied, 543 U.S. 976 (2004), the Federal Circuit had upheld the agency's practice of zeroing as reasonable, while observing that the statutory definition of dumping margin "does not unambiguously require that dumping margins be positive numbers." *Id.* at 1342; see Pet. App. 57a-58a; see also *Corus Staal BV* v. *Department of Commerce*, 395 F.3d 1343, 1346-1347 (Fed. Cir. 2005) (applying *Timken*) (cited at Pet. App. 57a), cert. denied, 546 U.S. 1089 (2006). "[T]he central point of *Timken*," the CIT explained, "is that Congress, in crafting the statutory definitions of 'dumping margin' and 'weighted-average dumping margin,' did not address whether Commerce must (1) employ a certain methodology to calculate the dumping margins for the subject merchandise, and (2) consider only certain values—positive, negative, or both—as a 'dumping margin' when calculating the weighted-average dumping margin." Pet. App. 57a-58a. The CIT also rejected petitioners' arguments that certain other provisions of the antidumping laws required zeroing and that the agency's interpretation rendered certain statutory subsections meaningless. *Id.* at 58a-60a, 67a-70a.

Addressing the second step of *Chevron*—whether the agency's construction is "permissible," 467 U.S. at 844—the CIT concluded that the agency's formula constitutes a reasonable implementation of the antidumping laws. Pet. App. 60a-67a. The court observed that the change from zeroing to offsetting in average-to-average cases "does not eliminate the central weapon used to protect domestic industries from dumped merchandise—antidumping duties—but rather, merely amends the manner in which those duties are calculated in certain proceedings." *Id.* at 64a. The CIT also stated that the offsetting methodology, in which the agency "take[s] a more complete view of the market" rather than merely "look[ing] for particular unfairly made sales," is "arguably more fair" than zeroing. *Id.* at 64a.

4. The court of appeals affirmed. Pet. App. 1a-30a. Like the CIT, the court concluded that offsetting in average-to-average cases "reflects Commerce's reasonable interpretation of an ambiguous statute." *Id.* at 23a. The court "agree[d] with" previous decisions, including *Timken*, "which [had] held that [19 U.S.C.] § 1677(35)(A)

does not unambiguously preclude—or require—Commerce to use zeroing methodology." *Id.* at 25a.

The court of appeals explained that "the statute is silent as to what to do when the 'amount' calculated by Commerce pursuant to § 1677(35)(A) is negative. Congress has given Commerce discretion in forming its methodology in antidumping investigations, and where the statutory language does not address the methodology at issue, we decline to conclude that Congress has manifested its unambiguous intent." Pet. App. 25a-26a. The court also rejected petitioners "new" argument that the agency's offsetting formula is inconsistent with the existence of the three separate comparison methodologies (average-to-average, transaction-to-transaction, and average-to-transaction) described in 19 U.S.C. 1677f-1(d). Pet. App. 26a-30a.

ARGUMENT

The court of appeals correctly held that the Secretary of Commerce's offsetting formula for determining the weighted average dumping margin in average-to-average-comparison cases reflects a permissible interpretation of the antidumping laws. Contrary to petitioners' contention, the statute does not unambiguously require zeroing or preclude the Secretary's current methodology. Further review is not warranted.

1. In the course of carrying out the duties assigned to him by the antidumping statutes, the Secretary of Commerce necessarily must construe ambiguous provisions of those laws. See 19 U.S.C. 1673(1), 1673b(b), 1673d(a), 1677(1); *United States* v. *Eurodif, S.A.*, 129 S. Ct. 878, 886 (2009). The Secretary's interpretation "governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of lan-

guage that is ambiguous." *Eurodif, S.A.*, 129 S. Ct. at 886-887 (citing, *inter alia*, *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984)). "This is so even after a change in regulatory treatment, which 'is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework.'" *Id.* at 887 (quoting *National Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)).

Petitioners and their amici identify several statutory provisions that, in their view, require zeroing in the computation of a weighted average dumping margin. None of these provisions unambiguously eliminates the agency's discretion to use an offsetting formula for computing a weighted average dumping margin in cases involving average-to-average comparisons.

a. Petitioners contend (10-1433 Pet. 26; 10-1439 Pet. 26-27) that the statutory definition of "dumping" precludes the possibility of a negative "dumping margin." The antidumping laws define "dumping" as "the sale or likely sale of goods at less than fair value." 19 U.S.C. 1677(34). In petitioners' view, if merchandise is exported to the United States for a price greater than its value if sold locally, there is no "dumping" and hence no "dumping margin." That argument provides no sound basis for overturning the Secretary's use of an offsetting methodology in conducting average-to-average comparisons.

Petitioners are correct that, viewed in isolation, an export sale of goods at a price greater than their normal value does not constitute "dumping." Nevertheless, in using the average-to-average method to determine the "weighted average dumping margin" for a group of transactions taken as a whole, the agency may take such above-normal-value sales into account. The Secretary's decision to use offsetting rather than zeroing in this circumstance is in no way inconsistent with the statutory definition of "dumping."

Petitioners' argument appears to rest on the flawed premise that the statutory definition of "dumping margin" incorporates the statutory definition of "dumping." That is not so. "[D]umping" and "dumping margin" are separate statutory terms with separate definitions. 19 U.S.C. 1677(34) and (35)(A); see *Burgess* v. *United States*, 553 U.S. 124, 129 (2008) ("Statutory definitions control the meaning of statutory words in the usual case.") (alterations and citation omitted). Although "Congress has often used [the] drafting technique [of] repeating a discretely defined word * * * when it intends to incorporate the definition of a particular word into the definition of a compound expression," *Burgess*, 553 U.S. at 130-131, it did not use that technique here, since the definition of "dumping margin" does not reference the term "dumping." See 19 U.S.C. 1677(35)(A); *Burgess*, 553 U.S. at 129-132 (definition of "felony drug offense" in the Controlled Substances Act does not incorporate the definition of "felony" that appears in a separate subsection of the same statute).

Petitioners' argument falls short, moreover, even on its own terms. There is no plain-language reason to believe that a "dumping margin" cannot be negative. For example, although the term "profit" is commonly defined as a form of "pecuniary gain," *Webster's Unabridged Dictionary* 1545 (2d ed. 2001), a business's "profit margin" during a particular period can be negative. See, *e.g.*, *Rose Acre Farms, Inc.* v. *United States*, 559 F.3d 1260, 1269-1270 (Fed. Cir. 2009) (referring, in discussing expert's testimony, to a "less than zero" or "negative" "initial profit margin"), cert. denied, 130 S. Ct. 1501

(2010); *In re Remec Inc. Sec. Litig.*, 415 F. Supp. 2d 1106, 1116 (S.D. Cal. 2006) (referring to company's "negative gross profit margins of negative 7%"); *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 70 Fed. Reg. 54,523, 54,526-54,527 (2005) (referring to company's "negative" "net profit margin"). It would be especially natural, moreover, to use a negative number as a company's "profit" for a particular year in determining the company's *average* annual profit during a multi-year period.

b. Petitioners also contend (10-1433 Pet. 26-28; 10-1439 Pet. 27-28) that the statutory definition of "dumping margin"—"the amount by which the normal value exceeds the export price * * * of the subject merchandise," 19 U.S.C. 1677(35)(A)—itself dictates that a dumping margin cannot be negative. That definition, however, does not "directly address[] the precise question at issue," *Chevron*, 467 U.S. at 843, namely, what the dumping margin should be when the export price (say, $3) is higher than the normal value (say, $2).

Petitioners contend that there is no "amount by which $2 exceeds $3." But because the term "weighted average dumping margin" is defined as a fraction with a sum of dumping margins in the numerator, see 19 U.S.C. 1677(35)(B), the Secretary is required in that circumstance to identify *some* number as the amount by which the smaller normal value exceeds the higher export price. When it uses its zeroing methodology, the agency addresses that potential problem by treating values that otherwise would be numerically undefined as though they had a value of zero. See *Chevron*, 467 U.S. at 843 ("The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.") (citation omitted).

The other way of addressing the circumstance in which the export price is greater than the normal value is to say that "the amount by which $2 exceeds $3" is "$-1." The agency's offsetting method reflects that approach. As the Federal Circuit has explained, "[a]t least in the mathematical context, 'exceeds' does not unambiguously preclude the calculation of a negative dumping margin." *Timken Co.* v. *United States*, 354 F.3d 1334, 1341 (Fed. Cir.), cert. denied, 543 U.S. 976 (2004). "Rather, the word 'exceeds' could arguably allow for negative dumping margins because it guides the manner in which to set up the mathematical equation—x 'exceeds' y = x-y." *Id.* at 1341-1342; see Pet. App. 25a ("[T]he statute is silent as to what to do when the 'amount' calculated * * * is negative."). Contrary to petitioners' contention, the statutory language does not categorically preclude that approach, particularly because, as discussed above, petitioners' own preferred approach (zeroing) itself relies on agency resolution of potential ambiguity.

Petitioners also rely (10-1433 Pet. 28 & n.7; 10-1439 Pet. 29-30) on another provision of the antidumping laws (19 U.S.C. 1673c(b)) that contains language similar to the definition of "dumping margin." Section 1673c(b) is entitled "Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise." It permits the Secretary to suspend an investigation into possible dumping if the relevant exporters "agree * * * to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price * * * of that merchandise." 19 U.S.C. 1673c(b)(2). Petitioners contend that in the context of that provision, the amount by which a lower normal value "exceeds" a higher export price must be deemed to be zero (rather than a negative number), since otherwise Section 1673c(b) would be limited to agreements that would require the normal value and export price to be precisely the same, and would preclude agreements allowing exporters to sell goods at lower prices in the originating country than in the United States. Petitioners extrapolate from this that the similar language in the definition of "dumping margin" must also refer to a nonnegative number.

Petitioners' argument overlooks the contextual differences between 19 U.S.C. 1673c(b)(2) and 19 U.S.C. 1677(35)(A). That a statutory term or phrase "may have a plain meaning in the context of a particular section" does not mean that it "has the same meaning in all other sections." *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 343 (1997). As the title of Section 1673c(b) ("Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise") makes clear, an agreement covered by Section 1673c(b)(2) reflects the exporter's commitment not to make *any* future sales of merchandise in the United States at a lower price than the exporter would have received in its home country. In determining whether a particular export sale complies with such an agreement, it would (as petitioners emphasize) make no sense to distinguish between an export sale at a price greater than normal value and an export sale at a price equal to normal value. The Secretary's application of the average-to-average method, by contrast, is a means of determining the "weighted average dumping margin" for a *group* of export sales taken as a whole. For purposes of calculating that average, the Secretary could reasonably attribute different dumping margins to above-normal-value export sales than to equal-to-normal-value export sales.

c. Petitioner United States Steel Corporation additionally argues that the agency's offsetting methodology renders portions of 19 U.S.C. 1677f-1(d) superfluous. See 10-1433 Pet. 29-31. Section 1677f-1(d) describes the various methods (average-to-average, transaction-to-transaction, and average-to-transaction) for assessing whether merchandise has been sold at less than fair value. United States Steel argues that whereas Section 1677f-1(d) provides for three separate comparison methods, the agency's offsetting methodology in practice collapses two of them together. United States Steel quotes the WTO panel's observation (which was consistent with the United States' own submission to that body) that "without zeroing, the average-to-transaction method 'would as a matter of mathematics produce a result that was identical to that of the * * * average-to-average methodology.'" *Id.* at 30 n.12 (citation and emphasis omitted); see *id.* at 30 & n.11.

United States Steel's argument overlooks that the Secretary has only made a final determination to employ the offsetting method in average-to-average-comparison investigations. See *Final Modification*, 71 Fed. Reg. at 77,724; Pet. App. 66a-67a, 116a. As the agency explained in adopting its new rule, "[t]he argument that the targeted dumping methodology would be nullified presumes that offsets would be provided under that methodology." *Final Modification*, 71 Fed. Reg. at 77,723. The Secretary continues to use zeroing for both transaction-to-transaction and average-to-transaction comparisons.

The different methods described in 19 U.S.C. 1677f-1(d) therefore remain distinct. See Pet. App. 66a-67a.

d. Finally, an amicus relies (Union Amicus Br. 5) on a statement in a Senate Report accompanying the 1994 legislation that added the definitions of "dumping margin" and "weighted average dumping margin" to the statute. The Senate Report states that "[t]hese definitions are consistent with the definitions set forth in Commerce's current regulations." *Ibid.* (quoting S. Rep. No. 412, 103d Cong., 2d Sess. 80 (1994)). Contrary to the amicus's contention (*id.* at 4-12), however, that statement does not suggest that Congress intended to foreclose any alteration of the agency's then-current regulatory approach. Indeed, in the same public law in which Congress added the definitions of "dumping margin" and "weighted average dumping margin," it also added the provision (19 U.S.C. 3533(g)) that authorizes modification of agency regulations or practice based on WTO rulings. See Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809, 4831-4832, 4890-4891; p. 7, *supra*.

2. Contrary to petitioners' contention (*e.g.*, 10-1439 Pet. 31), the agency's use of offsetting in applying the average-to-average methodology is consonant with the antidumping laws' purpose. As petitioners correctly observe, the antidumping laws serve to protect domestic industry against injury from underpriced foreign goods. But the precise level of protection—that is, the circumstances in which an antidumping duty will be imposed—is the subject of the detailed statutes discussed above. Where, as here, those statutes are ambiguous, the agency has discretion to offer a reasonable interpretation. *Eurodif, S.A.*, 129 S. Ct. at 886.

The Secretary of Commerce also has discretion, in appropriate circumstances, to change course and adopt a different regulatory approach. *Eurodif, S.A.*, 129 S. Ct. at 886. Congress specifically provided for modifications to existing agency practices based on WTO decisions, provided certain procedures are followed. 19 U.S.C. 3533(g), 3538. There is no dispute that those procedures—which include consultation with relevant congressional committees, as well as consultation with executive agencies that deal with foreign-relations matters, industry players, and the public—were followed here. If Congress is dissatisfied with the Secretary's current use of offsetting in making average-to-average comparisons, it can of course amend the statute. Nothing in current law, however, precludes the agency from using that approach.

Petitioners' policy-based objections to the modified formula (*e.g.*, 10-1439 Pet. 22-24) are not pertinent to the question presented and are, in any event, overstated. As the CIT observed, the change "does not eliminate the central weapon used to protect domestic industries from dumped merchandise—antidumping duties—but rather, merely amends the manner in which those duties are calculated in certain proceedings." Pet. App. 64a. The agency has discretion to decide that the new method is preferable because it is a reasonable manner of aggregating multiple comparison results produced by average-to-average comparisons, in which high and low prices are already averaged together before the comparisons are made; because it avoids international-trade repercussions that could themselves harm domestic industry; and/or for other permissible reasons. The court of appeals correctly upheld the agency's lawful exercise of its discretion, and petitioners' disagreement with that decision raises no issue of exceptional importance warranting this Court's review.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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