

Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States
Court No. 05-00613 Slip Op. 07-167 (CIT November 15, 2007)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand order from the Court of International Trade (the Court) in Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 07-167 (Nov. 15, 2007) (Habas). In the remand order, the Court granted the Department's request to consider anew both the calculation of the cost of production (COP) for steel concrete reinforcing bars (rebar) produced by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and what constitutes the appropriate date of sale for Habas' U.S. sales transactions. Specifically, the Court has directed the Department to fully articulate the rationale for its redetermination on these issues and to recalculate Habas' dumping margin, if appropriate.

In accordance with the remand order, the Department has articulated its rationale for continuing to use a period of review (POR) weighted-average COP in its antidumping analysis. Further, the Department has reconsidered its date-of-sale methodology for Habas and, as a result, we have recalculated the margin for Habas using the contract date as its U.S. date of sale.

On January 25, 2008, we released the Draft Redetermination Pursuant to Court Remand ("Draft Results") to the parties to this proceeding, and solicited comments. Comments on the Draft Results were received from Habas and the Defendant-Intervenors Nucor Corporation, Gerdau Ameristeel, Inc., and Commercial Metals Company (the "domestic interested parties")

on February 1, 2008. Habas and the domestic interested parties submitted rebuttal comments on February 6, 2008. The Department has addressed those comments below.

B. BACKGROUND

On November 15, 2007, the Court remanded to the Department its final results in the 2003-2004 antidumping duty administrative review on rebar from Turkey. See Habas, Slip Op. 07-167; Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (Nov. 8, 2005), and accompanying Issues and Decision Memorandum (Final Results). The antidumping duty order in this proceeding was published in the Federal Register on April 17, 1997. See Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 18748 (April 17, 1997). The POR covers the period April 1, 2003, to March 31, 2004.

In its remand order, the Court directed the Department to: 1) consider anew both the calculation of Habas' COP and the use of contract date *versus* invoice date as date of sale; 2) fully articulate the rationale for its redetermination on these issues; and 3) recalculate Habas' dumping margin, if appropriate.

Pursuant to the Court's remand instructions, we have analyzed the information on the record of this administrative review, redetermined that the use of a POR weighted-average COP is appropriate for Habas in this case, and provided additional explanation for our analysis on this particular issue. We have also reconsidered our date-of-sale methodology for Habas' U.S. sales and have recalculated Habas' dumping margin using contract date as the U.S. date of sale.

C. ANALYSIS

Issue 1: The Calculation of Habas' COP

Habas argues in its Brief to the Court, as it did in the underlying administrative review, that its costs should be calculated on a quarterly-average basis, in order to more accurately reflect the fluctuating cost of its steel scrap input, which, according to Habas, caused a significant impact on the total cost of manufacturing (COM). Habas argues that the Department's use of a single average cost for the entire POR created a mismatch between sales and costs which distorted the comparisons between U.S. prices and normal value (NV). Habas states that when the COP is calculated on a POR-average basis, the surge in scrap costs in the fourth quarter of the POR significantly increases the COP when compared to a second quarter average cost. In the Final Results, after analyzing Habas' claim, the Department found that the cost fluctuation of the steel scrap input, as well as the other cost elements, did not cause a significant impact on the total COM of rebar.

a. The Department's Practice of Calculating a Respondent's COM on an Annual Basis is Reasonable and Consistent with Section 773 of the Tariff Act of 1930, as Amended (the Act)

We have considered anew the calculation of Habas' COP as directed by the Court, and determined that the calculation of Habas' COP and constructed value (CV) based on costs computed on an annual-average basis over the entire POR is consistent with section 773 of the Act and the Department's practice, and is also supported by the facts on the record.

The Department has developed a consistent and predictable methodology to calculate cost on an annual-average basis over the entire POR. The Department's questionnaire routinely requests that respondents report their costs on an annual-average basis over the entire POR. See, e.g., Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR

77852 (Dec. 13, 2000), and accompanying Issues and Decision Memorandum (Pasta from Italy) at Comment 18 and Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006), and accompanying Issues and Decision Memorandum (Wire Rod from Canada) at Comment 5 (where the Department explains its practice of computing a single weighted-average cost for the entire period).

Section 771(34) of the Act defines dumping as the sale or likely sale of goods at less than NV. Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the NV of the merchandise. Section 771(35)(A) of the Act defines the dumping margin as the amount by which the NV exceeds the export price (EP) or constructed export price (CEP) of the subject merchandise. In calculating NV, the Department will consider only those sales in the comparison market that are in the “ordinary course of trade.” Generally, sales are in the “ordinary course of trade” if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. See section 771(15) of the Act. Specifically, sales disregarded under section 773(b)(1) of the Act are defined by section 771(15)(A) of the Act as outside the ordinary course of trade. Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as:

an amount equal to the sum of -

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

Section 773(b)(1) of the Act states that if no sales made in the “ordinary course of trade” remain, “the normal value shall be based on the constructed value of the merchandise.” CV is defined at section 773(e) of the Act as the cost of materials, plus fabrication expenses, selling, general and administrative expenses, profit and packing expenses.

As can be seen above, the Act does not dictate the method of calculating COP during the POR, nor does it provide a definition for the term “period” in calculating COP and CV. The Department has, therefore, adopted a consistent and predictable approach in using annual-average costs over the entire POR - the result being a normalized, average production cost to be compared to sales prices covering the same extended period of time. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations). See also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (Sept. 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). As the Department explained in those cases, the result of this approach normally evens out swings in production costs that a respondent may have experienced over short periods (i.e., months or quarters) of time.

- b. The Department's Use of the POR Average Instead of Habas' Quarterly Costs is Appropriate in Light of the Facts Before the Agency
- i. **Habas' COM on a POR Basis Did Not Significantly Differ from the COM on a Quarterly Basis**

As directed by the Court, we have considered anew our calculation of Habas' costs and further analyzed our final results. Upon redetermination, we do not find Habas' alternate method of calculating cost on a quarterly basis to be a more accurate calculation for purposes of computing the dumping margin. We continue to find that the facts on the record support the conclusion that the COM on a POR-average basis did not significantly differ from the COM calculated on a quarterly basis.

In order for a shorter period to represent a more accurate measurement of cost and subsequently of dumping, we find that there must be a close correlation between the costs to produce the product during the shorter period and the sales price of that same merchandise during the same period. We note that many factors affect the timing relationship between the purchase of the raw materials, production, and the sale of the product. We find that relying on a shorter cost reporting period creates uncertainty as to how accurately the average costs during the shorter period would relate to the sales that occurred during that same shorter period. For example, factors such as: 1) the raw material inventory turnover period; 2) the inventory valuation method used by the company (e.g., last-in, first-out versus first-in, first-out versus weighted-average, etc.); 3) the extent to which raw materials are purchased pursuant to long-term contracts; 4) whether finished merchandise is sold to order or from inventory; 5) the finished goods inventory holding period; 6) sales made pursuant to long-term contracts; 7) the extent to which monthly accruals are made; and 8) year-end adjustments all affect the relationship of the sales transactions and costs. However, over an extended period of time, the Department's

experience demonstrates that these factors tend to smooth out in most cases, resulting in an average cost that reasonably reflects the COP for sales made throughout the year. As noted above, the Department's questionnaire routinely requests that a company's costs be reported on an annual-average basis over the entire POR for this reason. See, e.g., Pasta from Italy at Comment 18; and Wire Rod from Canada at Comment 5.

In the underlying administrative review, the Department analyzed the impact of calculating costs on an annual-average basis over the entire POR for Habas and whether it would render distortive results. The Department conducted a comparative analysis between the annual-average cost method and the quarterly-average cost method. In comparing the two methods, the Department first chose the five most frequently sold models of the foreign like product (i.e., control numbers or "CONNUMs") in the home market which represented a large portion of Habas' home market sales. Then, for each of those five models, the Department compared the difference between the annual-average COM and the quarterly-average COM for the first and second quarters of the POR (i.e., the only two quarters in which Habas had U.S. sales).¹ See the November 2, 2005, memorandum from the Team to the File entitled, "Habas POR Summary For Five Selected Control Numbers" ("Five CONNUM Memo") referenced in Final Results at Comment 1.

¹ Our focus was on the two quarters in which Habas had U.S. sales simply because those are the only quarters where contemporaneous comparison market sales would be used in the dumping margin calculation. For administrative reviews, U.S. sales are compared to comparison market sales which occurred in the same month. If no match is found, we go up to three months back or two months forward to find comparison sales to match. See 19 CFR 351.414(e). Since the sales-below-cost test potentially eliminates comparison market sales used in the dumping margin calculation, analyzing the difference in cost resulting from the use of the two different cost methodologies was only relevant for the two quarters in which Habas had U.S. sales.

As a result of this analysis, we reviewed the precise impact of using Habas' quarterly-average COM approach versus the Department's preferred annual-average COM method, and found that the difference of approximately five to ten percent was not significant. See Final Results at Comment 1. Accordingly, the Department found that using annual-average costs was preferable because it was consistent with our practice, predictable, and reasonable.

ii. **It is the Change in the COM and Not the Change in the Price of One Input that Directs the Department's Analysis**

1. Scrap is Only One of Many Inputs Required to Produce Rebar

Further, we do not believe Habas' proposed methodology is more accurate because we have determined that the appropriate analysis to perform in order to quantify the significance of a cost change is based on the change in the COM, not the change in the cost of a single input in isolation. After examining the impact of the change in scrap costs during the period and seeing how the scrap cost change influenced the COM, it became clear to us that looking at a single element of COM for rebar was not sufficient in determining the extent to which total costs fluctuated during the period.

Examining the change in the cost of scrap, one element in the COM, does not capture the change in cost of multiple other elements of the COM. Habas did calculate the change in scrap cost from the beginning of the POR to the end of the POR in a manner consistent with that described in Pasta from Italy at Comment 18; however, we do not believe an analysis of a change in a single input is the appropriate method for evaluating the significance of the change in cost during the period. Our analysis in the Final Results considered the change in the cost of scrap, as well as the change in cost for all other manufacturing costs associated with producing rebar. See Final Results at Comment 1. In analyzing the fluctuation in costs, it is the total COM that

matters, not simply one component of the total manufacturing cost, since it is the COP that is used in the sales-below-cost test. While one input, such as steel scrap, may represent a significant portion of the COM rebar, the other costs incurred to manufacture the finished product are also important in analyzing the significance of cost fluctuations throughout the POR.

This approach recognizes that scrap is only one of many inputs required to produce rebar. In Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 71 FR 6269 (Feb. 7, 2006), and accompanying Issues and Decision Memorandum (SSSSC from France) at Comment 2, a case that was conducted concurrently with this case, we faced a situation in which numerous elements of COM were fluctuating in cost. In that case, the Department evaluated the changes in COM, noting that the raw material component of costs incurred by the respondent (Ugine & ALZ, France, S.A./Imphy Ugine Precision) both decreased and increased during the POR for the various grades of stainless steel. The Department determined in that case that the changes in COM were not significant.

2. Habas' Analysis Offered in the Final Results Inflates the Change in Scrap Costs During the POR and Leads to a Less Accurate Result

Irrespective of determining whether a certain change in scrap costs qualifies for exception to the Department's normal practice, we reviewed the respondent's analysis that the cost of scrap increased by approximately 44 percent from the beginning to the end of the POR. See Final Results at Comment 1. While 44 percent appears to be a large number, we found that there were several flaws in this cost analysis. First, in accordance with section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, . . . and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, Habas reported its COP information for use in the Department's

sales-below-cost test, in Turkish lira (TL), consistent with its normal books and records.

However, in arriving at the 44-percent figure, we noted that scrap was inappropriately converted from TL derived from the normal books and records into U.S. dollars (USD). Converting its scrap costs to USD results in the cost fluctuation analysis being performed in a currency different from that used by Habas in reporting its COP information to the Department for use in the sales-below-cost test. In doing so, Habas' analysis captured not only the fluctuation in scrap costs during the POR, but it also captured the impact of fluctuations in the USD to TL exchange rates. Habas calculated a 28-percent change in the cost of scrap based on its normal TL-based books and records. Later, Habas calculated a 44-percent change in cost of scrap by converting its costs to USD. As a result, by deviating from its books and records, Habas' calculation inflated the change in scrap cost from approximately 28 percent to 44 percent.

While a 28-percent fluctuation in material costs from the beginning to the end of the annual POR may also seem large at first glance, it is important to put this change into perspective and to relate it to changes in the market and product under investigation. We analyzed the volatility of Habas' home market rebar prices within each quarter of the POR as a means to gauge the significance of the POR cost fluctuations. This analysis revealed that within the first, third, and fourth quarters of the POR, prices fluctuated for most CONNUMs far in excess of the fluctuation in costs over the entire full year POR (see the March 3, 2008, Memorandum to Neal Halper from Gina K. Lee entitled "Cost of Product and Constructed Value Calculation Remand – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S." ("Habas Remand Memo") at Attachment 1 to this Redetermination, which shows for each quarter of the POR, for each CONNUM, the highest and lowest priced sales and the percentage difference). Because the prices for the same models within the same quarter fluctuated more significantly than cost fluctuations over the

entire year, we concluded that such cost fluctuations were not unusual or significant, and accordingly, there was no justifiable reason to deviate from our normal method of calculating POR annual-average costs. Thus, upon an analysis of the change in COM, as well as the change in the price of scrap, upon remand the Department continues to disagree with Habas' claim that its methodology leads to a more accurate result.

iii. **There is No Information on the Record Linking Quarterly-Average Costs to Sales Made During the Same Truncated Period of Time**

Finally, even if we were to assume, arguendo, that the change in COM was significant, we still consider it inappropriate to arbitrarily cut the cost-averaging period into quarters and simply compare sales prices to the quarterly-average costs without any evidence of the direct linkage between the resulting quarterly-average costs and sales prices. This is because a more accurate sales-below-cost test only results if the sales during the shorter averaging period can be directly linked with the COP during the shorter averaging period. If one's objective is to determine whether sales within a given quarter were made above the cost to produce those same products in that quarter, production and sale should occur within the same quarter. Habas attempted to account for this when it claimed that its quarterly cost and price fluctuations are perfectly correlated throughout the POR. However, there is no evidence presented on the record which supports the proposition that production costs in each quarter were directly related to those sales reported in that same quarter.

As it was stated earlier, numerous factors have an impact on the timing of costs and the related sales prices, such as the raw material inventory turnover period, the inventory valuation method used by the company, the extent to which raw materials are purchased pursuant to long-term contracts, whether finished merchandise is sold to order or from inventory, the extent to

which monthly accruals are made, and the finished goods inventory holding period. The shorter the cost-averaging period, the harder it is to accurately match the timing of production costs and sales prices due to these factors. Simply shortening the cost-averaging period does not automatically result in a more accurate comparison of sales and costs.

In this case, there was no record evidence showing a linkage of the sales prices and cost other than a table comparing quarterly scrap cost trends to quarterly home market sale price trends for two home market CONNUMs, and a general statement by Habas that its “home market sales precisely and consistently track the cost in the same quarter.” See Plaintiff’s Brief at 7 (Table 3) and 9. In performing the analysis described in its administrative brief, Habas calculated a quarterly-average scrap cost for each quarter of the POR. Habas used the quarterly-average scrap cost for the first quarter as the base period, and it calculated the relationship of each of the subsequent three quarters’ average scrap cost to the base period’s average (i.e., the first quarter). Id. The analysis showed the same averaging computations using home market net sales prices for two models (i.e., CONNUM 13 and CONNUM 15). Id. The end result of Habas’ analysis was a quarterly scrap cost index and home market price index that followed each other precisely.

However, upon review of this claim, we do not reach the same conclusion as Habas that prices and costs were, in fact, in “lockstep.” Habas attempted to compare calculated quarterly home market price indices² calculated for two models (i.e., CONNUM 13 and 15) to calculated scrap cost indices stated in USD. By converting its quarterly TL scrap costs into USD and in

² Habas did not specifically identify what currency was used to determine the quarterly home market price indices contained in Table 3. However, we assume the home market price indices were based on sales prices stated in TL because the sales occurred in Turkey.

effect deviating from its normal books and records, Habas inflated the resulting apparent fluctuation in scrap costs. In addition, in line with our decision in SSSSC from France at Comment 2, the analysis should have compared the quarterly indices of total COM, not just scrap costs, to the home market price indices. In fact, between quarter two and three for the five CONNUMs selected for analysis in the Final Results, the sales price decline did not match the cost decline. See Final Results at Comment 1 (referencing the “Five CONNUM Memo”). We found that when both of these discrepancies are corrected, it becomes more apparent that scrap costs and sales prices do not move in absolute “lockstep.” Id.

In a more straightforward analysis of how well Habas’ quarterly prices and costs track each other, for these remand results, we analyzed the consistency of Habas’ quarterly profit percentages on home market sales. If Habas’ quarterly home market prices and costs did in fact track each other in “lockstep” as claimed by Habas, one would expect its quarterly profit percentage on home market sales to be consistent. We calculated Habas’ quarterly profit percentage by subtracting from Habas’ quarterly home market net sales revenue its quarterly cost of producing such sales, divided by the same quarterly cost of producing such sales. See the “Habas Remand Memo” at Attachment 2 to this Redetermination (which shows the quarterly home market profit percentage for each quarter of the POR). The results, which reflect a loss in one quarter and a large profit in another, again led us to conclude that prices and costs are not, in fact, moving in “lockstep.” Id.

In contrast, we point out that in the Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from Netherlands, 65 FR 742 (Jan. 6, 2000) (Brass Sheet and Strip from Netherlands), a case cited by Habas in its arguments in the underlying administrative review, the respondent could

make a contemporaneous comparison of metal values and sales prices which resulted in a more accurate calculation of the dumping margin in that instance because the respondent recorded its raw material inputs purchases by its related sales transactions in its normal books and records. See Brass Sheet and Strip from Netherlands, 65 FR at 747-748. The respondent in Brass Sheet and Strip from Netherlands was able to show the Department that its monthly cost and price fluctuations were in “absolute lockstep” with one another. Id. Accordingly, in Brass Sheet and Strip from Netherlands, the Department determined it appropriate to deviate from calculating cost on an annual-average basis over the entire cost reporting period because record evidence showed that cost fluctuations significantly impacted the total COM during the period and prices and costs for the shorter periods could be accurately matched.

On the other hand, in this case, the respondent was unable to show that its cost and price fluctuations were in “lockstep” with each other, and therefore, the Department did not use quarterly costs in this redetermination. See the “Habas Remand Memo” at Attachment 2 to this Redetermination.

c. The Facts in the Instant Case Do Not Fall Under Any Past Exceptions in Which the Department has Used Smaller Period Increments for Comparisons

We recognize that the Department has resorted to shorter cost-averaging periods in some cases. However, such exceptions have been rarely granted, and the reasons for having done so do not apply to the facts of this case. In those instances where the Department departed from its standard cost-averaging periods, the Department deviated from using an annual-average cost methodology because a high technology product experienced drastic and consistent cost and price changes over a short period of time or the respondent’s COM changed significantly throughout the cost reporting period. We do not find the facts of this case similar to the facts in

those cases which have involved high technology products such a dynamic random access memory, static random access memory or erasable programmable read only memory semiconductors. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8926 (Feb. 23, 1998) (SRAMS from Taiwan) (where the Department determined that quarterly, rather than annual, averages resulted in a more accurate comparison of pricing behavior during the period of investigation (POI) given the significant decrease in the price of static random access memory semiconductors throughout the POI); Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15476 (Mar. 23, 1993) (DRAMS from Korea) (where the Department found that monthly weighted-average prices, rather than POI averages, were more representative of the respondent's pricing given the consistent downward trend in both the United States and Singapore of prices over the POI); and Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories from Japan, 51 FR 39680, 39685 (Oct. 30, 1986) (EPROMS from Japan) (where the Department found that significant changes in the COP during a short period of time due to technological advancements and changes in the production process justified the use of quarterly weighted-average costs).

Nor do we find similarities between this case and Thai Pineapple Canning Indus. Corp. v. United States, 23 CIT 286 (May 5, 1999) (Thai Pineapple I). In the administrative review at issue in Thai Pineapple I, the POR covered an 18-month period. For purposes of calculating the dumping margin, the Department initially used the POR-wide weighted-average cost. See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 7392 (Feb. 13, 1998). However, the Department later matched the sales

and costs by segregating the POR into two fiscal years for purposes of its dumping analysis. See Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order Thai Pineapple Canning Industry Corp. Ltd. and Mitsubishi International Corp. Ltd. v. United States, Court No. 98-03-00487 (May 31, 2002) at 3, found at <http://www.ia.ita.doc.gov> under “Decisions and Data” (Remand Redeterminations). In Thai Pineapple I, it is true that the Department matched sales prices to average costs for periods of time that were shorter than the span of the entire POR; however, it is important to note that the shorter averaging periods used were fiscal years, and not quarters or months. Because we used fiscal years in our dumping analysis, our margin calculation continued to reflect our practice of using annual averages. Thus, the exceptions for using a different cost-averaging period (i.e., high technology products or a significant change in COM over the cost period, as addressed in Thai Pineapple I) do not apply to Habas’ situation in this case.

d. Habas’ Home Market Sales Used by the Department in its Calculations Were Made in Commercial Quantities and Were Made Within the Ordinary Course of Trade

Habas also made arguments in its Brief to the Court that calculating cost on an annual-average basis over the entire POR resulted in virtually every home market sale in the first two quarters of the POR to be below COP and, thus, outside the ordinary course of trade. See Plaintiff’s Brief at 8 (Public Version). In response, we note that Habas’ home market sales prices during these first two quarters of the POR were low. Even using Habas’ quarterly-average costs, during the second quarter of the POR, its home market sales were made at an overall loss (see the “Habas Remand Memo” at Attachment 2 to this Redetermination). Furthermore, the home sales that were not disregarded in the sales-below-cost test, as the result of calculating the respondent’s COP on an annual-average basis, established an appropriate universe of home

market sales, in the usual commercial quantities that were within the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP or CEP. The Department assessed whether the May sales in the home market were contemporaneous with the sales to the United States that occurred in June, July, and August, and noted that these May home market sales are indeed a contemporaneous match with the U.S. sales in the following three months, as the Department has established a practice with regard to reviewing sales that occur in the months prior to the U.S. sale. See Final Results of Antidumping Duty Administrative Review; Stainless Steel Hollow Products from Sweden, 57 FR 21389, 21392 (May 20, 1992) (where the Department rejected the respondent's request to depart from the 90/60 day rule to minimize distortions resulting from metal price fluctuations); Final Results of Antidumping Duty Administrative Review; Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand, 56 FR 58355, 58359 (Nov. 19, 1991) (where the Department declined to depart from its normal practice of applying the 90/60 day rule); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31714 (July 11, 1991) (where the Department rejected a request to depart from its 90/60 rule to find matches for two unmatched sales outside the 90/60 day window); and Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results, 55 FR 47093, 47098 (Nov. 9, 1990) (where the Department reversed its preliminary determination to look outside the 90/60 day window for model matches). See also 19 CFR 351.414(e) for the definition of a contemporaneous sale.

The Department generally bases NV for the POR on monthly weighted-average prices and compares them to individual U.S. sales. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted-

average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, the Department will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90/60 day rule and is articulated in 19 CFR section 351.414(e). If no months with sales in the foreign market exist in this window, then we will use CV to determine NV.

We did not find any basis to consider Habas' May 2003 home market sales mismatches with its U.S. sales for purposes of computing the dumping margin. See *Prodotti Alimentari Meridionali, S.R.L. v. United States*, 26 C.I.T. 749 (July 16, 2002) (where the Court concluded that the Department's analysis of the sales within the POR and the window period was neither prohibited by statute nor inconsistent with the Department's normal practice stating that "it is a common and accepted practice for Commerce to consider sales within 90 days before and 60 days after the POR for comparison"). Thus, it was appropriate for the Department to use those sales in its calculations, and this in no way undermines the Department's use of a POR-wide average in this case.

e. An Increase in NV as a Result of a Cost Change Does Not Necessarily Reflect the Actual Magnitude of the Change of Manufacturing

Finally, we evaluated whether the change in cost, using the Department's methodology, alone resulted in a 14.5-percent increase in NV as alleged by Habas. See Plaintiff's Brief at 32 (Public Version). While we agree that NV increased by 14.5 percent when using the annual-average cost method versus quarterly-average costs, we disagree that the change in NV is a direct reflection of the magnitude of the change in costs. The change in NV is the effect of new sales falling below cost as a result of the cost increases. That is, it is the price differential between the sales passing the cost test and those that fail as a result of the cost increase, and the quantities

associated with the new sales falling below cost relative to those passing the cost test (i.e., above-cost sales). For example, one could increase costs by one percent and the effect on NV could be an increase of over 30 percent simply because the one-percent increase in cost may drive 90 percent of the previously above-cost sales below cost, with the remaining above-cost sales having much higher prices than those that previously passed the cost test. Thus, simply indicating the magnitude of the increase in NV, as a result of a cost change, does not necessarily reflect the magnitude of the cost change. Accordingly, the change in NV has not affected our decision to use POR weighted-average costs.

f. Conclusion

The Department has addressed the concerns raised by Habas by comparing the two cost methods (i.e., annual-average cost method and the quarterly-average cost method) and found that the difference in COM resulting from these two methods was not significant, and therefore, does not warrant a departure from our normal practice. In addition, we have determined that record evidence did not support the claim that splitting the cost period into quarters and comparing quarterly sales prices to quarterly-average costs resulted in a more accurate matching of sales and costs. The Department has, thus, correctly calculated Habas' COP, performed the sales-below-cost test according to the Act, and the resulting sales used for NV were made within the ordinary course of trade. Therefore, for these reasons and the others stated above, we have continued to calculate Habas' COP on an annual-average basis.

Issue 2: U.S. Date of Sale

The Department based the date of sale for Habas' U.S. sales in this review on invoice date. The Department's regulations provide for a rebuttable presumption that the date of sale for purposes of comparing the NV of a respondent's home market sales to its U.S. sales price is the

invoice date. See 19 CFR 351.401(i). Based on the administrative record of this review, in the Final Results the Department found that Habas failed to demonstrate that the material terms of sale were established on the contract date. Specifically, the Department found that the information on the record demonstrated that there were, in fact, changes to the price specified in a contract subsequent to the contract date. In the Final Results, we stated the following:

. . . according to the sample U.S. sales documentation contained in Habas' August 16, 2004, Section A response at Exhibit A-7 and December 10, 2004, supplemental response at Exhibit SC-1, the amount paid by the customer was not the price specified in the contract; rather, the difference between the two amounts was reflected in the form of a billing adjustment in the U.S. sales listing . . . Consequently, we do not find that the material terms of sale for Habas' U.S. sales were established at the contract date.

See Finals Results at Comment 6.

In its arguments, Habas disagreed with the Department's assessment, claiming that all material terms of sale of its U.S. sales were fixed as of the date of the contract. While Habas acknowledged that it did report the billing adjustment cited by the Department in its Final Results, Habas argued that this adjustment was related to a penalty for late delivery which was specifically provided for by the terms of the contract. See Habas, Slip Op. 07-167, at 11. Habas further contended that, not only did it submit the letter of credit and contract related to the sale with the billing adjustment, but it explicitly noted in its antidumping duty questionnaire response that the billing adjustment was the result of a late delivery penalty. See Habas at 11. Moreover, Habas argued that the Department did not point to the billing adjustment as the reason for the use of invoice date as the U.S. date of sale until the Final Results. Thus, Habas asserted that it had no opportunity to brief this issue on the record. See Habas at 12.

After further examination of the information on the record in this review, we find that the billing adjustment in question was, in fact, directly related to a late delivery clause contained in the contract between Habas and its U.S. customer. Moreover, there is no evidence on this administrative record to demonstrate that the prices and quantities shown in Habas' contracts were changeable, nor has the Department made such a determination with respect to Habas' contracts in prior segments of this proceeding.

Therefore, because Habas shipped the merchandise in question to each of its U.S. customers during the POR at the quantities and prices provided for under the terms of its contracts, we now conclude that the material terms of sale for Habas' U.S. sales during the POR were determined on the contract dates. As a result, we have recalculated the margin using Habas' reported contract dates as the U.S. dates of sale.

D. FINAL RESULTS OF REDETERMINATION

As directed by the Court, the Department has further explained its reasons for determining that Habas' COP should be based on its normal methodology (i.e., the POR weighted-average cost method), as supported by substantial evidence on the record and otherwise in accordance with law. In addition, as directed by the Court, the Department has considered anew the use of contract date *versus* invoice date as U.S. date of sale. Based on our reexamination of this issue, we find that the material terms of sale for Habas' U.S. sales were established on the contract date. Therefore, we have recalculated the dumping margin for Habas using its contract dates as the U.S. date of sale. See Attachment 1 to this Redetermination. Accordingly, for these final results, the weighted-average margin for Habas for the period April 1, 2003, through March 31, 2004, is 22.53 percent. On January 25, 2008, we released the Draft Results to the parties to this proceeding, and solicited comments. Comments on the Draft Results were received from Habas

and the domestic interested parties on February 1, 2008. Habas and the domestic interested parties submitted rebuttal comments on February 6, 2008. The Department has addressed those below.

E. COMMENTS

Comment 1: *The Methodology and Meaning of Significance*

Habas' Arguments

Habas argues that the Department has applied an incorrect test to determine whether the change in costs during the POR was significant enough to warrant a deviation from using POR-average costs in the Draft Results. See Habas' February 1, 2008, Comments at 7. Habas asserts that the Department's analysis, which compared the quarterly costs and the POR-average costs, only compares the end result of the two different cost reporting methodologies. See Habas' February 1, 2008, Comments at 11. However, Habas claims that the purpose of this exercise is to decide whether sales at a particular time are being compared to costs that are driven by events in a remote period of time. Thus, Habas maintains that the correct test would be simply to compare the costs between the first and the fourth quarters of the POR because this analysis would clarify whether there was a significant increase in COM between the beginning and the end of the POR. Habas asserts that this analysis shows that the COM increased by 21 percent from the first to the fourth quarter. Moreover, Habas contends that, when it originally performed its analysis, based only on scrap costs instead of COM, the scrap costs increased by 28 percent from the first to the fourth quarter. Thus, Habas notes that either approach results in a significant difference. See Habas' February 1, 2008, Comments at 9-10. Finally, Habas contends that Department has used such analysis in past cases and should follow that practice in this case. See Habas' February 1, 2008, Comments at 12.

Moreover, with regard to the Department's specific analysis of the price and cost fluctuations within each quarter of the POR, Habas claims that there are many reasons why prices could fluctuate within a quarter (e.g., scrap purchases driving the prices, a different mix of products sold, different pricing strategies, different credit terms, etc.). Habas contends that the Department's analysis, which Habas states is not probative of anything, relies on sales with minimum and maximum unit values that are outliers in the database. Therefore, Habas concludes that the Department's analysis does not controvert the use of quarterly costs. See Habas' February 1, 2008, Comments at 17-18.

In addition, Habas argues that the Department has not provided evidentiary support for its proposition that a difference of five to ten percent is not significant. Habas first points to an International Trade Commission (ITC) determination that found that rebar is essentially a commodity product and that a percentage of U.S. producers would be influenced in their rebar purchasing decisions by a five-percent increase in price. See Steel Concrete Bars from Turkey, USITC Inv. 731-TA-745 (Final), ITC Pub. 3034 at 29 (1997). Habas further cites to another ITC determination in which the ITC indicated that, for its purposes, transportation costs ranging from two to 20 percent of a U.S. producer's costs are considered important components of price. See Steel Concrete Bars from Turkey, USITC Inv. 731-TA-745 (Review), ITC Pub. 3577 at 8-9 (2003). See Habas' February 1, 2008, Comments at 13-14. In addition, Habas points to the Department's post-preliminary results in the most recent administrative review of this antidumping duty order, covering a subsequent POR (2005-2006), in which the Department found that home market prices appeared to move with changes in the price of scrap and, therefore, any change in cost should be considered significant. See the August 31, 2007, Memorandum from James Maeder, Shawn Thompson, Irina Itkin, and Brianne Riker to David M. Spooner, entitled

“Preliminary Finding on Issues Related to the Turkish Government Competition Board’s Reports in Certain Steel Concrete Reinforcing Bars from Turkey” at 30. See Habas’ February 1, 2008, Comments at 15.

Moreover, Habas notes that several different areas in the antidumping law and regulations define different levels of significance. For example, pursuant to section 773(b)(3) of the Act, a dumping margin is considered de minimis in a less-than-fair-value investigation if it is less than two percent. Therefore, Habas asserts that one can presume a margin over two percent is significant. Habas also points to 19 CFR 351.413, which states that any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than one percent, is considered an insignificant adjustment. Regarding the cost increase in question in this case, Habas asserts that the Department’s methodology regarding hyper-inflationary costs is similar. Habas points to section A of the antidumping duty questionnaire which states that respondents are required to report costs on a hyper-inflationary basis if the annual inflation rate in the foreign market was in excess of 25 percent during any month of foreign market sales. In this case, Habas argues that its cost increase was very close to this 25-percent threshold, even though it was caused by world scrap prices, as opposed to domestic inflation. See Habas’ February 1, 2008, Comments at 15-16.

Finally, Habas disagrees with the Department’s reliance on Pasta from Italy, where the Department previously discussed a five- to ten-percent change in cost as not being significant. Habas argues that the Department’s determination in Pasta from Italy is irrelevant to the current proceeding because the Department has used a different analysis here from that applied to the facts of that case. Specifically, in Pasta from Italy, Habas contends that the Department compared costs from the beginning of the POR to costs at the end of the POR, while in this case, the

Department compared costs in the first quarter to POR average costs. See Habas' February 1, 2008, Comments at 16.

The Domestic Interested Parties' Arguments

The domestic interested parties note that that the Department's well-established practice, which has been upheld by the Federal Circuit, has been to use average POR costs because POR-wide average costs ensure more accurate sales comparisons by smoothing out short-term fluctuations in costs and permitting the Department to avoid uncertainties as to whether and how costs are related to sales within the shorter period. See Fujitsu General Ltd. v. United States, 88 F.3d 1034, 1038-39 (Fed. Cir. 1996). See also Final Results at Comment 10. The domestic interested parties acknowledge that only in highly unusual cases has the Department departed from this methodology because multiple averaging periods may create distortions far beyond those caused by POR-average costs. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 3. Because the Department's practice of using POR-average costs was formulated to ensure the most accurate comparisons, the domestic interested parties contend that any party wishing to depart from this methodology must show that resorting to multiple averaging periods would be more accurate. See, e.g., Pasta from Italy at Comment 18 and Brass Sheet and Strip from Netherlands, 65 FR at 747. The domestic interested parties also assert that the Department has refined its test for determining whether to employ multiple cost periods. The domestic interested parties argue that by analyzing total costs, and not simply the primary input costs, and by comparing the COM for the proposed cost periods to the POR-average costs, the Department has analyzed the impact of the use of multiple period costs against the POR costs. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 4. The domestic interested parties state that the methodology used by the Department in past cases did not directly

address this particular issue of whether multiple period costing promoted accurate comparisons. Therefore, the domestic interested parties state that it is clear that the Department's refined methodology permits the Department to review the precise impact of the quarterly-average COM approach versus an annual average approach, which serves the aim of choosing the cost methodology with the greatest accuracy. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 6-7.

In addition, the domestic interested parties contend that Habas cites to several sources of information that are not on the record of this review to demonstrate that the five- to ten-percent difference in COM is significant, including two ITC determinations and facts derived from a subsequent administrative review of this antidumping duty order. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 7. Regarding Habas' citations to ITC publications, the domestic interested parties argue that these citations do not have probative value in this proceeding as they relate to data obtained to analyze whether U.S. producers were materially injured by any dumping or subsidization that may have occurred. Moreover, the domestic interested parties assert that Habas did not base its comments on the Turkish industry, but rather on a determination made by the ITC with respect to the U.S. rebar industry. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 9. The domestic interested parties further argue that the 2003 ITC information does not relate to the facts of this case because it is derived from a time frame that is after the POR in question for this remand. Regarding Habas' citation to the anti-competition finding in the recently completed 2005-2006 administrative review, the domestic interested parties claim that this finding is not relevant to this litigation because the pricing information cited by Habas is from an entirely different time frame than is at issue here and, again, the information simply was not on the administrative record of the

administrative review now before the Court. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 10.

Further, the domestic interested parties disagree with Habas' reliance on several different percentage benchmarks found in the antidumping law and regulations because they do not relate to the issue at hand. The domestic interested parties contend that there is no reason to believe that what is considered a significant rate of inflation or a significant dumping margin should inform the Department's analysis of a significant difference between quarterly costs and POR-wide costs. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 11.

In addition, the domestic interested parties disagree with Habas' contention that the Department has wrongly relied on the determination in Pasta from Italy for purposes of determining that a five- to ten-percent change in COM is not significant. The domestic interested parties assert that Pasta from Italy represents the Department's analysis of a multiple-cost period issue. According to the domestic interested parties, although the Department has rightfully refined its analysis of determining whether a company should be allowed to depart from the POR-average cost methodology, it is logical to rely on the percentages stated in Pasta from Italy as a basis for administering this refined analysis.

Finally, the domestic interested parties suggest that the Department clarify its discussion of the relevance of SRAMS from Taiwan, 63 FR at 8926; DRAMS from Korea, 58 FR at 15476; and EPROMS from Japan, 51 FR at 39685. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 12.

The domestic interested parties, therefore, argue that the Department should conclude that the increase in COM in this case was not shown to be significant, out of the ordinary, or otherwise unusual for the product and industry at issue.

Department's Position:

Depending on what cost reporting period one uses, the length of the averaging period, and the timing of a respondent's sales throughout the POR, it is possible to end up with very different results when performing the sales-below-cost test. This is precisely why the Department has developed a standard, predictable and fair method for cost reporting. To deviate from our standard single annual POR average cost method, the fact pattern must be very compelling. The facts in this case, however, do not support such deviation.

In this case, while we performed analyses that differed from that performed in prior cases such as Pasta from Italy at Comment 18, we did so as a means to further refine our analysis. In this case, we analyzed the impact of calculating costs on an annual average basis versus a quarterly average basis. In addition, we took into account all components of the COM, not just a single input. As all components have an impact on the total cost to the producer, with some elements increasing and others decreasing, it is important to view the fluctuation in costs as a whole in determining whether such cost fluctuations are significant enough to deviate from our normal practice. In Habas' case, it is clear that the difference in costs of approximately five to ten percent when using an annual average method versus a quarterly average method, is not significant. We disagree with Habas' claim that to compare the difference between the two averaging methods at issue is an inappropriate test. See Habas' February 1, 2008, Comments at 7. This analysis makes it very clear the extent to which costs are impacted by the fluctuation in costs throughout the POR.

Habas continues to argue that the change in costs from the beginning of the POR to the end is the proper method for analyzing this issue. See Habas' February 1, 2008, Comments at 9. Other than the change in cost resulting in a larger figure, this approach provides little use in

assessing the issue at hand. To simply look at costs at two points in time fails to recognize all production activity throughout the year. That is, it simply represents the cost at two specific points in the POR, and calculates the percentage difference between those two points. By calculating the percent difference in the COM based on two specific points of time, we would be ignoring both the volume and COP occurring during the remaining time in the POR. Thus, we do not believe that Habas' proffered analysis is appropriate.

Furthermore, to deviate from our normal, predictable, and consistent approach every time costs temporarily increase or decrease would create a situation in which we no longer have a practice, and which no longer allows for a predictable result. Habas claims that the purpose of the Department's test is to aid in determining whether there is a temporal mismatch between sales and costs. See Habas' February 1, 2008, Comments at 11. Habas, however, oversimplifies the issue at hand. The difficulty in this case is to determine at what point the fluctuation in costs is significant enough to depart from our normal annual average method. Is a ten-percent difference in costs between an annual average method and a quarterly average method the tipping point? Is it 15 percent? By looking to the fluctuation in Habas' product-specific home market sales prices within a given quarter, there is a basis for us to measure the normal range of fluctuation that occurs within Turkey for rebar sales over a relatively short period of time. As such, contrary to Habas' claim, we do consider the extent to which home market prices fluctuate in a given quarter instructive in deciding whether cost fluctuations over the annual POR are significant.

Habas claims that our analysis of the volatility of home market prices was flawed because the minimum and maximum prices during a quarter were not representative of its home market sales in the quarter. See Habas' February 1, 2008, Comments at 18. That is, Habas claims that due to the low quantities associated with these sales, these sales are outliers in the database. In

response to Habas' claim, we have refined our analysis from the Final Results by including more sales. Specifically, instead of using only the single high- and low-priced sales, as we did in the Final Results, we have calculated the weighted-average price for the top ten high-priced and low-priced sales transactions by product by quarter and calculated the percent difference between the average high- and low-priced transactions. See the "Habas Remand Memo" at Attachment 2 to this Redetermination at point 3. This revised analysis addresses Habas' concerns since the quantity and value of these transactions are not minor. We continue to find under this revised analysis that the fluctuation in home market prices within a given quarter still frequently exceeds the fluctuation in COM throughout the entire POR. This point continues to lead us to the conclusion that the cost variation experienced by Habas over the entire POR was not unusual given that its own home market price variations during much shorter periods of time frequently exceeded that figure. See the "Habas Remand Memo" at Attachment 2 to this Redetermination at point 3.

We disagree with Habas that the statement in the ITC report that a five-percent increase in price is a significant factor in purchasing decisions of the U.S. market for rebar should have any impact on our decision in this case. See Habas' February 1, 2008, Comments at 14. Looking at Habas' actual home market sales information is the relevant issue here, not a generalized statement relating to a different aspect of this proceeding during a different period of time, and related to the U.S. market, not the Turkish market.

In addition, Habas' reference the Department's post-preliminary determination addressing anti-competition findings in the 2005-2006 administrative review is not persuasive as that subsequent decision was not on the administrative record of this proceeding, relates to a time frame subsequent to the review period at issue, and was based on a different set of facts before the

agency. Habas' reliance on information which is not on the administrative record before the agency is inappropriate and the Department will not address this line of argument further. See Habas' February 1, 2008, Comments at 15.

The Department relies on many different numerical thresholds, percentages, ratios, and comparisons in administering an antidumping investigation or review. Habas has pointed to several instances in which the Department will rely on a percentage threshold to manage elements of a case, such as determining whether a dumping margin is de minimis (i.e., two percent for investigations and 0.5 percent for administrative reviews), determining adjustments to levels of trade or a CEP offset (i.e., those having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than one percent of the EP, CEP, or NV, as the case may be), or determining whether a country's economy experienced high inflation (i.e., annually exceeding 25 percent). See section 733(b)(3) of the Act, 19 CFR 351.106(c)(1), 19 CFR 351.413, and section A questionnaire at A-12, respectively. See Habas' February 1, 2008, Comments at 15. There are also additional instances where we rely on percentages, such as when we disregard below-cost sales that are not made in substantial quantities (i.e., where less than 20 percent of a respondent's sales of a given product were at prices less than COP), and also when we allow special reporting for merchandise with value added after importation that exceeds substantially the value of the imported product (i.e., at least 65 percent of the price of the merchandise as sold in the United States). See section 773(b)(2)(C)(i) of the Act and 19 CFR 351.402(c)(2), respectively. These various thresholds differ greatly and relate to many different specific parts of the antidumping proceeding. The only percentage threshold that is close to being on point here is the 25-percent high inflation percentage, where we resort to calculating costs using shorter period averages. However, even if we were to follow the Department's 25-percent

high inflation standard here, Habas even admits that the 25-percent threshold was not reached here. See Habas' February 1, 2008, Comments at 15.

Further, we do not find the facts of this case similar to cases which have involved high technology products such a dynamic random access memory, static random access memory, or erasable programmable read only memory semiconductors. In those instances, where the Department departed from its standard cost-averaging periods, the Department deviated from using an annual-average cost methodology because a high technology product experienced drastic and consistent cost and price changes over a short period of time or the respondent's COM changed significantly throughout the cost reporting period. The nature of these high technology industries whereby prices and costs decline dramatically on a quarterly basis due to quick technological advances in the capabilities and production of these semiconductors is unique. Rebar is neither a high technology product nor does it have the characteristics of rapid advances in capabilities and production methods present in semiconductors.

In conclusion, when we compared the resulting COM calculated as an annual average versus calculating a quarterly average, we did not find a significant difference. Our analysis focused on the precise impact of using Habas' quarterly average COM approach versus the Department's normal annual average COM method, including that fact that Habas could not actually connect the merchandise during the quarters to merchandise produced during the same quarter. We determined that Habas' approach was no more accurate than the analysis normally applied by the Department. Furthermore, we considered the extent to which costs fluctuated over the entire POR relative to the extent to which home market sales prices fluctuated within a given quarter and noted that the cost fluctuations over the longer period were less significant, indicating that the fluctuations in cost were not unusual. Therefore, we based our decision not to depart

from our predictable, reasonable, longstanding practice of using annual-average costs on a thorough, complete, and refined analysis of Habas' costs and sales price information.

Comment 2: Linking Quarterly Average Costs to Sales

Habas disagrees with the Department's conclusion that there is no evidence on the record to support the proposition that production costs in each quarter were directly related to the sales reported in that same quarter. See Habas' February 1, 2008, Comments at 26. Habas argues that home market prices and the COM of rebar marched in lockstep in each quarter of the POR which concretely demonstrates that sales during a quarter are linked with the cost of the products sold during the quarter. To support its position, Habas argues that the record demonstrates that the inventory holding period for rebar is less than one month, and for billets is less than one week. See Habas' February 1, 2008, Comments at 24. Habas also notes that the Department stated in the post-preliminary determination regarding an anti-competition issue that Turkish producers keep low inventory levels to ensure that costs and prices are closely matched. See Habas' February 1, 2008, Comments at 26.

Further, Habas contends that the Department's attempt to undermine this evidence with an analysis showing that profit on home market sales varied from quarter to quarter is so thoroughly flawed that it has no probative value. See Habas' February 1, 2008, Comments at 23. Specifically, Habas asserts that the Department's use of incorrect figures in calculating profit eliminates any probative value that might otherwise be found in the analysis. Further, Habas holds that, even if the figures were accurate, any variation in profitability simply reflects differences between prices and costs and in no way controverts the quarterly tracking of prices and cost it has shown on a quarterly basis.

The domestic interested parties counter that Habas has never shown that there is a direct link, within each quarter, for the input costs for a given piece of rebar and the sales price for that same piece. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 18. Moreover, the domestic interested parties assert that the Department's analysis of the price fluctuations and cost fluctuations within each quarter of the POR supports the conclusion that prices and costs are not directly linked. The domestic interested parties argue that the Department never stated that it was analyzing the minimum and maximum values in the quarterly data, but rather the Department used the analysis to conclude that the price fluctuations within the quarters were wider and more pronounced than the fluctuations in the COM over the POR. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 19. The domestic interested parties assert that the Department's analysis did not appear to be limited to the data that Habas has referenced. The domestic interested parties suggest that the extent to which cost fluctuations are accompanied by much wider price fluctuations that do not track the fluctuations in cost supports the Department's finding that the prices and costs are not directly linked, much less directly linked within distinct quarters. Finally, the domestic interested parties assert that without such data, Habas cannot show that quarterly costs promote accuracy and are, therefore, justified. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 19.

The domestic interested parties argue that the mere fact that costs and prices move upward within the same quarter does not mean that the scrap purchased in that quarter was incorporated into rebar sold in the same quarter, nor does it provide the Department with information sufficient to tie individual input purchases to particular sales. The domestic interested parties hold that record evidence relating to Habas' inventory management shows that Habas raised prices even when it produced rebar from lower-priced inputs in a prior quarter. See the domestic interested

parties' February 6, 2008, Rebuttal Comments at 18, citing Habas' January 31, 2005, supplemental section A-D questionnaire response at exhibit D-33. Therefore, the domestic interested parties maintain that the Department can have no idea, with regard to any given sale, how much the related input costs were or when the inputs were purchased and, accordingly, cannot determine how sales relate to costs within a quarter.

Department's Position:

Habas attempts to justify a departure from annual-average costs by following the example set forth in Brass Sheet and Strip from Netherlands, 65 FR at 747-748. See Habas' February 1, 2008, Comments at 5. However, despite Habas' best efforts, the facts here are not similar to those in Brass Sheet and Strip from Netherlands, in which the respondent could make a contemporaneous comparison of metal values and sales prices which resulted in a more accurate calculation of the dumping margin in that instance because the respondent linked its raw material input purchases to its related sales transactions in its normal books and records. See Brass Sheet and Strip from Netherlands, 65 FR at 747-748. The respondent in Brass Sheet and Strip from Netherlands was able to show the Department that its monthly cost and price fluctuations were in "absolute lockstep" with one another. Id. Accordingly, in Brass Sheet and Strip from Netherlands, the Department determined it appropriate to deviate from calculating costs on an annual-average basis over the entire cost reporting period because record evidence showed that cost fluctuations had a significant impact on the total COM during the period and prices and costs for the shorter periods could be accurately matched.

We disagree with Habas' conclusion that its home market prices and costs "marched in lockstep" in each quarter. Habas provided a graph on page 21 of its February 1, 2008, Comments which purports to show that prices and costs moved in lockstep in each quarter of the POR.

While we note a general upward trend in the last three quarters of the graph we do not find that prices and costs moved consistently together. Rather, we see divergent trend lines in this graph. When we examined the underlying prices and costs from exhibit 5 of Habas' February 1, 2008, Comments, we found that selling prices and costs do not move in "lockstep." Using the data in this exhibit, one can see that the overall upward swings in costs and prices occurred at different rates. In fact, in our analysis of the information contained in this exhibit, we noted that costs and prices increased at different rates from quarter to quarter, product by product, which translates into prices and costs not moving in lockstep. See the "Habas Remand Memo" at Attachment 2 to this Redetermination at point 3.

In a more straight-forward analysis of how well Habas' quarterly prices and costs track each other, for these remand results, we again analyzed the consistency of Habas' quarterly profit percentages on home market sales. If Habas' quarterly home market prices and costs did in fact track each other in "lockstep" as claimed by Habas, one would expect its quarterly profit percentage on home market sales to be consistent. We corrected for the error in our profit analysis pursuant to the Draft Results and present the corrected profit ratios in the "Habas Remand Memo" at the Attachment 2 of this Redetermination. We calculated Habas' quarterly profit percentage by subtracting from Habas' quarterly home market net sales revenue its quarterly cost of producing such sales, and then divided by the same quarterly cost of producing the merchandise sold during the quarter. The results, which reflect varying losses in the first two quarters, and varying profits in the last two quarters, again support our conclusion that prices and costs are not, in fact, moving in "lockstep." If prices and costs "marched in lockstep" as Habas claims, then profit would remain relatively constant throughout the POR, as prices would increase in relatively the same amount as costs. However, we do not find this to be case. Further, we note

that for prices within a given quarter to fluctuate by more than costs fluctuate over the entire annual POR, logic dictates that prices and costs are not moving in “lockstep” with each other.

Also, we do not find that two generally upwardly trending lines in the graph provide evidence that scrap purchased in one quarter was used to produce products that were sold in the same quarter. Unlike in Brass Sheet and Strip from Netherlands, where the respondent could directly tie input metal purchased to specific sales of subject merchandise, we do not find that the graphical representation of home market sales prices and the COM on page 21 of Habas’ February 1, 2008, Comments can establish a link between input purchases and sales of rebar.

Comment 3: Habas’ Other Arguments

Habas states that the Department asserted that there are at least eight factors, including inventory holding periods for raw materials and finished goods, that may “affect the timing relationship between the purchase of raw materials, production, and the sale of the product.” See the Draft Results at 6. In regard to these factors, Habas argues that it fairly raised the issue of quarterly costing in the review and the Department’s appropriate response would have been to ask any supplemental questions it desired. See Habas’ February 1, 2008, Comments at 24.

Moreover, Habas contends that facts addressing many of the factors are already on the record. For example, Habas argues that information on the record regarding its short inventory holding period for billets and rebar shows that production costs in each quarter are directly related to sales in the same quarter. In addition, Habas contends that record evidence demonstrates that it did not have long-term contracts with home market customers, that all sales were on a spot basis, and that the only scrap purchase on the record indicates that it was purchased pursuant to a long-term contract. Further, Habas maintains that, as it has shown that its home market prices move in lockstep with its cost, it has satisfied its obligation to make a prima facie case, and neither the

domestic interested parties nor the Department has pointed to evidence on the record that controverts its position. See Habas' February 1, 2008, Comments at 25.

Finally, Habas points out that, in its view, the Department's application of an erroneous cost methodology has made an excessive number of home market sales fail the cost test by artificially increasing the COP. Habas argues that the question is not whether the sales that pass the cost test are in the ordinary course of trade, but whether the universe of sales that pass the cost test is correctly constituted. Habas claims that the universe of sales that pass the cost test has been erroneously truncated by the Department's methodology. See Habas' February 1, 2008, Comments at 28.

The domestic interested parties contend that, as the party requesting a departure from the Department's normal practice of using POR costs, Habas bore the burden of providing sufficient record evidence to support its claim that using quarterly costs was appropriate. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 24. According to the domestic interested parties, Habas failed to do so and, therefore, there was no reason for the Department to make any further inquiries. Moreover, the domestic interested parties argue that Habas' contentions regarding inventory holding periods are equally unpersuasive since they do not link any scrap purchased to the product produced and sold within a quarter. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 24. Finally, the domestic interested parties disagree that the universe of sales in the dumping calculation has been erroneously truncated. See the domestic interested parties' February 6, 2008, Rebuttal Comments at 26. The domestic interested parties respond that quarterly and POR costs are not so clearly divergent as to create a serious risk that annualized costs will distort the calculation to a greater degree than quarterly costs.

Department's Position:

We disagree with Habas that it was the Department's burden to ask additional supplemental questions to help Habas support its request to shorten the cost-averaging periods. As the party requesting a departure from the Department's standard practice, it was Habas' burden to provide sufficient evidence to support its claim. See Habas' February 1, 2008, Comments at 24. However, Habas failed to sufficiently support its claim.

We also disagree with Habas that it has sufficiently addressed the factors identified which affect the timing relationship between the purchase of steel scrap, production of rebar, and the sale of rebar. See Habas' February 1, 2008, Comments at 24. We find that relying on a shorter cost reporting period creates uncertainty as to how accurately the average costs during the shorter period relate to the merchandise sold during that same shorter period. Of the numerous examples highlighted by the Department, Habas has addressed only three. As any one of the points raised by the Department can have an impact on the accuracy of matching sales and costs during a given quarter, ignoring any one of them results in uncertainty.

Furthermore, we do not find Habas' relatively short inventory holding period for billets evidence of a direct link between sales and COP in a given quarter. See Habas' February 1, 2008, Comments at 24. While on average it appears from the turnover ratio Habas calculated that it generally holds billets in inventory for a short period of time, this does not establish when the scrap in inventory used to produce rebar was purchased. Habas points to the only scrap purchase explicitly on the record as a spot contract. See Habas' February 1, 2008, Comments at 25. However, one contract for one purchase during the POR does not qualify as evidence of the company's purchasing experience. Lastly, Habas states that it does not sell to home market customers pursuant to long-term contracts which would appear to indicate a shorter lag time

between date of sale and shipment. See Habas' February 1, 2008, Comments at 25. However, the question of whether the shipped rebar was produced in the same quarter in which it was sold remains an open question with no direct answer on the record. Because we have not found that the difference between Turkish manufacturing costs during the POR as measured on a quarterly basis versus an annual average basis were consequential, we found that the difference did not negate the reliability and accuracy of annualized costs. We maintain that this group of sales has not been improperly reduced because we have used annualized costs. Therefore, we do not find that the Department's sales-below-cost test as performed in this review erroneously truncated the universe of home market sales in the margin analysis.

We performed the sales-below-cost test as usual in this review. See section 773(b) of the Act. Because we do not find that using annual average costs for the test would be inappropriate, we did not deviate from our normal practice. The results of the sales-below-cost test resulted in a universe of home market sales that were above cost, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same LOT as the EP or CEP. This determination is reasonable and supported by substantial information on the record of the administrative proceeding.

Comment 4: *U.S. Date of Sale*

The domestic interested parties argue that the Department's determination to use contract date as the U.S. date of sale for Habas is not consistent with either the Department's practice or judicial precedent. Specifically, the domestic interested parties argue that, in accordance with 19 CFR 351.401(i), it is the Department's practice to use invoice date as the date of sale. The domestic interested parties assert that the Department may only apply a date other than invoice date as the date of sale if it is satisfied that an alternate date better reflects the date on which the

material terms of sale were established. See Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1366-67 (CIT 2003) (Hornos Electricos); Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (Allied Tube); SeAH Steel Corp. v. United States, 25 CIT 133, 134-135 (Feb. 10, 2001) (SeAH Steel). Moreover, the domestic interested parties assert that the Court has held that the Department should only use a date other than invoice date as the date of sale in “unusual circumstances.” See Thai Pineapple Canning Indus. Corp. v. United States, 24 CIT 107, 109 (Feb. 10, 2000) (Thai Pineapple II), *rev’d on other grounds* at 273 F. Supp. 3d 1077 (Fed. Cir. 2001). See also the domestic interested parties’ February 4, 2008, Comments at 6.

Further, the domestic interested parties contend that the party seeking to establish an alternate date as the date of sale bears the burden of providing sufficient evidence to satisfy the Department that the alternate date better reflects the date on which the materials terms of sale were established. See Allied Tube, 132 F. Supp. 2d. at 1090. The domestic interested parties argue that, in order to overcome this burden, a party must: 1) provide sufficient evidence by establishing a complete record that includes all relevant sales documentation; and 2) demonstrate that the material terms of sale did not change, nor were subject to change, during the POR. See the domestic interested parties’ February 4, 2008, Comments at 7. Regarding the first item, the domestic interested parties assert that the Department determined in Oil Country Tubular Goods From Korea; Final Results of Antidumping Duty Administrative Review, 65 FR 13364 (Mar. 13, 2000), and accompanying Issues and Decision Memorandum (OCTG from Korea) at Comment 1 that “absent complete sales documentation supporting {the} respondent’s argument for a change in sale date methodology, and demonstrating a shift in their {sic} standard business practices, the Department cannot conclude that invoice date is no longer the appropriate date of sale because we

cannot determine whether or not there were changes in the material terms of sale not included in the sample.” In addition, the domestic interested parties note that in Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12935 (Mar. 16, 1999) (Cold-Rolled Steel from Korea), the Department stated “even if the documentation from a few sample U.S. sales suggests that essential terms of sale did not change after initial contract date, this does not demonstrate that essential terms of sale were not subject to change after initial contract date, or that essential terms of sale did not in fact change after initial contract date for significant numbers of sales.” Therefore, the domestic interested parties assert that Habas did not meet the burden of proof set forth in these cases because it did not provide a complete record with respect to date of sale, but rather only provided one sample set of sales documentation. See the domestic interested parties’ February 4, 2008, Comments at 8.

Regarding the second item, the domestic interested parties argue that, in addition to demonstrating that the terms of sale did not change, a respondent must also demonstrate that the terms of sale were not subject to change. See Hornos Electricos, 285 F. Supp. 2d at 1367 (where the Court found “{o}nly if the ‘material terms’ are not subject to change between the proposed date and the invoice date, or the agency provides a rational explanation as to why the alternative date ‘better reflects’ the date when ‘material terms’ are established, may the Department exercise its discretion to rely on a date other than invoice date for the date of sale”) and Allied Tube, 132 F. Supp. 2d. at 1090 (where the Court found that “a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date”). According to the domestic interested parties, in this case,

the evidence on the record supports the conclusion that Habas' material terms of sale were, in fact, subject to change. See the domestic interested parties' February 4, 2008, Comments at 9-10. Due to the proprietary nature of the domestic interested parties' specific assertion, we have also addressed this issue in a separate business proprietary memo. For further details, see the March 3, 2008, memorandum to The File from Brianne Riker entitled, "Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Court No. 05-00613 Slip Op. 07-167 (CIT Nov. 15, 2007): Business Proprietary Memorandum Regarding Date of Sale Comment" ("Date of Sale Memo") at Attachment 3 to this Redetermination. Therefore, the domestic interested parties contend that, contrary to the Department's determination in the Draft Results, Habas' contracts were subject to change during the POR.

Finally, the domestic interested parties contend that the Department should not use contract date as the date of sale because it previously used invoice date as the date of sale for Habas. According to the domestic interested parties, the Department has found that "the date of sale determination should not be changed from review to review without evidence of changes in a company's business or marketing practices." See OCTG from Korea at Comment 1. The domestic interested parties argue that the Department has found that a change in date-of-sale methodology could result in double-counting or omitting sales or otherwise manipulating the margin of a respondent. See id. Because no such change in business or marketing practices was reported by Habas, the domestic interested parties argue that changing Habas' date of sale is inappropriate. See the domestic interested parties' February 4, 2008, Comments at 11.

Habas argues that the Department's determination to use contract date as its U.S. date of sale is within its discretion and is supported by evidence on the record. Specifically, Habas contends that the domestic interested parties acknowledge that the Court found that the

Department has the discretion to determine the appropriate date of sale in Hornos Electricos, 285 F. Supp. 2d at 1367. See also, USEC v. United States, 498 F. Supp. 2d 1337, 1343-4 (CIT 2007). See Habas' February 5, 2008, Rebuttal Comments at 3. In this case, according to Habas, the Department reviewed its date-of-sale determination and ascertained that the related billing adjustment was stipulated in the late-delivery clause of the contract. Therefore, Habas asserts that the only matter that would prevent the use of contract date as date of sale (i.e., the billing adjustment) was factually resolved.

Moreover, Habas asserts that this case is similar to Colakoglu Metalurji A.S. v. United States, Slip Op. 2006-36 (CIT Mar. 13, 2006), where the Court approved a remand determination in which the Department found that contract date was the appropriate U.S. date of sale for the respondent because the differences between the quantities shipped and the quantities in the contract were all within the tolerances stipulated in the contract. In that case, Habas argues that, after resolving the factual issue of quantity differences, the Department was satisfied that the material terms of sale were established on the contract date. Habas contends that the Department should follow the same reasoning in this case. See Habas' February 5, 2008, Rebuttal Comments at 4.

Finally, Habas argues that the domestic interested parties' claim that the Department should not change the date-of-sale methodology in order to ensure that all sales are appropriately reviewed is speculative and not supported by any evidence on the record. Habas asserts that, if the domestic interested parties believed that any of its sales were not appropriately reviewed, they should have made a specific claim when the administrative review was being conducted. See Habas' February 5, 2008, Rebuttal Comments at 4.

Department's Position:

The Department's regulations at 19 CFR 351.401(i) define the date of sale as the date on which the material terms of sale (i.e., price and quantity) are established. We have examined the information on the record of this segment of the proceeding and we agree with Habas that the material terms of sale for its U.S. sales were established at the contract date. In this case, the record reflects that the billing adjustment, which we originally determined was a change in the material terms of sale, was, in fact, stipulated in the late-delivery clause of the contract. Moreover, we find no other evidence on this administrative record to demonstrate that the prices and quantities shown in Habas' contracts were changeable in this specific administrative review, nor has the Department made such a determination with respect to Habas' contracts in prior segments of this proceeding. Therefore, we find that the material terms of sale were established at the contract date.

We agree with the domestic interested parties that invoice date is the presumptive date of sale. However, the Department has the discretion to determine whether the invoice date or an alternate date better reflects the date when such terms are set. Specifically, the relevant section of the regulations states:

{T}he Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See 19 CFR 351.401(i). In The Preamble to the Department's regulations, the Department explained the exceptions to using the invoice date as the presumptive date of sale, stating:

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.

See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27349 (May 19, 1997) (The Preamble). The Court has further upheld that the Department has the discretion to determine the appropriate date of sale if the Department is satisfied that an alternate date best reflects when the material terms of sale are established. See Hornos Electricos, 285 F. Supp. 2d at 1367, SeAH Steel, 25 CIT at 134-135, and Allied Tube, 132 F. Supp. 2d at 1090. Thus, in this case, we are satisfied that the alternate date (i.e., contract date) is the appropriate date of sale.

Moreover, we disagree with the domestic interested parties' assertion that the Department's discretion to use an alternate date is limited to unusual circumstances in accordance with Thai Pineapple II. Rather, in that case, the Court found that there was no reason for the Department to abandon its presumption of using invoice date as the date of sale because the material terms of sale "were changed in some instances." See Thai Pineapple II, 25 CIT at 109. In the instant case, we have determined that the billing adjustment was stipulated in the contract and, thus, does not represent a change to the material terms of sale.

We further disagree with the domestic interested parties that Habas did not meet the burden of providing sufficient evidence that contract date is an appropriate date of sale. The domestic interested parties contend that, in order to provide sufficient evidence, a respondent must supply all relevant sales documentation for the Department's analysis in accordance with the Department's practice in OCTG from Korea and Cold-Rolled Steel from Korea. However, in the instant case, we did not instruct Habas to provide all U.S. sales documentation. Moreover, we note that it is not the Department's general practice to require respondents to submit complete sales documentation for all sales, as this could be a very burdensome request. Section A of the antidumping duty questionnaire, which the Department issues to all respondents involved in an antidumping duty proceeding, clearly states:

Provide a copy of each type of agreement and all sales-related documentation generated in the sales process (including the purchase order, internal and external order confirmation, invoice, and shipping and export documentation) for a sample sale in the foreign market and U.S. market during the POR.

See section A of the questionnaire at A-10. Therefore, because Habas provided the sample U.S. sales documentation that is required by Section A of the antidumping duty questionnaire and demonstrated that the billing adjustment in question was stipulated in the contract, we find that it provided the necessary evidence to support its date-of-sale claim.

Moreover, we disagree with the domestic interested parties' assertion that, even if Habas supplied the necessary evidence regarding its date-of-sale claim, it did not also demonstrate, in accordance with the Court's finding in Hornos Electricos, that its material terms of sale were not subject to change. The domestic interested parties contend that a certain clause found in the contract provided in the sample U.S. sales documentation demonstrates that the contract was subject to change. For further discussion of this specific information, see the "Date of Sale Memo" at Attachment 3 to this Redetermination. However, we find that, even though such a clause exists in the contract, there is no evidence on the record that Habas or its U.S. customer did, in fact, change the contract in any way or that the language represented anything more than standard contract language. Therefore, we disagree that this clause represents evidence that Habas' contracts were changeable during the POR.

Finally, regarding the domestic interested parties' concerns with respect to changing date-of-sale methodologies from one review to the next, we agree that the Department is generally cautious in changing established methodologies. However, the issue of the appropriate date-of-sale methodology for Habas was raised for the first time in this segment of the proceeding, and the substantial evidence on the record supports the conclusion that the date of contract was the appropriate date of sale during the POR. See USC 1516(a)(B)(1). While we agree with the

domestic industry that methodological consistency is a desirable goal, consistency, in and of itself, cannot outweigh the mandate set forth in the Department's regulations to base the date of sale on the date upon which the material terms of sale are first established. See 19 CFR 351.401(i). Lastly, using Habas' contract dates as U.S. date of sale here does not alter the universe of transactions examined in this review, and thus this decision does not give rise to the concern that we have not captured all of Habas' U.S. sales in this review or any subsequent review. Therefore, the domestic industry's argument does not apply to the facts before the Department in this case.

Consequently, because: 1) we do not find that the billing adjustment reported by Habas constitutes a change to the material terms of sale; 2) there is no other evidence on this administrative record to demonstrate that the prices and quantities shown in Habas' contracts are changeable; and 3) the Department had not made such a determination with respect to Habas' contracts in prior segments of this proceeding, we find that the contract date is the appropriate date of sale for Habas' U.S. sales. Accordingly, we have recalculated the margin using Habas' contract date as the date of sale.

FINAL RESULTS OF REDETERMINATION

Based on the above analysis, we find that Habas' COP should be based on its normal methodology (i.e., the POR weighted-average cost method), as supported by substantial evidence on the record and otherwise in accordance with law. In addition, we find that the material terms of sale for Habas' U.S. sales were established on the contract date. Therefore, we have recalculated the dumping margin for Habas using its contract date as the U.S. date of sale. See Attachment 4 to this Redetermination. Accordingly, for these final results, the weighted-average margin for Habas for the period April 1, 2003, through March 31, 2004, is 22.53 percent.

Ronald K. Lorentzen
Acting Deputy Assistant Secretary
for Import Administration

(Date)