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April 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: James Doyle 
Director, Office V
Antidumping and Countervailing Duty Operations

Subject: Decision Memorandum for the Preliminary Determination of the
Investigation of Sales at Less Than Fair Value for Steel Concrete
Reinforcing Bar from Turkey

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that steel concrete reinforcing bar (rebar) from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the "Preliminary Determination" section of the accompanying *Federal Register* notice. Interested parties are invited to comment on this preliminary determination.

II. BACKGROUND

On September 4, 2013, the Department received an antidumping (AD) duty petition¹ concerning imports of steel concrete reinforcing bar (rebar) from Turkey, filed in proper form on behalf of

¹ See Petitions for the Imposition of Antidumping Duties on Steel Concrete Reinforcing Bar from Mexico and Turkey and the Imposition of Countervailing Duties on Steel Concrete Reinforcing Bar from Turkey, dated September 4, 2013 ("the Petition").



the Rebar Trade Action Coalition (RTAC) and its individual members (collectively, Petitioners).²

On September 25, 2013, we placed U.S. import data of rebar from Turkey obtained from U.S. Customs and Border Production (CBP) on the record and invited interested parties to comment on the data and the Department's respondent selection methodology.

The Department published the initiation of this LTFV investigation of rebar from Turkey on October 2, 2013.³ The Department invited comments regarding the CBP data and respondent selection within seven days of publication of the *Initiation Notice*.⁴ The Department set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments by October 15, 2013.⁵

On October 21, 2013, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of rebar from Turkey.⁶

Between October 31, 2013 and November 12, 2013, the Department received comments and rebuttal comments on physical characteristics of the merchandise under consideration from interested parties.⁷

On November 14, 2013, the Department selected Habas and Icdas as mandatory respondents. On December 3, 2013, the Department issued the initial Section A questionnaire to these two respondents. On December 16, 2013, the Department issued the initial Section B-D questionnaire to these two respondents. Between January 7, 2014, and February 14, 2014, we received responses to sections A, B, C and D of the Department's initial questionnaire from Habas and Icdas, which were timely filed. Additionally, Habas and Icdas timely responded to all supplemental questionnaires issued by the Department.

On December 3, 2013, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), Petitioners alleged that critical circumstances exist with respect to imports of rebar from Turkey.⁸

² Petitioners are RTAC and its individual members: Byer Steel Group, Inc., Schnitzer Steel Industries d/b/a Cascade Steel Rolling Mills, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., and Nucor Corporation.

³ See *Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations*, 78 FR 60827 (October 2, 2013) (*Initiation Notice*).

⁴ *Id.*, 78 FR at 60827.

⁵ *Id.*, 78 FR at 60830.

⁶ See *Steel Concrete Reinforcing Bar from Mexico and Turkey*, Investigation Nos. 701-TA-502 and 731-TA-1227-1228 (*Preliminary*) (November 2013); *Steel Concrete Reinforcing Bar from Mexico and Turkey*, 78 FR 68090 (November 13, 2013).

⁷ See Letter from Petitioners titled "Product Characteristics and Product Matching Comments," dated October 31, 2013 (Petitioners' Model Match Comments); see also Letter from Deacero titled, "Comments on Product Characteristics," dated October 31, 2013; Letter from Icdas and Colakoglu, titled "Rebuttal Comments on Product Characteristics & Product Matching," dated November 12, 2013; Letter from Petitioners titled "Rebuttal Comments Concerning Product Characteristics and Product Matching Comments," dated November 12, 2013; Letter from Deacero titled, "Rebuttal Comments on Product Characteristics," dated November 12, 2013.

⁸ See Petitioners' letter titled, "Steel Concrete Reinforcing Bar from Turkey: Critical Circumstances Allegation," dated December 3, 2013.

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, the Department will issue a preliminary finding not later than the preliminary determination. On January 10, 2014, the Department requested that Habas and Icdas report their shipment data for a six-month period covering June – November 2013. On January 15, 2014, Habas submitted its shipment data and on January 17, 2014, Icdas submitted its shipment data. On January 27, 2014, the Department issued a supplemental questionnaire to both respondents regarding critical circumstances, to which Icdas and Habas responded on February 3, 2014 and February 4, 2014, respectively.

On April 9 and 10, 2014, Petitioners filed comments for the Department to consider in its preliminary determination with regard to Habas and Icdas.⁹ In their comments, Petitioners cite a number of reasons as a basis for applying adverse facts available (AFA) to Habas and Icdas. We considered the issues Petitioners raise regarding AFA, and find that the questionnaire responses provided by Habas and Icdas provide a sufficient basis for purposes of our margin calculations and do not warrant AFA in the preliminary determination. Additionally, in their pre-preliminary determination comments, Petitioners raise issues concerning duty drawback, date of sale, and the physical characteristics of the merchandise under consideration. We address the issue of duty drawback in section V, part F. below, and issues regarding date of sale and the physical characteristics of the merchandise under consideration in the calculation memoranda issued for Habas and Icdas.¹⁰

On April 11, 2014, Habas requested a postponement of the final determination and an extension of provisional measures.¹¹

III. PERIOD OF INVESTIGATION

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was September 2013.¹²

IV. POSTPONEMENT OF PRELIMINARY DETERMINATION

On February 4, 2014, the Department fully postponed the deadline for issuing the preliminary determination to no later than 190 days after the date on which it initiated this investigation.¹³ As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the

⁹ See Petitioners' April 9, 2014, Pre-Preliminary Determination Comments concerning Habas; *see also* Petitioners' April 10, 2014, Pre-Preliminary Comments concerning Icdas.

¹⁰ See Memorandum to the File regarding "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey: Habas Preliminary Analysis Memorandum," dated concurrently with this memorandum (Habas Preliminary Analysis Memorandum); *see also* Memorandum to the File regarding "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey: Icdas Preliminary Analysis Memorandum," dated concurrently with this memorandum (Icdas Preliminary Analysis Memorandum).

¹¹ See Letter from Habas titled, "Rebar from Turkey; request to extend final determination," dated April 11, 2014.

¹² See 19 CFR 351.204(b)(1).

¹³ See *Steel Concrete Reinforcing Bar from Mexico and Turkey: Postponement of Preliminary Determination in the Antidumping Duty Investigations*, 79 FR 6541 (February 4, 2014).

closure of the Federal Government from October 1, through October 16, 2013.¹⁴ Accordingly, the revised deadline for the preliminary determination in this investigation is now April 18, 2014.

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on April 11, 2014, Habas requested that the Department postpone the final determination and that the Department extend the provisional measures from four to six months. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this preliminary determination notice in the *Federal Register*. The Department is further extending the application of the provisional measures from a four-month period to a period not to exceed six-months, and will extend the suspension of liquidation accordingly, pursuant to Habas' request to extend the application of the provisional measures prescribed under section 735(a)(2)(A) and 733(d) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(b)(2)(ii) and 351.210(e)(2).

VI. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (i.e., non-deformed or smooth rebar). HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

VII. SCOPE COMMENTS

In the *Initiation Notice*, the Department notified interested parties that "we are setting aside a period for interested parties to raise issues regarding product coverage" and invited parties to submit comments by October 15, 2013.¹⁵

On November 1, 2013, we received scope comments from Deacero S.A. de C.V. (Deacero), a mandatory respondent in the companion LTFV investigation of rebar from Mexico, requesting that the Department confirm that two of its product families are outside the scope of the investigation. The Department extended the deadline until November 22, 2013 for Petitioners to

¹⁴ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

¹⁵ See *Initiation Notice*, 78 FR at 60827.

submit scope rebuttal comments. We received rebuttal comments from Petitioners on November 22, 2013.¹⁶ On November 27, 2013, Deacero submitted surrebuttal comments to Petitioners' November 25, 2013 rebuttal comments.¹⁷

For the reasons set forth in the Preliminary Scope Comments Decision Memorandum, we find that the products at issue are inside the scope of the investigation.¹⁸ We invite parties to comment on this in their briefs so that the issue can be addressed in the final determination.

VIII. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act provides the Department discretion, when faced with a large number of exporters and producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. In addition, section 777A(c)(2) of the Act provides that the Department will limit its examination to either (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

In the *Initiation Notice* we stated that in the event the Department determined that the number of known exporters and producers is large, we intended to select respondents based on CBP data for U.S. imports of rebar from Turkey.¹⁹ On September 25, 2013, we released the CBP data to all parties with access to information under an administrative protective order.²⁰ The data on the record indicated a significant number of possible producers or exporters of subject merchandise to the United States during the POI, six of which were listed among the 41 producer or exporters identified in the Petition.²¹ As a result, there are 51 potential producers and exporters to examine.²² We invited comments on the CBP data and selection of respondents for individual examination.²³

On October 25, 2013, we received comments from Petitioners requesting that the Department select at least three mandatory respondents for examination in its LTFV investigation of Turkey, citing respondent selection decisions from other recent investigations. Petitioners argue that there are a large number of producers in Turkey and it is important that as many companies as

¹⁶ See Petitioners' November 22, 2013, scope rebuttal comments, of which a public version is available on the IA Access website.

¹⁷ See Deacero's November 27, 2013, surrebuttal comments.

¹⁸ Interested parties' scope comments reference business proprietary information. For further discussion, see the Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar ("Rebar") from Turkey," (April 18, 2014) (Preliminary Scope Comments Decision Memorandum) public version placed on the record of the instant investigation of rebar from Turkey.

¹⁹ See *Initiation Notice*, 78 at 60830.

²⁰ See Memorandum titled "Release of Customs and Border Protection ("CBP") Data," dated September 25, 2013.

²¹ See the Petition at Exhibit I-5B.

²² *Id.*, at 3.

²³ See *Initiation Notice*, 78 FR at 60827.

possible be selected for examination in order to ascertain the extent of dumping based on a representative group of companies. In addition, Petitioners state that Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) are the largest Turkish exporters to the United States and are not representative of the rest of the Turkish industry, which tends to be small- to medium-sized producers and exporters. Finally, Petitioners state that the selection of three mandatory respondents would account for a significant share of the total imports of rebar shipped from Turkey to the United States.²⁴ We received no additional comments regarding the CBP data or respondent selection from interested parties.

Because of the large number of known producers and exporters and based on our resource constraints,²⁵ we determined to limit the number of companies individually examined and that we had the resources to individually examine two companies. Accordingly, we selected Habas and Icdas for individual examination in this investigation.²⁶ These companies are the two producers or exporters of subject merchandise that accounted for the largest volume of the subject merchandise during the POI that we could reasonably examine in accordance with section 777A(c)(2)(B) of the Act.²⁷

IX. PHYSICAL CHARACTERISTICS AND MODEL MATCHING COMMENTS

In the *Initiation Notice*, the Department solicited comments on physical characteristics and the model matching hierarchy for the merchandise under consideration for the Department's initial LTFV questionnaire.²⁸ The Department extended the deadlines, resulting in due dates of October 31, 2013 for comments and November 12, 2013 for rebuttal comments.²⁹

In its comments, Deacero recommends that the Department use the following physical characteristics in the following hierarchy for model matching: (1) rebar grade (2) specification (3) size, and (4) form.³⁰

In their comments, Petitioners suggest that the Department not use rebar grade as a physical characteristic because it could increase the likelihood of manipulation by renaming a particular grade in the home market (HM), selling small amounts of ASTM graded product in the HM in order to match U.S. sales or adopting a unique or customized grading system. Petitioners suggest that the Department instead use the following physical characteristics in the following order for model matching: (1) type of steel (2) form of rebar (3) type of rebar (*i.e.*, air- or water-

²⁴ See Petitioners' October 25, 2013, respondent selection comments.

²⁵ See Memorandum titled, "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey: Respondent Selection," dated November 14, 2013, at 3-4.

²⁶ *Id.*, at 5.

²⁷ *Id.*

²⁸ See *Initiation Notice*, 78 FR at 60828.

²⁹ See Memorandum to the File, "Deadlines for Comments on Customs and Border Protection Data and Product Characteristics for Antidumping Questionnaires," (October 18, 2013).

³⁰ See Letter from Deacero titled, "Steel Concrete Reinforcing Bar from Mexico: Comments on Product Characteristics," dated October 31, 2013.

cooled rebar) (4) imported or domestic billets (5) basic oxygen furnace or electric arc furnace billets (6) yield strength (7) size, and (4) length.³¹

On November 12, 2013, Petitioners submitted rebuttal comments concerning Deacero's October 31, 2013, model match comments. Petitioners contend that Deacero's proposed physical characteristics are based on a prior rebar model match hierarchy from 1996 which was largely rejected by the Department and replaced by an alternate model match hierarchy in the 2000 multi-country LTFV investigations of rebar.³² Petitioners state that the multi-country investigations focused on the actual physical characteristics of the rebar itself. In contrast, the arbitrary grade and national standards proposed by Deacero are not tied to specific differences in physical characteristics and would merely skew the dumping calculations by creating opportunities for manipulation of the results.³³

On November 12, 2013, the mandatory respondent, Icdas and interested party Colakoglu Metalurji (Colakoglu) jointly submitted rebuttal comments regarding Petitioners' October 31, 2013, model match comments. In its comments, Icdas and Colakoglu state that the Department has never used criteria which have no commercial significance and are not appropriate for model matching (*i.e.*, air cooled or water cooled rebar, imported or domestic billets), and differentiation based on length is not commercially relevant).³⁴ Additionally, Icdas and Colakoglu suggest that the physical characteristics and model match hierarchy should be based on form, grade, size, specification, and short length sales.³⁵

Since the issuance of the Department's initial questionnaire, Petitioners reiterated certain initial comments regarding the physical characteristics and the model matching hierarchy in its submissions.³⁶ Petitioners made these comments primarily in the context of the Turkish investigation, but we also considered these comments within the context of the Mexico rebar investigation, which shares the same merchandise under consideration. In particular, Petitioners address the rebar cooling method, asserting that there are two types of rebar involved in these investigations that are fundamentally different: one which utilizes air cooling and is predominantly sold in the United States while the other uses water cooling and is predominantly sold in Turkey.³⁷ Further, Petitioners assert that the two different cooling methods result in different physical characteristics and cost structures of each type of rebar, and these physical characteristics are commercially significant.³⁸

Petitioners assert that the method in which rebar is cooled after rolling imparts important physical characteristics to the final product; namely, the vulnerability of the surface to oxidization. Petitioners state that the rebar sold in Turkey is typically produced using low-

³¹ See Petitioners' October 31, 2013, model match comments.

³² See Petitioner's November 12, 2013, rebuttal model match comments at Exhibit 2, which reference the Department's request for model match comments in the prior AD investigation of rebar.

³³ *Id.*, at 3.

³⁴ See Icdas' and Colakoglu's November 12, 2013, rebuttal model match comments at 2 (this submission was filed on behalf of both Icdas and Colakoglu).

³⁵ *Id.*, at 8 and Attachment 1.

³⁶ See *e.g.*, Petitioners' March 14, 2014, submission at 2.

³⁷ See Petitioners' October 31, 2013, model match comments at 5-6.

³⁸ *Id.*, at 7.

strength billets, primarily because they are cheaper, but also because of the necessity for producing weldable rebar. Low-strength billets have a higher iron content and lower alloy content, which give the steel its strength. This lower level of alloys also greatly increases the weldability of the rebar, which is important in the Turkish market. Petitioners assert that, because these low-strength billets are not as strong, the rebar must be water cooled in order to reach the required tensile and yield strengths. Water cooling also removes the thick outer scales and makes the surface porous and thus, much more prone to rust, according to Petitioners. Petitioners further state that the air cooling process utilizes higher-strength billets achieved through the addition of alloys, which add to the cost of producing the rebar. Petitioners indicate that the air-cooling process reduces throughput rates, which also adds to production costs. Finally, Petitioners state that air-cooled rebar is not subject to rust when shipped overseas, and U.S. customers require air-cooled rebar because it is free from rust.³⁹

The Department's initial Section B-C questionnaire utilized physical characteristics and a model matching hierarchy that is patterned after the criteria used in the prior multi-country investigations,⁴⁰ which Petitioners affirmed stating, "{t}he multi-country investigation, which had similar scope coverage to the original Turkish order (save for coiled rebar), focused on the actual physical characteristics of the rebar itself."⁴¹ Further, the model match hierarchy included in the initial B-C questionnaire accounted for weldability, an important end-use function of water-cooled rebar according to Petitioners,⁴² by including carbon content along with the minimum yield strength ranges, which we find is a more quantifiable method than the air- or water-cooled method proposed by Petitioners.⁴³ In fact, Petitioners affirmed our model matching criteria with regard to weldability, stating,

{a}s discussed in Petitioner's model match submission of October 31, 2013, the "carbon equivalency" determines the rebar's weldability. The Department has recognized this important physical characteristic in its CONNUM creation instructions in the questionnaire. Specifically, the physical characteristic for yield strength in the CONNUM (MSYSTRU/H) has carbon equivalency categories that distinguish weldable and non-weldable rebar (*i.e.*, .55% CE).⁴⁴

An excerpt from the ITC's Preliminary Report provides background on the two cooling methods:

...Rebar can be water-quenched and tempered, rather than air-cooled. Water-quenching is a cooling process used to increase tensile strength in order for the rebar to comply with ASTM standards.⁴⁵ Quenched-and-tempered rebar can meet the same physical property requirements of the ASTM A615/A615M specification without the addition of certain alloys to the steel billets that are rolled into rebar, and thus is slightly less expensive to produce. In this process

³⁹ *Id.*, at Attachment 3, at 2-3.

⁴⁰ *See, e.g.*, the Department's December 16, 2014, Initial Section B-C Questionnaire at B-7 – B-11.

⁴¹ *See* Letter from Petitioners titled, "Rebuttal Comments Concerning Product Characteristics and Product Matching Comments," dated November 12, 2013 at 2-3.

⁴² *See* Petitioners' October 31, 2013, model match comments at 6-7.

⁴³ *See, e.g.*, the Department's December 16, 2014, Initial Section B-C Questionnaire at B-7 – B-11.

⁴⁴ *See* Petitioners March 5, 2014 submission, at 7; *see also* Petitioners' submission titled "Habas' Pre-Preliminary Comments, dated April 8, 2014, at 18-19.

(the Thermex process),⁴⁶ hot-rolled rebar passes through a water-quenching stand (a series of water coolers), which rapidly cools the outer case of the rebar, before the final finishing process. The quench-and-temper treatment causes a dual metallurgical structure to form in the cross-section of the bar, which ultimately produces a rebar with a stronger outer case and a more ductile core...

⁴⁵ Conference transcript, p. 151 (Porter).

⁴⁶ Thermex refers to both the water-quench and tempering process, as well as the mill equipment used to produce rebar through this process. The Thermex process was developed and branded by Germany engineering firm Hennigsdorfer Stahl Engineering (HSE) in the 1970s.⁴⁵

As an initial matter, we disagree that differences in the costs of the production process alone should be considered as a basis for determining whether cooling method should be included as one of the physical characteristics included in the product control number (CONNUM) used in the instant investigations. The primary objective of the physical characteristics and the model matching hierarchy is to identify the identical or most similar merchandise sold in the comparison market based on the characteristics of the merchandise under consideration. While variations in cost may suggest the existence of variation in physical characteristics, such variations do not constitute differences in products in and of themselves.⁴⁶ Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time, and therefore do not, in and of themselves, provide a reliable basis for identifying the relative importance of different physical characteristics.⁴⁷ The Department stated that for defining products and creating a model match hierarchy, “{t}he physical characteristics are used to distinguish the differences among products across the industry,” that “{c}ost is not the primary factor for establishing these characteristics,” and, in short, “{c}ost variations are not the determining factor in assigning product characteristics for model-matching purposes.”⁴⁸

We find in this investigation that a different production process is not a physical characteristic, as a producer can achieve the same essential physical characteristics in a product using more than

⁴⁵ See the ITC’s Preliminary Report titled, “Steel Concrete Reinforcing Bar from Mexico and Turkey: Investigation Nos. 701-TA-502 and 731-TA-1227-1228: Publication 4432, November 2013,” (*ITC Preliminary Report*) at I-11 (footnotes included); see also the Department’s Memorandum to the File titled, “Documents Placed on the Record for the Preliminary Determination” dated concurrently with this memorandum.

⁴⁶ See *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 32546 (June 1, 2012), (*Preliminary Determination of Steel Pipe from the UAE*), unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less than Fair Value*, 77 FR 64475 (October 22, 2012).

⁴⁷ See *Preliminary Determination of Steel Pipe from the UAE*, 77 FR at 32456.

⁴⁸ See *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Also, the Department’s “ * * * selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess * * *,” and “ * * * differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences * * *.” See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1.

one process.⁴⁹ Icdas and Colakoglu reported that they do not measure the cost differential between air and water cooled rebar in their normal course of business because they claim such cost differences are negligible.⁵⁰ The Department has not made the cooling method a physical characteristic in the prior antidumping proceedings against rebar from Turkey or in the other multi-country rebar proceedings. Further, in other proceedings, the Department rejected efforts to use commercially insignificant processing differences with no significant physical manifestations to establish a physical characteristic of in-scope merchandise.⁵¹

The reason why the physical differences in the production process or inputs may not be relevant to our analysis is because the resulting in-scope merchandise, which is the end product of these processes and inputs, is not different in any commercially meaningful manner. There may be many ways to produce a given product using different chemical formulas. However, unless the differences in production or inputs result in commercially different end products, there is no need to take differences in production or inputs into consideration when establishing the physical characteristics necessary to define the in-scope merchandise. The Department may amend the established physical characteristics when new factual information identifies a commercially relevant distinction between end products. If the differences in material inputs and production processes do not result in a commercially significant difference in the end product, adding additional physical characteristics to account for such commercially insignificant differences arbitrarily narrows the pool of sales for comparison purposes. Therefore, we do not find that cost differences alone warrant a change to our physical characteristics and model matching hierarchy to include the cooling method in the CONNUM, as there is no reason to assume significant cost differences that would persist over time across companies and countries.

Further, during the ITC's *Second Sunset Review*, Petitioners conceded, "that the water-quenching process is not new, the cost difference is small, and the process is used by some U.S. producers to make ASTM-compliant rebar sold in the U.S. market."⁵² In addition, the ITC hearing testimony for this investigation indicates that domestic producers utilize both water and air-cooled rebar production methods in the United States.⁵³ Thus, information from Petitioners themselves belies their claims that substantial cost differences exist between water and air-cooled rebar, and that water-cooled rebar is too inferior for the U.S. market.

We also disagree with the notion that the cooling method imparts a physical characteristic that is not accounted for elsewhere in the CONNUM. As stated by Petitioners,⁵⁴ and confirmed by Habas,⁵⁵ we find that air-cooled rebar produced in Turkey is predominantly sold in the United

⁴⁹ See ITC Hearing Transcript for Steel Concrete Reinforcing Bar from Mexico and Turkey, Investigation 701-TA-502 and 731-TA-1227-1228 (Preliminary), dated September 25, 2013, at 110-111.

⁵⁰ See Letter from Icdas and Colakoglu, titled "Rebuttal Comments on Product Characteristics & Product Matching," dated November 12, 2013, at 5.

⁵¹ See, e.g., *Certain Warmwater Shrimp From Thailand, Preliminary Results of Administrative Review and Final Results of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 12188, 12191 (March 15, 2010).

⁵² See ITC's Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine Investigation Nos. 731-TA-873-875, 878-880, and 882 (Second Review), Publication 4409 (July 2013) at 13 (*Second Sunset Review*).

⁵³ See ITC Hearing Transcript for Steel Concrete Reinforcing Bar from Mexico and Turkey, Investigation 701-TA-502 and 731-TA-1227-1228 (Preliminary), dated September 25, 2013, at 157.

⁵⁴ See Petitioners' Model Match Comments at 5-6.

⁵⁵ See Habas' Section B and C questionnaire response at B-9 and C-6, respectively.

States and water-cooled rebar produced in Turkey is predominantly sold in the HM. Petitioners contend this difference is due to the fact that U.S. customers require a rust-free product and that only air-cooled rebar is immune to rust during overseas transport. Habas states in its response to the supplemental section D questionnaire:

It is possible to achieve a given tensile strength in two ways: by adjusting the quantity of ferroalloys in the steel, or by subjecting the rebar to a quenching-and-tempering (Q&T) process after the bar is formed and while it is still hot. For its Q&T rebar, Habas uses the Thermex QSR process, in which a highly focused stream of water is directed onto the rebar immediately after it leaves the last rolling stand. Gerdau Ameristeel, North America's leading producer of long products, and a petitioner herein, explains how this process works and further explains that Q&T rebar is interchangeable with rebar that achieves the desired yield strength by addition of ferroalloys. See Exhibit S3D-1. A short video showing the process can be viewed at <http://www.youtube.com/watch?v=XYwhuQcq9i4> incorporated herein by reference.⁵⁶

Further, Habas' Exhibit S3D-01 includes a statement from Gerdau Ameristeel supporting the contention that the cooling method is not determinative to meet an industry specification. As a result, we find that there is no need to account for cooling method as a physical characteristic of the subject merchandise. Accordingly, we preliminarily find that record evidence does not support Petitioners' claims that the different inputs and production processes result in rebar with commercially significant differences.

Moreover, we find that testimony before the ITC addresses the issue of fungibility and lack of differentiation in the rebar market with respect to air cooled rebar as compared to water cooled rebar. Specifically, an excerpt from the ITC hearing for its preliminary investigation states the following:

2 MR. HENDERSON: Thank you. We've obviously
3 been hearing a lot this morning about how rebar is
4 fungible, et cetera. And, you know, we'll hear more
5 this afternoon from the Respondents about any
6 particular characteristics of Mexican or Turkish
7 rebar. But I'm just wondering if I can hear any
8 reactions or comments from domestic producers here
9 about any differences of subject rebar from Mexico or
10 Turkey.
11 I mean, in the five-year review there was a
12 lot of discussion of, I guess, whether it was Latvian
13 producers that had some Thermex project. So anyway, I
14 wanted to hear some comments from domestic producers
15 on that question.
16 MR. PRICE: That was actually -- they always
17 do the last name with our product.
18 MR. DARSEY: Jim Darsey with Nucor. And

⁵⁶ See Habas' Third Supplemental Section D Questionnaire Response, at 2 and Exhibit S3D-1

19 there are no differences. It is a commodity product.
20 It's traded on a world basis, and it is completely
21 fungible. The rebar is all produced to an ASTM spec,
22 and it has to meet the performance standards and
23 specifications of ASTM spec for strength and
24 flexibility. And there are a number of ways to get,
25 and that's what you were hearing earlier that you
1 referenced about some water-cool, air-cool. Some add
2 alloys. There are different ways to get there, but at
3 the end of the day, the end product, there is no
4 difference. It meets the spec. It's sold as meeting
5 those specs. And, you know, it's end use. It goes
6 into concrete.⁵⁷

Furthermore, Habas stated that the "{w}ater-cooled rebar sold in the home market does meet the ASTM specifications. There is nothing in ASTM A-615 specification prohibiting water cooling. Air-cooled and water-cooled rebar are interchangeable products. Habas understands that the air-cooling requirement in the U.S. market principally reflects cosmetic concerns, as water-cooled rebar tends to rust faster in the long voyage overseas, while the company's U.S. customers prefer a completely rust-free surface."⁵⁸

Accordingly, we preliminarily find that the sales of air-cooled rebar in the United States by U.S. and Mexican producers indicates that customer preferences are driven, in part, by differences in strength and weldability, and not by rust-related concerns. Thus, we find that the physical characteristics included in the initial questionnaire already properly account for the differences in physical characteristics, including strength and weldability, by virtue of the "minimum specified yield strength" field, which distinguishes rebar based on the amount of carbon content

Our finding in this regard is consistent with the Department's statement in the *Initiation Notice*,

{w}e note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel concrete reinforcing bar, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

Based on our analysis, the Department preliminarily finds that it has already accounted for the meaningful commercial differences that impact comparisons of rebar in both the HM and United States. Further, we find that including the cooling method as a physical characteristic and a part of the model matching hierarchy is redundant in that the Department's practice. Accordingly, we preliminarily find that no changes to the Department's physical characteristics and model matching hierarchy are warranted for this preliminary determination.

⁵⁷ *Id.*, at 110-111.

⁵⁸ See Habas' Second Section A-C supplemental questionnaire response, dated April 7, 2014, at 4.

X. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether sales of rebar from Turkey to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the “Export Price” and “Normal Value” sections of this memorandum below.

B. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NV to weighted-average EP or constructed export price (CEP) (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In recent AD proceedings, the Department examined whether to compare weighted-average NV to the EP or CEP of individual export transactions (the average-to-transaction or A-to-T method) as an alternative comparison method consistent with section 777A(d)(1)(B) of the Act. In order to determine whether the A-to-A method is the appropriate comparison method, in recent proceedings the Department applied a “differential pricing” (DP) analysis pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁵⁹ The Department finds that the DP analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this LTFV investigation.⁶⁰ The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods.⁶¹ If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise.

⁵⁹ See, e.g., *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum From Austria*), and accompanying Issues and Decision Memorandum at 2.

⁶⁰ See, e.g., *id.*, and accompanying Issues and Decision Memorandum at 2; see also *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Reviews and New Shipper Reviews*, 79 FR 4327 (January 27, 2014) (*Tapered Roller Bearings from the PRC*); *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 4876 (January 30, 2014); *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 2011-2012, 79 FR 5375 (January 31, 2014) (*Light-Walled Pipe and Tube from Mexico*).

⁶¹ As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. See, e.g., *Tapered Roller Bearings from the PRC*; *Light-Walled Pipe and Tube from Mexico*.

Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes for Icdas and city name for Habas), which are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between export prices or constructed export prices and normal values for the individual dumping margins.

In the first stage of the DP analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference

between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

C. Results of the Differential Pricing Analysis

Based on the results of the DP analysis, the Department preliminarily finds that 94.20 percent of Habas' U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on applying the A-to T method to all U.S. sales. Accordingly, the Department preliminarily determines to use the A-to-A method for all U.S. sales to calculate the estimated weighted-average dumping margin for Habas.⁶²

Based on the results of the DP analysis, the Department preliminarily finds that 72.40 percent of Icdas' U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot appropriately account for such differences because there is at least a 25 percent relative change in the weighted-average dumping margins when calculated using the A-to-A method and an alternative method based on applying the A-to T method to all U.S. sales. Accordingly, the Department preliminarily determines to use the A-to-T method for all U.S. sales to calculate the estimated weighted-average dumping margin for Icdas.⁶³

C. Product Comparisons

As noted above, the Department gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics for model matching purposes within a certain deadline.⁶⁴ On October 31, 2013, we received comments regarding physical characteristics and the model matching hierarchy from interested parties.⁶⁵ On November 12, 2013, we received rebuttal comments from interested parties.⁶⁶

⁶² See Habas Preliminary Analysis Memorandum.

⁶³ See Icdas Preliminary Analysis Memorandum.

⁶⁴ See *Initiation Notice*, 78 FR at 60828.

⁶⁵ See Letters from Petitioners, and Deacero, dated October 31, 2013.

⁶⁶ See Letters from Petitioners, Deacero, Icdas and Colakoglu, dated November 12, 2013.

We considered the comments that were submitted and established the appropriate physical characteristics to use as a basis for defining product control numbers (CONNUMs), and for identify identical or the most similar products for this LTFV investigation. In making product comparisons, we matched foreign like products based on the physical characteristics established by the Department and reported by Habas and Icdas in the following order of importance: steel type, minimum specified yield strength with equivalent carbon content, size designation, and form.⁶⁷

The goal of the model matching hierarchy is to identify the identical or most similar product with respect to the physical characteristics of the merchandise. While variations in cost may suggest the existence of variation in physical characteristics, such variations do not constitute differences in products in and of themselves. As the Department noted “. . . selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.”⁶⁸

Accordingly, based on the above, the Department is not revising the model matching hierarchy it proposed after the initiation of this investigation and included in its questionnaires. In accordance with section 771(16) of the Act, all products produced by Habas and Icdas, covered by the description in the “Scope of Investigation” section above, and sold in the comparison market during the POI, are considered to be foreign like product for purposes of determining appropriate product comparisons to subject merchandise sold in the U.S. market. For Habas and Icdas, we relied on the above mentioned four physical characteristics to identify identical or the most similar merchandise sold in the comparison market with subject merchandise sold in the U.S. market. Where there were no sales of identical merchandise in the comparison market to compare to subject merchandise sold in the United States, we identified the most similar merchandise sold in the comparison market on the basis of the reported physical characteristics provided in the AD questionnaire.

D. Date of Sale

Although the Department normally uses the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale, the Department’s regulations provide that the Department 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 (*e.g.*, price and quantity).⁶⁹

⁶⁷ See the Department’s Section B-D Questionnaire issued to Habas and Icdas on December 16, 2013.

⁶⁸ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum, at Model Match Comment 1.

⁶⁹ See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001); and *Yieh Phui Enterprise Co. v. United States*, 791 F. Supp. 2d 1319, 1324 (CIT 2011) (affirming that the Department may use invoice date unless a party demonstrates that the material terms of the sale were established on another date).

Habas and Icdas reported that a significant number of its U.S. sales were produced to order pursuant to sales contracts between Habas and Icdas and the customer.⁷⁰ Habas and Icdas reported invoice date as the date of sale in their respective initial questionnaire responses for both the HM and U.S. market. Based on record evidence and pursuant to the Department's request, Habas and Icdas reported the date of the sale's contract or the amended contract as an additional data field in their respective U.S. sales data.⁷¹ We examined the information on the record and preliminarily find that the material terms of Habas' and Icdas' U.S. sales did not change after the date of the sale's contract. Therefore, for purposes of this preliminary determination, we used the date of the sale's contract as the date of sale for Habas' and Icdas' U.S. sales.

For HM sales, Habas and Icdas reported invoice date as the date of sale. We preliminarily find that invoice date reflects the date of sale for Habas' and Icdas' HM sales because we find that this is the date on which the material terms of sale are established in the HM.

E. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)."

We calculated EP for purposes of this preliminary determination, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was first sold in the country of manufacture (*i.e.*, Turkey) to an unaffiliated purchaser prior to importation and CEP was not otherwise warranted based on the facts of record. Therefore, with respect to Habas' reported EP sales, we calculated EP based on the packed C&F (Cost and Freight) and CIF (Cost, Insurance and Freight) price to unaffiliated purchasers in the United States.⁷² For all of Icdas' sales we calculated EP based on the packed prices based on the reported sales terms to unaffiliated purchasers in the United States.⁷³ For both Habas' and Icdas' EP sales, we made adjustments for billing adjustments, as appropriate. For both Habas and Icdas, we also made deductions for movement expenses, in accordance with section 772(e)(2)(A) of the Act.⁷⁴

F. Duty Drawback

Section 772(c)(1)(B) of the Act states that EP shall be increased by "the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether a respondent is entitled to duty drawback, the Department traditionally uses (and the United States

⁷⁰ See Habas' Section A questionnaire response, dated January 7, 2014 at 21; *see also* Icdas' Supplemental Section C response, dated April 1, 2014, at SC-10.

⁷¹ See Habas' Supplemental Section A-C response, dated March 31, 2014 at 7-8;

⁷² See Habas' Section A questionnaire response, dated January 7, 2014 at 13.

⁷³ See Icdas' Section C response, dated February 14, 2014 at C-15 (Icdas' sales terms are bracketed as business proprietary information).

⁷⁴ See Habas Preliminary Analysis Memorandum and Icdas Preliminary Analysis Memorandum, dated concurrently with this memorandum.

Court of International Trade (CIT) sustained⁷⁵) the following two-prong test:⁷⁶ first, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.⁷⁷

We examined respondents' claims for duty drawback utilizing the criteria outlined above. Respondents provided a list of items imported during the POI along with the Inward Processing Certificate (IPC) numbers against which they made the imports. Further, respondents provided copies of IPCs as well as the documents they submitted to the Government of Turkey when they closed out an IPC.⁷⁸ These documents provide a tally of the items imported and exported against the IPCs. Further, respondents provided information concerning the usage or waste rate utilized under the drawback program for exports of rebar.⁷⁹ Therefore, based on this information, we preliminarily determine that respondents established sufficient linkage between their respective inputs and the exports of subject merchandise during the POI, and that the respondents had sufficient imports to account for the duty drawback received. Therefore, we granted the duty drawback adjustments as claimed by Habas and Icdas.

While the Department preliminarily granted adjustments for duty drawback with respect to Habas and Icdas, for the final determination we intend to consider further their eligibility for this adjustment, including through an examination of relevant information in the context of verification.

G. Normal Value

1. Home Market Viability

Section 773(a)(1) of the Act and 19 CFR 351.404(b)(2) state that the HM is viable if the aggregate quantity of HM sales of the foreign like product is equal to five percent or more of the

⁷⁵ See, e.g., *Saha Thai Steel Pipe (Public.) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed Cir. 2011).

⁷⁶ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006), citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd. v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

⁷⁷ See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 7; and *Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

⁷⁸ See Habas' Section C response, dated February 11, 2014, at C-34 – C36 and Exhibit C-17; see also Habas' First Supplemental Section A-C response, dated March 31, 2014 at 27-28 and Exhibit SBC-23; Habas' Second Supplemental Section A-C response, dated April 7, 2014, at 1-3 and Exhibits S2C-1 to S2C-4; Icdas' Section C response, dated February 14, 2014, at C-33 - C35 and Exhibit C- 42; Icdas' First Supplemental Section B-C response, dated April 1, 2014, at pages SC-12 to SC-15 and Exhibits SC-14 to SC-15; Icdas' Second Supplemental Section A-C response, dated April 7, 2014, at pages S2C-1 – S2C-3 and Exhibits S2C-1 to S2C-4.

⁷⁹ *Id.*

aggregate quantity of U.S. sales of subject merchandise. To determine whether there is a sufficient volume of sales of rebar in the HM to serve as a viable basis for calculating NV, we compared each respondent's reported volume of HM sales of the foreign like product to its volume of U.S. sales of the subject merchandise during the POI.⁸⁰ Based on this comparison, we determined that Habas' and Icdas' aggregate volume of HM sales of the foreign like product was greater than five percent of the aggregate volume of their respective U.S. sales of the subject merchandise.⁸¹ Therefore, we used HM sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),⁸² to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either HM or third country prices),⁸³ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. In this investigation, Habas and Icdas reported only EP sales to the United States.⁸⁴

We obtained information from Habas and Icdas regarding the marketing stages involved in making the reported home and U.S. market sales, including a description of the selling activities performed by the respondent for each channel of distribution. Habas reported one channel of distribution in the HM and one channel of distribution to the United States.⁸⁵ Habas reported that the selling activities associated with all sales through the single channel of distribution do not differ.⁸⁶ Icdas reported two channels of distribution in the HM and one channel of distribution to the United States.⁸⁷ Icdas reported selling activities do not vary significantly by channel of distribution. Furthermore, we found no evidence to contradict Habas' and Icdas' statements. Accordingly, we find that the Habas' and Icdas' single EP channel of distribution constituted a single LOT. For Habas and Icdas, we found that the selling functions Habas and Icdas performed for EP sales were very similar to those performed for their respective HM sales. As a result we preliminarily determine for Habas and Icdas that the LOT of EP sales is the same

⁸⁰ See section 773(a)(1)(B) of the Act and 19 CFR 351.404(b)(2).

⁸¹ See Habas Preliminary Analysis Memorandum and Icdas Preliminary Analysis Memorandum, dated concurrently with this memorandum.

⁸² See *Statement of Administrative Action Accompanying the Uruguay Round Agreement Act*, H.R. Doc. 103-316 (1994) (SAA), at 829-831.

⁸³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses and profit for CV, where possible.

⁸⁴ See Habas' Section C Questionnaire Response, dated February 11, 2014 at C-10; *see also*, Icdas' Section C Questionnaire Response dated February 14, 2014 at C-43.

⁸⁵ See Habas' Section A Questionnaire Response, dated January 7, 2014 at 13.

⁸⁶ *Id.*, at Exhibit A-6.

⁸⁷ See Icdas' Section A Questionnaire Response dated January 7, 2014 at A-14 – A-15.

as the LOT of the HM sales. Therefore, we matched Habas' and Icdas' EP sales to sales at the same LOT in the comparison market and made no LOT adjustment.

3. Investigation of Sales Below Costs

In the *Initiation Notice*, we stated with regard to Turkey, “{b}ased upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act.”⁸⁸ Accordingly, the Department initiated a country-wide sales-below-cost investigation.

a. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the cost of production (COP) based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and packing costs.⁸⁹ We examined the cost data for Habas and Icdas and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual average costs based on the reported data, as adjusted below.⁹⁰

We relied on Habas' submitted COP data except as follows:

- 1) Section 772(c)(1)(B) of the Act requires the Department to increase the export price or constructed export price by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the export merchandise to the United States. While Habas claimed a “duty drawback” in relation to such export duties forgiven by the Turkish government during the POI, it has not included the amount of any such duties in the corresponding cost of production. We therefore increased the total cost of manufacturing of each CONNUM to include the duties forgiven on the purchases of imported scrap and ferroalloys used in the production of the subject merchandise.
- 2) We adjusted the total cost of manufacturing to exclude an offset claimed by Habas for the POI profit earned on port services.⁹¹

⁸⁸ See *Initiation Notice*, 78 FR at 60830.

⁸⁹ See “Test of Comparison Market Sales Prices” section, below, for treatment of comparison market selling expenses.

⁹⁰ See *Xanthan Gum From Austria*, and accompanying Issues and Decision Memorandum at 9.

⁹¹ See Memorandum from Robert Greger, Senior Accountant to Neal M. Halper, Director, Office of Accounting, titled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.,” at Attachment 1, dated concurrently with this memorandum.

We relied on Icdas' submitted COP data except as follows:⁹²

- 1) We revised the reported per-unit costs to exclude the allocation of costs to short-length rebar.
- 2) We revised the calculation of the by-product offset rate to reflect the quantity of scrap generated and the value of scrap sold to unaffiliated parties.
- 3) We revised the calculation of the exempted duty rate to base the calculation on direct material costs.
- 4) We revised the denominator of the general and administrative rate to include the revised by-product offset.
- 5) We revised the denominator of the financial expense rate to include the revised by-product offset.

b. Sales-Below-Costs Test

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the HM sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses, and packing expenses, where appropriate.⁹³

c. Results of the Sales-Below-Costs Test

Section 773(b)(1) provides that where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time" the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities, (*i.e.*, where 20 percent or more of the respondent's sales of a given product were at prices less than the COP).⁹⁴ Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁹⁵

Based on the analysis described above, for both Habas and Icdas, we disregarded certain below-cost sales where they were made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁹⁶

⁹² See Memorandum from Angie Sepulveda, Senior Accountant to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated concurrently with this memorandum.

⁹³ See Habas Preliminary Analysis Memorandum and Icdas Preliminary Analysis Memorandum.

⁹⁴ See sections 773(b)(2)(C)(i) and (ii) of the Act.

⁹⁵ See section 773(b)(2)(D) of the Act.

⁹⁶ See Habas Preliminary Analysis Memorandum and Icdas Preliminary Analysis Memorandum.

4. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated constructed value (CV) based on the sum of the respondent's material and fabrication costs, SG&A expenses, profit, and packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market. We made the same adjustments to CV that we made for COP, as referenced above.

5. Price-to-Constructed Value Comparisons

For this preliminary determination, we did not use price-to-constructed value comparisons.

6. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Habas and Icdas based on the reported packed, ex-factory or delivered prices to comparison market customers. For Habas and Icdas, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses and bank charges). We added U.S. export packing costs and deducted HM packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for Habas and Icdas, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the comparable foreign like product and subject merchandise.⁹⁷ For detailed information on the calculation of NV, see the Habas Preliminary Analysis Memorandum and the Icdas Preliminary Analysis Memorandum.

H. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

XI. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

⁹⁷ See 19 CFR 351.411(b).

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree ✓ Disagree _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

18 APRIL 2014
Date