

Habas Sinai ve Tibbi Gazler Istihsal Endustrisi A.S. v United States
Consol. Ct. No. 17-00204, Slip Op. 19-130 (CIT October 27, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination (*Second Final Remand Redetermination*) pursuant to the decision and remand order issued by the U.S. Court of International Trade (Court) on October 17, 2019.¹ This *Second Final Remand Redetermination* concerns the final determination of the less-than-fair-value investigation of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey).² The Court remanded and ordered Commerce to recalculate normal value (NV) without making a circumstance of sale adjustment related to the duty drawback adjustment made to export price (EP) (or constructed export price (CEP)).³

As set forth in detail below, pursuant to the *Second Remand Order*, Commerce has, under respectful protest,⁴ granted Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) a duty drawback adjustment by

¹ See *Habas Sinai ve Tibbi Gazler Istihsal Endustrisi A.S. v United States*, Slip Op. 19-130 (CIT October 17, 2019). (*Second Remand Order*).

² See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM), as amended by *Steel Concrete Reinforcing Bar From the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 FR 32532 (July 14, 2017) (*Amended Final Determination*).

³ See *Second Remand Order* at 31.

⁴ See *Viraj Group v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003) (*Viraj*).

calculating each company's exempted import duty ratio by dividing its period of investigation (POI) exempted import duties by its POI cost of sales and applied the resultant ratio to the CONNUM-specific total cost of manufacturing to determine the per-unit, CONNUM-specific, imputed amount of import duties.⁵

BACKGROUND

On May 22, 2017, Commerce published the *Final Determination* pertaining to mandatory respondents Habas and Icdas.⁶ The POI is July 1, 2015 through June 30, 2016. On July 14, 2017, Commerce published the *Amended Final Determination* after correcting a ministerial error present in the *Final Determination*.⁷

On January 23, 2019, the Court remanded the *Final Determination* and directed Commerce to: (1) reconsider the calculation of Plaintiffs' duty drawback adjustment; and (2) reconsider the application of partial adverse facts available (AFA) to Icdas.⁸ Also in its January 23, 2019 opinion, the Court sustained: (1) Commerce's denial of Habas' and Icdas' request to utilize quarterly cost of manufacturing; (2) Commerce's use of invoice date as the date of sale for Habas' U.S. sales; and (3) Commerce's calculation of Habas' imputed credit expenses.⁹ On May 17, 2019, Commerce filed its *First Remand Redetermination*.¹⁰

⁵ See Memoranda, "Draft Results of Redetermination Pursuant to Second Remand of the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey: Amended Final Calculation for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated December 27, 2019 (Habas Remand Calc Memo); and "Draft Results of Redetermination Pursuant to Remand of the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey: Amended Final Calculation for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated December 27, 2019 (Icdas Remand Calc Memo) unchanged for this *Second Final Remand Redetermination*.

⁶ See *Final Determination*, 82 FR at 23193-94.

⁷ See *Amended Final Determination*, 82 FR at 32532-33.

⁸ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S., et al., v. United States*, Consol. Ct. No. 17-00204, CIT Slip Op. 19-10 (January 23, 2019) at 44.

⁹ *Id.* at 21-23, 26-29, and 34-36.

¹⁰ See *Final Results of Redetermination Pursuant to Court Remand: Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S., et al., v. United States Consol. Court No. 17-00204, Slip Op. 19-10 (CIT January 23, 2019)*, dated May 17, 2019 (*First Remand Redetermination*).

On October 17, 2019, the Court sustained Commerce’s use of partial AFA to Icdas, but ordered Commerce to recalculate NV without making a circumstance of sale adjustment related to the duty drawback adjustment made to EP (or CEP).¹¹ On December 27, 2019, Commerce issued its *Second Draft Remand Redetermination*.¹² On January 3, 2020, the Rebar Trade Action Coalition (RTAC) and its individual members (collectively, the petitioner), Habas, and Icdas, each filed comments on the *Second Draft Remand Redetermination*.¹³

ANALYSIS:

Pursuant to the Court’s instructions, Commerce, under protest, has recalculated each respondent’s NV without making a circumstance of sale adjustment related to the duty drawback adjustment made to EP (or CEP). We have added, pursuant to the Federal Circuit’s opinion in *Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F. 3d 1335 (Fed. Cir. 2011), the amount of the duty forgiven divided by the production data to arrive at the annual average per-unit import duty burden to add to the cost of production.

FINAL RESULTS

In accordance with the Court’s *Remand Order*, Commerce has, as discussed above, revised certain aspects of its dumping analysis. Based on these changes, the estimated POI weighted-average dumping margins and cash deposit rates for Habas and Icdas are listed in the chart below. Given that the estimated weighted-average dumping margins and cash deposit rates

¹¹ See Habas Remand Calc Memo; and Icdas Remand Calc Memo.

¹² See Draft Results of Redetermination Pursuant to Court Remand: *Habas Sinai ve Tibbi Gazler Istihsal Endustrisi A.S. v United States* Consol. Ct. No. 17-00204, Slip Op. 19-130 (CIT October 17, 2019), dated December 27, 2019 (*Second Draft Remand Redetermination*).

¹³ See Petitioner’s Letter, “Steel Concrete Reinforcing Bar from Turkey: RTAC’s Comments on Draft Results of Remand Redetermination,” dated January 3, 2020 (Petitioner’s Draft Comments); see also Habas’ Letter, “Antidumping – Steel Concrete Reinforcing Bar from Turkey; Habas comments on draft redetermination in second remand,” dated January 3, 2020 (Habas’ Draft Comments); and Icdas’ Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. Comments on Draft Results of Redetermination Pursuant to Court’s October 17, 2019 Remand Order: Slip Op. 19-130,” dated January 3, 2020 (Icdas’ Draft Comments).

for Habas and Icdas have been revised, Commerce is also recalculating the estimated weighted-average dumping margin and cash deposit rates for all other producers and exporters.¹⁴

Exporter or Producer	Amended Final Determination (percent)		Remand Redetermination (percent)	
	Weighted-Average Dumping Margin	Cash Deposit Rate (adjusted for export subsidies)	Weighted-Average Dumping Margin	Cash Deposit Rate (adjusted for export subsidies)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	5.39	5.25	4.08	4.04
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	9.06	8.89	4.17	4.00
All Others	7.43	7.26	4.13	3.96

¹⁴ See Memorandum, “Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey – Final Determination Calculation for the ‘All-Others’ Rate,” dated May 15, 2017; *see also* Memorandum, “Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey – Amended Final Determination Calculation for the ‘All-Others’ Rate,” dated July 10, 2017; and Memorandum, “Draft Results of Redetermination Pursuant to Remand: Steel Concrete Reinforcing Bar from the Republic of Turkey, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S., et. al. v. United States, Consol. Ct. No. 17-00204, Slip Op. 19-10 – Draft Calculation for the ‘All-Others’ Rate,” dated December 27, 2019, unchanged for this *Second Final Remand Redetermination*.

COMMENTS ON SECOND DRAFT REMAND REDETERMINATION

Comment 1: Whether the duty drawback methodology used by Commerce in the *Second Final Remand Redetermination* complies with the Court's Order.

Petitioner's Draft Comments

- The *Second Draft Remand Redetermination* relies on a duty drawback methodology that produces a distorted margin, reducing the margins for most Turkish rebar manufacturers well below what a duty-neutral calculation would produce.¹⁵
- The petitioner urges Commerce to explain its rationale for adopting the *Saha Thai* methodology that produces distorted margins.¹⁶
- The petitioner urges Commerce to adopt a different option of a duty-neutral calculation. For example, Commerce could adjust the cost-side drawback methodology approved in *Saha Thai* to ensure the per-unit costs are duty-reflective to the same degree as per-unit EP, consistent with the principles espoused in *Saha Thai*.¹⁷
- The Federal Circuit recognized that Commerce has the statutory authority to include in the cost calculation “implied costs” that are not reflected in a respondent’s books, as required to “reasonably reflect the costs associated with the production and sale of the merchandise,” and these remaining costs had to be imputed into the cost side of the antidumping calculations.¹⁸

¹⁵ See Petitioner’s Draft Comments at 6 (citing *First Remand Redetermination* at 3-4).

¹⁶ *Id.* at 7 (citing *Saha Thai Steel Pipe (Public) Co., Ltd. v. United States*, 635 F. 3d 1335 (Fed. Cir. 2011) (*Saha Thai*)).

¹⁷ *Id.* (citing *Second Remand Order*).

¹⁸ *Id.* at 7-8 (citing Section 773(f)(1)(A) of the Act; and *Saha Thai*).

- Consistent with *Saha Thai*, Commerce should impute duty costs up to the same per-unit level as reflected in EP. In this case, where EP is fully duty-loaded, but the respondents do not incur or book any duty costs at all, the respondents' costs can (and should) be adjusted upwards to reflect the same, per-unit duty load as EP.¹⁹
- In *Rebar Trade Action Coalition v. United States*, the Court specifically suggested that costs and NV could be adjusted to ensure duty neutrality by imputing the same domestic-to-foreign input content ratio that is implicitly embodied in the duty drawback adjustment made to U.S. price to cost and/or NV. Such an approach does not result in an overstated cost/NV; rather, it appropriately places NV at the same duty-inclusive level as EP, eliminating the distortive imbalance that otherwise exists in the duty drawback calculation. Commerce should recalculate the drawback adjustment using the modified *Saha Thai* approach described here.²⁰

Habas' Draft Comments

- Commerce erred in excluding from the adjustment to U.S. price two inward processing certificates (IPCs) that remained open at the end of the POI. Commerce's imposition of the POI limitation undercuts its stated goals of accuracy, transparency, and predictability when ignoring verified record information. The record shows that Habas had exports under these IPCs during POI. The law requires Commerce to apply the full amount of the drawback attributable to U.S. exports during the POI.²¹

¹⁹ *Id.* at 9-10 (citing *Saha Thai*).

²⁰ *Id.* at 10 (citing *Rebar Trade Action Coalition v. United States*, No. 14-00268, Slip Op. 16-88 (CIT September 21, 2016)).

²¹ See Habas' Draft Comments at 1-2 (citing *Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi v. United States*, Slip Op. 19-10 (CIT January 23, 2019) at 14; and *Tosçelik Profil ve Sac Endüstrisi v. United States*, 348 F. Supp. 3d 1321, 1328 (CIT 2018) (requiring Commerce to include in the drawback calculation IPCs that closed after the conclusion of the POI) (*Toscelik 2018*)).

- When Commerce imputes to COP the amount of duties that are drawn back in a given period, it is, in effect, treating the duties as if they were paid in cash to the Turkish government at the time of importation. If Habas were operating under a “cash” drawback regime, Habas would not only pay duties when it imported raw materials, but it would also receive a cash rebate of those duties that were actually paid when the goods were exported.²²
- Habas submits that the net result of the *Saha Thai* adjustment to cost is properly a zero adjustment. The Federal Circuit may have been correct in imputing the duties “paid” to the cost of production, but the Court, and Commerce, failed to consider the impact of the duties “refunded” by reason of the exports.²³

Icdas’ Draft Comments

- Icdas agrees with Commerce’s recalculation of Icdas’ NV in the *Second Draft Remand Redetermination*.²⁴ This calculation is consistent with the opinion in *Saha Thai*.²⁵

Commerce’s Position:

We agree with the petitioner that the duty drawback methodology used, under protest, in the *Second Draft Remand Redetermination* produces distorted antidumping duty margins in certain situations. Specifically, in situations where the respondent purchases an input both from the domestic market, which is import duty free, and from a foreign source, which incurs import duty liability, the average per-unit amount of duty in the home market sales price is less than the amount attributed to the U.S price through the duty drawback adjustment. While the adjustment to U.S. price contains a full amount of the per-input unit duty, the cost only contains the annual

²² *Id.* at 3.

²³ *Id.*

²⁴ See Icdas’ Draft Comments at 2.

²⁵ *Id.* at 3.

average amount, which is a lower per-unit duty burden because the duty-free input purchases are averaged with the import input purchases which incurred duties.

We have not adopted the revised cost-side drawback methodology proposed by the petitioner, because there is no statutory or regulatory basis for making such a cost-side adjustment. The statute and regulations do provide for imputing the input duty cost as a part of the input cost, as affirmed by the Federal Circuit in *Saha Thai*. However, neither the statute or the regulations provide for an artificial allocation of cost to compensate for the duty drawback adjustment to U.S. price. The circumstance of sale adjustment was the appropriate mechanism to address the difference between the per-unit duty amount in the U.S. price and the per-unit duty amount in the NV.

We disagree with Habas' contention that Commerce erred by excluding two IPCs that remained open at the end of the POI from its duty drawback adjustment. The facts in this proceeding are different than those in *Toscelik 2018*. During the investigation underlying *Toscelik 2018*, Commerce verified that IPCs which were open at the end of the POI had been closed prior to verification. Here, there is no information on the record that indicates that the two IPCs at issue have been closed. The record merely shows that Habas had exports under these IPCs during POI. There is no verified record evidence that the Turkish government has relieved Habas of the duty liability on the open IPCs and no verified record evidence that those IPCs were closed. Therefore, we have continued to exclude the two open IPCs at issue for Habas' duty drawback calculation.

Whether a respondent is given credit for duties on inputs, whether paid or imputed, upon export of the finished product under a duty drawback scheme depends on the record evidence of whether the government actually refunds any paid duties or has forgiven the imputed duties. In this case, Commerce has provided a credit where the IPCs are closed indicating the Turkish government has forgiven the duty liability. Commerce will not provide credit for an open IPC, because the record evidence does not demonstrate that the Turkish government has forgiven the input import duty liability under those open IPCs.

1/15/2020

X 

Signed by: JEFFREY KESSLER

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