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September 8, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Negative Determination in the Less than Fair Value Investigation of Steel Concrete Reinforcing Bar from Turkey

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I. SUMMARY

In this final determination, the Department of Commerce (the Department) finds that steel concrete reinforcing bar (rebar) from Turkey is not being, or is not likely to be, sold in the United States at not less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are listed in the "Final Determination" section of the accompanying *Federal Register* notice. The period of investigation (POI) is July 1, 2012, through June 30, 2013.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the respondents in this case, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas). We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.

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

II. List of Comments

General Issues:

Comment 1: Whether the Department Should Deny Respondents' Duty Drawback Adjustments

Comment 2: Whether Exempted Duties Should be Added to Costs Regardless of Whether the Department Grants the Duty Drawback Adjustment

Comment 3: Whether the Department Should Revise Habas and Icdas' Home Market (HM) Control Numbers (CONNUMs) for the Yield Strength Product Characteristic (MSYSTRH)

Comment 4: Whether the Department Should Include Rebar Type (REBARTYPEH/U) as a Product Characteristic Forming Part of the Control Number (CONNUM)

Comment 5: Whether HM Sales of Foreign Grade Rebar Are Outside the Ordinary Course of Trade

Comment 6: Whether Critical Circumstances Exist for All Others

Issues regarding Habas:

Comment 7: Date of Sale for Habas' U.S. Market

Comment 8: Whether the Department Should Utilize Habas' Revised Mill Scale Offset in the Cost Calculations

Comment 9: Whether the Department Should Disallow Habas' Offsets Related to Prior Fiscal Years

Issues regarding Icdas:

Comment 10: Date of Sale for Icdas' U.S. Market

Comment 11: Differential Pricing Analysis

Comment 12: Denial of Offsets for Non-Dumped Sales When Using the Average-to-Transaction Method

Comment 13: Whether the Department Should Account for Certain COP Differences not Reported by Icdas

Comment 14: Whether the Department Should Adjust Icdas' TOTCOM for Unreconciled COM Differences

Comment 15: Whether the Department Should Adjust the Cost Calculation of Rebar to Reflect the Production of Short-Length Rebar

Comment 16: Whether Icdas Correctly Reported The Byproduct Offset Amount For Scrap And Related Materials

Comment 17: Whether the Department Should Include Insurance Proceeds in Calculating Icdas' G&A Expenses

III. BACKGROUND

On April 24, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of rebar from Turkey.[1] The Department conducted sales and cost verifications of Habas from May 19, 2014 through May 23, 2014, and June 2, 2014 through June 6, 2014, respectively.[2] The Department conducted sales and cost verifications of Icdas from May 12, 2014 through May 18, 2014, and from June 9, 2014 through June 13, 2014, respectively.[3] Petitioners requested that the Department conduct a hearing in this investigation, which the Department conducted on July 31, 2014.[4]

We invited parties to comment on the *Preliminary Determination*. On July 18, 2014, we received case briefs from Petitioners,[5] Habas, Icdas, and the interested party Colakoglu Metalurji, A.S. (Colakoglu) and the Turkish Steel Exporter's Association (TSA). On July 24, 2014, we received rebuttal briefs from Petitioners, Habas, and Icdas. Based on our analysis of the comments received, as well as our findings at verification, we revised the weighted-average margins calculated in the *Preliminary Determination*.

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[1] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22804 (April 24, 2014) (*Preliminary Determination).*

[2] *See* Memorandum from George McMahon and Jolanta Lawska, Senior International Trade Analysts, Antidumping and Countervailing Duty Operations, through Eric Greynolds, Program Manager, Office III, Antidumping and Countervailing Duty Operations, and Melissa Skinner, Director, Office III, Antidumping and Countervailing Duty Operations to the File, titled "Verification of the Sales Response of Habas in the 2012-13 "Antidumping Duty Investigation of Concrete Reinforcing Bar from Turkey" (Habas Sales Verification Report) dated June 23, 2014; and Memorandum from Angie Sepulveda and Robert Greger, Senior Accountants, through Michael Martin, Lead Accountant and Neal M. Halper, Director, Office of Accounting, to The File, titled "Verification of the Cost Response of Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey (Habas Cost Verification Report) dated July 3, 2014.

[3] *See* Memorandum from George McMahon and Jolanta Lawska, Senior International Trade Analysts, Antidumping and Countervailing Duty Operations, through Eric Greynolds, Program Manager, Office III, Antidumping and Countervailing Duty Operations, and Melissa Skinner, Director, Office III, Antidumping and Countervailing Duty Operations to the File, titled "Verification of the Sales Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the 2012-13 Investigation of Steel Concrete Reinforcing Bar from Turkey (Icdas Sales Verification Report) (June 27, 2014); and Memorandum from Angie Sepulveda and Robert Greger, Senior Accountants, through Michael Martin, Lead Accountant, through Neal M. Halper, Director, Office of Accounting, to The File, titled "Verification of the Cost Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey" (Icdas Cost Verification Report) (July 7, 2014).

[4] *See* AD Hearing Transcript, filed on the record August 14, 2014.

[5] Petitioners are the Rebar Trade Action Coalition and its members: Nucor Corporation, Gerdau Ameristeel U.S. Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.

IV. CRITICAL CIRCUMSTANCES

The Department preliminarily found that, pursuant to section 733(e)(1) of the Act, critical circumstances exist with regard to rebar from Turkey for the "all others" rate companies, but that they did not exist for Habas or Icdas.[6] Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, *or* the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. For this final determination, for the reasons explained below, we continue to continue to find that critical circumstances exist for the "all others" rate producers and exporters of rebar from Turkey, but not for Habas or Icdas. The finding for "all others" is moot because the final determination is negative. Thus, we will not instruct U.S. Customs and Border Protection (CBP) to retroactively suspend entries for firms subject to the all others rate.

History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, the Department generally considers current or previous antidumping duty (AD) orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.[7]

In the *Preliminary Determination*, the Department explained that Colombia, the Dominican Republic, Jordan, and the United Arab Emirates initiated trade remedy proceedings with respect to Turkish rebar producers.[8] Additionally, the International Trade Commission (ITC) previously found Turkish rebar to be causing material injury and the Department previously found Turkish rebar to have been sold for LTFV.[9] The resulting AD order, imposed in 1997, remained in force until its revocation in 2009.[10] Based on these proceedings, we find that there is a history of injurious dumping of rebar from Turkey. Furthermore, in the instant investigation, the ITC preliminarily found a reasonable indication that an industry in the United States is materially

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[6] *See Preliminary Determination*, 79 FR at 22805; *see also* memorandum from James Doyle, Director Office V to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Less-Than-Fair-Value Investigation: Steel Concrete Reinforcing Bar from Turkey; Preliminary Affirmative Determination of Critical Circumstances," dated April 18, 2014 (Critical Circumstances Preliminary Decision Memo).

[7] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

[8] *See* Critical Circumstances Preliminary Decision Memo, at 6.

[9] *See* ITC's *Steel Concrete Reinforcing Bars form Turkey*, 62 FR 18653 (April 16, 1997)

[10] *See Notice of Final Determination of Sales at Less than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737 (March 4, 1997); *see also Revocation of Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars from Turkey*, 74 FR 26 (January 5, 2009).

injured by imports of rebar from Turkey. Therefore, we preliminarily determined that Petitioners met the criteria specified under 735(a)(3)(A)(i) of the Act.[11] As discussed in Comment 6 below, our findings in this regard remained unchanged. Further, based on the finding that the criteria under 735(a)(3)(A)(i) of the Act is satisfied, we find the requirements of 735(a)(3)(A)(ii) of the Act are not applicable for this critical circumstances determination.

Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later. Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed. In addition, the Department normally uses the longest period for which information is available up to the effective date of the preliminary determination.[12]

In its critical circumstances allegation, Petitioners state that Turkish exporters had knowledge of a possible case in advance of the actual filing of a petition through references to press articles and a meeting that government of Turkey officials held with officials from the Department. Petitioners further allege that due to trends associated with the months of peak construction activity, seasonality should be-considered as a factor in evaluating the shipment volumes within the Department's base and comparison. As such, Petitioners assert that the Department should rely on alternate base and comparison periods (*i.e.*, December 2012 – April 2013 and May 2013-September 2013, respectively) to analyze whether "massive imports" occurred under section 735(e)(l)(B) of the Act.[13]

In the *Preliminary Determination*, the Department considered Petitioners' arguments but found that, although the press articles quote industry sources discussing the possibility of a petition filing, the articles also quote members of the rebar industry dismissing the possibility of a petition filing as "saber rattling."[14] On this basis, we found that the articles, in and of themselves, do not constitute a sufficient basis to believe or suspect prior knowledge.[15]

With regard to seasonality, both Petitioners and Icdas agree that rebar imports into the United States typically peak during the first half of the year.[16] Thus, we found the parties' arguments do not support the use of the base and comparison periods advocated by Petitioners because

[11] *See* Critical Circumstances Preliminary Decision Memo, at 6.
[12] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom*, 58 FR 37215, 37216 (July 9, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9746 (March 4, 1997), and accompanying Issues and Decision Memorandum at Comment 10.
[13] *See* Petitioners' submission, "Steel Concrete Reinforcing Bar from Turkey: ·Critical Circumstances Allegation" (Turkey Critical Circumstances Allegation), dated December 3, 2013.
[14] *Id.*, at Exhibit 7.
[15] *See* Critical Circumstances Preliminary Decision Memo, at 7.
[16] *Id*., at 14; *see also* lcdas Rebuttal Comments, at 2.

Petitioners' base period (*i.e.*, December 2012- April 2013) contains several months when imports are low relative to the peak demand months in early spring through early summer, as evidenced by seasonal import data from the ITC that is included in Icdas' submission.[17] Rather, in the *Preliminary Determination*, we found it more appropriate to evaluate whether critical circumstances exist using the standard base and comparison periods of June 2013 - August 2013 and September 2013 - November 2013, respectively.[18] Interested parties did not comment on this aspect of our critical circumstances analysis, and, thus, our analysis in this regard remains unchanged from the *Preliminary Determination*.

In determining whether there were "massive" imports from Habas and Icdas, we analyzed company-specific shipment data for the period June 2013-August 2013 and September 2013-November 2013. These volume data[19] indicate that there was not a massive increase in shipments of subject merchandise to the United States by either Habas or Icdas during the three month period following the filing of the Petition. Specifically, shipments of subject merchandise to the United States from the two companies decreased in terms of volume.[20] To determine whether critical circumstances exist with regard to all other Turkish producers and exporters, we analyzed aggregate trade data, net of the company-specific shipment data supplied by Habas and Icdas. We used Global Trade Atlas (GTA) data as our aggregate data source.[21] Based on this approach, we found that shipments by all other Turkish companies were "massive" because the import volume increased by more than 15 percent between the base and comparison periods. Our findings in this regard remain unchanged from the *Preliminary Determination.*[22]

Therefore, we determine that the criteria under sections 735(a)(3) of the Act and 19 CFR 351.206(h) are met with regard to imports of rebar from Turkey by firms that are subject to the all others rate. As explained in the accompanying *Federal Register* notice we determine that the AD margin for both mandatory respondents, Habas and Icdas, are *de minimis* and, thus, we are issuing a negative final determination for this AD investigation. Therefore, although in accordance with section 735(a)(3)(B) of the Act, we determine that critical circumstances exist with regard to the all others rate producers and exporters of rebar from Turkey, the finding for the all others rate producers and exporters is moot because the final determination is negative. Thus, we will not instruct CBP to retroactively suspend entries for firms subject to the all others rate.

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[17] *See* Critical Circumstances Preliminary Decision Memo, at 7; *see also* Icdas' December 18, 2014, submission at Exhibit 6.

[18] *See* Critical Circumstances Preliminary Decision Memo, at 7.

[19] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Notice of Preliminary Affirmative Determination of Critical Circumstances*, 75 FR 28237, 28238 (May 20, 2010): "The Department normally considers a "relatively Short period" as the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 CFR 351.206(i). For this reason, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period")."

[20] *See* Memorandum to Eric B. Greynolds, Program Manager, "Preliminary Analysis of Critical Circumstances Shipment Data for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)," dated April 18, 2014; *see also* Memorandum to Eric B. Greynolds, Program Manager, "Preliminary Analysis of Critical Circumstances Shipment Data for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)," dated April 18, 2014.

[21] We find that GTA data are generally more reliable than aggregate data from the ITC Dataweb.

[22] *See* Critical Circumstances Preliminary Decision Memo at 7-8.

V. SCOPE COMMENTS

In the *Initiation Notice*, we invited parties to submit comments regarding product coverage.[23] We received scope comments from Deacero S.A. de C.V. and Deacero USA (Deacero), the mandatory respondent in the AD investigation on rebar from Mexico,[24] and rebuttal scope comments from Petitioners.[25] We evaluated those comments in the context of the companion AD investigations on rebar from Mexico and Turkey,[26] and preliminarily determined that the products at issue are within the scope.[27]

We invited parties to comment on our preliminary findings regarding this scope issue. On August 4, 2014, Deacero submitted a case brief concerning this issue to which Petitioners submitted a rebuttal brief on August 11, 2014. The issues raised by the interested parties are addressed in the companion AD investigation of rebar from Mexico, and we are incorporating the scope decision for Mexico in the instant investigation, as the scope is identical for both the Mexico and Turkey investigations.[28] For the reasons set forth in the companion AD investigation of rebar from Mexico, we continue to find that the products at issue are inside the scope of the investigation.[29]

On June 19, 2014, Petitioners submitted a request that the Department amend the scope of this investigation to exclude certain types of deformed steel wire by inserting the sentence below immediately before the last sentence of the current scope language:

> Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.

Based on the fact that no other interested party submitted comments regarding the Petitioners' request to amend the scope language, we incorporated this amendment into the "Scope of the Investigation" section below.

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[23] *See Initiation Notice*, 78 FR at 60827.
[24] *See* Letters from Deacero S.A. de C.V. and Deacero USA regarding "Scope Comments" (placing comments made in AD investigation on rebar from Mexico (A-201-844) on the record of this AD investigation, dated November 1 and 6, 2013; and Letter from Deacero S.A. de C.V. and Deacero USA regarding "Rebuttal Comments on Product Characteristics," dated November 12, 2013.
[25] *See* Letter from Petitioners regarding "Rebuttal Scope Comments" (November 25, 2013).
[26] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determinatio*n, 79 FR 22804 (April 24, 2014), and accompanying Decision Memorandum at "Scope Comments" section; and *Steel Concrete Reinforcing Bar from Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), and accompanying Decision Memorandum at "Scope Comments" section.
[27] *See* the Department's Memorandum to the File, titled "Scope Comments Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Mexico and Turkey," dated April 18, 2014 (Public Version)(Preliminary Scope Comments Decision Memorandum), unchanged in the Final Determination.
[28] *See Steel Concrete Reinforcing Bar from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstance*s, and accompanying Issues and Decision Memorandum at "Scope Comments" section.
[29] *Id*.

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). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

VII. MARGIN CALCULATIONS

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

For Icdas, we made the following changes for the final determination:

Sales Changes

1) We used the invoice date as Icdas' U.S. date of sale.
2) We used Icdas' originally reported CONNUMs for the final determination. For additional details, *see* Icdas Final Sales Analysis Memorandum.[30]

Cost Changes

We examined Icdas' cost data 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 except as follows:

3) We revised the calculation of the by-product offset rate to reflect the generated quantity of scrap, slag, defective billets, *etc.*, valued at the average POI price sold to unaffiliated parties.
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.
6) Consistent with the *Preliminary Determination*, we revised the calculation of the exempted duty rate to base the calculation on direct material costs.
7) We increased the reported cost of manufacturing (COM) to include the unreconciled difference between the COM from the normal books and records and the reported COM.

[30] *See* Memorandum to the File, titled "Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey – Sales Analysis Memorandum for Icdas," (Sales Analysis Memorandum for Icdas), dated concurrently with this notice.

8) We assigned a full cost to the downgraded rebar.

For additional details, *see* Icdas Final Cost Calc Memorandum.[31]

For Habas, we made the following changes for the final determination:

Sales Changes

1) We implemented certain minor corrections that were not included in Habas' post verification sales database ("habius03.sas7bdat").
   For additional details, *see* Habas Final Sales Analysis Memorandum.[32]

Cost Changes

We examined Habas' cost data 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 except as follows.

2) Consistent with the preliminary determination, we increased the total cost of manufacturing of each control number to include the duties forgiven on the purchases of imported raw materials used in the production of the subject merchandise.
3) We incorporated the revised mill scale offset by applying a ratio based on the reduction in the extended total average cost of manufacturing.
   For additional details, *see* Habas Final Calc Memo.[33]

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Deny Respondents' Duty Drawback Adjustments

Petitioners' Arguments

- The Department should reverse the P*reliminary Determination* granting a duty drawback adjustment for Icdas and Habas because the Turkish duty drawback scheme, known as the Inward Processing Regime (IPR), does not allow for the necessary linkage between imports and exports. The failure of Turkey's drawback scheme results from its lax standards concerning substitutable merchandise, which allowed respondents in this investigation to claim a duty drawback adjustment for imports which are not used in the production of subject merchandise.
- The Department applies a two-prong test when evaluating whether to grant a duty drawback adjustment. The first prong requires that the import duty and rebate must be linked to, and dependent on, one another, or in the context of an exemption from import duties, the

[31] *See* Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," (Icdas Final Cost Calc Memorandum) dated September 8, 2014. We made the same adjustments to Constructed Value (CV) that we made for Cost of Production (COP).

[32] *See* Memorandum to the File, titled "Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey – Sales Analysis Memorandum for Habas," (Sales Analysis Memorandum for Habas), dated concurrently with this notice.

[33] *See* Memorandum from Robert B. Greger to Neal M. Halper, re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (September 8, 2014) (Habas Final Calc Memo). We made the same adjustments to CV that we made for COP.

exemption is linked to the exportation of the subject merchandise. The second prong requires that the respondent demonstrate that there are sufficient imports of the imported material to account for the duty drawback received on the export of subject merchandise.[34]

- The Turkish system fails to satisfy either prong of the test.
- Under the Department's current policy, for the first prong to be met the respondent must present a duty drawback methodology that links specific duty-exempt eligible imports to specific U.S. exports on an entry-by-entry basis. The Department denied respondents' requests for a duty drawback adjustment when such information is absent from the record.[35]
- In *OCTG from Turkey*, the Department concluded without a word of analysis that the Turkish drawback system operated satisfactorily merely because it had been accepted in prior proceedings.[36] The Department then proceeded to grant respondents' duty drawback claims "based on each company's fulfillment of the requirements under the IPR to be entitled to exemptions from import-related duties and taxes."[37]
- The Department's conclusion in *OCTG from Turkey* was flawed because it granted the adjustment despite the fact that the respondent did not use any of the imports in the production of subject merchandise.[38]
- For example, under the Turkish system, processed products may be exported before the raw materials eligible for the duty relief are imported, in which case the raw materials used in the processed product may actually be procured from the domestic market.
- The Department should not judge the respondents' entitlement to a duty drawback adjustment solely by their compliance with the Turkish scheme but rather by standards which are consistent for all countries and across all AD proceedings. Conducting an analysis in this manner, namely comparing Turkey's IPR to the drawback system employed by the United States, will demonstrate that the Turkish system does not contain the linkage necessary to grant a duty drawback adjustment.
- Thus, the Department should reverse its finding in *OCTG from Turkey* and conclude that the IPR does not meet the criteria of the first prong of the Department's analysis.
- Aside from the flaws inherent in Turkey's IPR, information from the respondents also demonstrates that there is no basis to determine that the first prong of the Department's test has been met.
- For example, respondents failed to demonstrate that they have inventory systems that are able to distinguish between inputs (*e.g.*, scrap) that are, in fact, used to produce exports of subject merchandise. Rather, under the IPR, the Turkish government merely requires firms to demonstrate that they produced the exported good using an input of the same eight-digit HTS number as the imported input.
- Additionally, respondents failed to demonstrate that they have met the second prong of the Department's test for granting drawback adjustments.

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[34] *See, e.g., Saha Thai Steel Pipe, v. United States*, 635 F.3d 1335, 1340 (Fed. Cir. 2011) (*Saha Thai*).
[35] *See, e.g., U.S. Steel Corp. v. United States*, No. 08-00216, Slip Op. 12-48 (Ct. Int'l Trade, April 11, 2012) (*U.S. Steel*) at 5, in which the respondent failed to submit the necessary documentation with regard to India's drawback system.
[36] *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 41971 (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum at Comment 1.
[37] *Id*.
[38] *Id*.

- Despite the Department's repeated requests for Habas to document how it uses imported scrap to produce its rebar exported to the United States, Habas, instead, merely states that it imported scrap and ferroalloys to produce billets that it, in turn, used to produce subject merchandise. In making these claims, Habas provided nothing more than a list of exports and imports it supposedly provided to the Government of Turkey (GOT) as part of the IPR.[39]
- The Department solicited the same information from Icdas. However, Icdas failed to provide a single IPR which shows the specific amount and types (*i.e.*, the eight-digit HTS category) of imports and exports, as required by the IPR itself.
- Information on the record indicates that the respondents domestically procure significant volumes of scrap. Therefore, it is reasonable to conclude that the respondents are using domestically-source scrap (considered fungible with imported scrap) for purposes of receiving the drawback under the Turkish scheme to fulfill its export requirements and to rationalize an inflated and distorted drawback adjustment.
- Further, Habas bases a substantial amount of its duty drawback claim upon imports of billets, which Habas does not use to produce subject merchandise, as evidence by the lack of reference to billets in Habas' description of its production process.[40] The fact that Habas bases such a large amount of its drawback claim on imports that it does not use in exported rebar demonstrates the flaws in Turkey's IPR.
- The respondents have not explained or placed sufficient information on the record concerning the utilization rate used under the IPR. For example, respondents have not established whether the GOT uses a fixed ratio, the company's production records, or some other rate to determine the utilization rate applied to imports incorporated into the exported subject merchandise.
- The Department routinely reduces the amount of duty drawback to reflect the average actual utilizations rate of raw materials used by the respondent. However, in this investigation, respondents have not submitted the necessary information to determine whether such an adjustment is necessary.
- In addition, the Department should not allow an adjustment based on the Resource Utilization Support Fund Tax Exemption (KKDF) because it is not an import duty, is not applicable to all imports, and can be avoided altogether by structuring the import financing differently.

Habas' Rebuttal

- Petitioners ask the Department to ignore decades of case law in Turkish trade cases to find that Turkey's drawback system does not meet the Department's duty drawback requirements. Petitioners' counsel made the same arguments in *OCTG from Turkey*, and the Department carefully considered each argument and rejected each of them.
- The duty drawback adjustment in Habaş' U.S. sales database is calculated as:
  DTYDRAWU = A/B where:
  A = total TL value of import duties and KKDF tax forgiven on inward processing certificates (IPCs or DIIBs) active in the POI, and;
  B = total volume of exports used to satisfy export commitments under the POI IPCs.

[39] *See* Habas' March 31, 2014, Supplemental Questionnaire Response (Habas' A-C Supp. QNR Response) at 27-28, and Exhibit SBC-23.
[40] *See* Habas' February 11, 2014, Supplemental Questionnaire Response (Habas' B-D Supp. QNR Response) at 4.

- Information from Habas indicates that it used every sale in the reported U.S. sales database to close an IPC; furthermore, the Department verified the accuracy of Habaş' drawback reporting.
- The Department has repeatedly investigated and upheld Turkey's duty drawback system and has explicitly considered not only import duties but also the KKDF tax as eligible for drawback treatment under U.S. law.[41]
- Contrary to Petitioners' claim, there is no direct linkage requirement under the Department's two-prong test for evaluating duty drawback claims.
- The Court of International Trade (the Court or CIT) addressed this very issue in *Far East Machinery* finding that the linkage requirement may be satisfied by a system that allows some latitude in matching of specifications of imports and exports.[42]
- Petitioners further suggest that there is some fundamental difference between a drawback system under which import duties are actually collected upon importation and then actually rebated upon exportation, and a suspension system in which import duties are uncollected upon importation and the contingent liability is then extinguished upon exportation. However, drawback and suspension systems are both subject to the drawback adjustment under U.S. trade law, 19 U.S.C. 1677a(c)(1)(B), and there is no distinction between them as the CIT held in *Saha Thai*.[43]
- Habaş is very conservative in its IPC utilization tables, reporting significantly more tonnage of exports than would be required under any yield calculation.
- Petitioners assert that the U.S. TIB (temporary importation under bond) system is the touchstone against which all foreign duty drawback systems should be measured. However, Petitioners make the fundamental error of confusing the U.S. TIB system with duty drawback. TIB and drawback are entirely different systems, with different purposes and rules.
- Petitioners' main claim is that the argument that the Turkish drawback "program's failure to establish linkage (between imports and exports) results from its lax substitutable merchandise standards which have allowed respondents in this investigation to claim a duty drawback adjustment for imports which are not used in the production of subject merchandise." Similarly, Petitioners argue that "the Turkish system cannot directly link the input and the product exported." However, there is no such direct linkage requirement under the drawback precedents.
- Petitioners argue that the drawback adjustment for Habaş should be denied because Habaş failed to "specifically tie" its IPC imports to its IPC exports. Petitioners' argument is predicated entirely on Petitioners' erroneous assumption that a drawback beneficiary must establish that each particular export was produced from a particular imported input. Thus, Petitioners completely ignores the concept of substitution drawback ("equivalent goods" in the terminology of the Turkish regulations) and its role in a drawback system.
- Habaş is not required to prove that it produced specific exported rebar from specific imported scrap, billets, and ferroalloys. The records clearly reflects that, as for the linkage between

[41] *See, e.g., OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment VI.1.
[42] *See Far East Machinery Co. v. United States*, 12 CIT, 972, 699 F. Supp 309, 312-313(1988) (*Far East Machinery*); *see also Allied Tube & Conduit v. United States*, 29 CIT, 502, 374 F. Supp 2d 1257 (2005) (*Allied Tube*).
[43] *See Saha Thai Steel Pipe (Public) Company v. United States*, 33 C.I.T. 1541, 1544; 31 Int'l Trade Rep. (BNA) 2220; 2009 Ct. Intl. Trade LEXIS 122; SLIP OP. 2009-116 at 9 (October 15, 2009).

scrap consumption and billets, all billets are produced from the same scrap inputs; scrap, itself, is a homogeneous input, and the different grades of billet are obtained by adding different amounts of ferroalloys to the melt.

- In sum, Petitioners' base their arguments against the drawback adjustment on either flawed legal premises or erroneous assertions of "fact." Habas has thoroughly demonstrated that it used all of its U.S. exports to close IPCs; that it imported the type of material under the IPCs needed to produce the exported goods; and, that the quantity of exports was more than sufficient to have absorbed all of the imports during the POI. The drawback adjustment should therefore be granted in full.

Icdas' Rebuttal

- Petitioners' arguments are without merit and should be dismissed by the Department as they were in prior cases.
- Icdas' duty drawback adjustment is consistent with the law and the Department's practice.
- Record evidence indicates that Icdas meets the two-prong test for duty drawback exemptions.[44] Specifically, the record evidence demonstrates that the duty drawback exemption is linked to the subsequent export of rebar and that there are more than sufficient imports of raw materials to account for the duty drawback claimed by Icdas.[45]
- Cases cited by Petitioners fail to support their arguments. In each of the proceedings cited by Petitioners, the Department rejected the duty drawback claims at issue because there was either a specific omission or error in which the export sale was not being tied to the import license or there were different drawback requirements in place at the time of the proceeding.[46]
- Unlike the cases cited by Petitioners, all of Icdas' imports were tied to specific exports.
- Petitioners' intent is to create a new prong for the Department's duty drawback test that would rely on finding a specific link from each imported input to a particular export.
- However, the Department rejected this interpretation.[47]
- Petitioners' comparison of Turkish and U.S. Duty drawback programs is not part of the Department's two-prong test and has no relevance in this investigation. Notwithstanding the irrelevance of Petitioners' arguments, they are wrong to assert that the U.S. system does not permit substitution drawback. In fact, the U.S. drawback system permits substitution drawback where "fungible" (*e.g.*, not the same) merchandise is exported within three years of importation of a product.

Department Position: In the *Preliminary Determination*, we granted adjustments for duty drawback to Habas and Icdas, pursuant to section 772(c)(1)(B) of the Act. In this final

[44] *See Preliminary Determination,* and accompanying Decision Memorandum at 18; *see also* Icdas Sales Verification Report at 21-22.
[45] *See* Icdas Sales Verification Report at 21-22.
[46] *See, e.g., Far East Machinery*, 688 F. Supp. 610, 612 (CIT 1988), in which the respondent failed to demonstrate that the imported steel coil was, in fact, compatible with the production of subject merchandise.
[47] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64696 (October 20, 2010) (*Pipe and Tube from Thailand*) and accompanying Issues and Decision Memorandum at 11, "In determining whether an adjustment should be made to EP for this {duty drawback} exemption, the Department looks for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exemption;" *see also OCTG from Turkey,* and accompanying Issues and Decision Memorandum at Comment 1.

determination, we continue to find that Habas and Icdas are entitled to claimed adjustments for duty drawback.

To satisfy section 772(c)(1)(B) of the Act, which states that export price (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," and to confirm the respondents' entitlement to a duty drawback adjustment, we employed a two-prong test to ensure that 1) 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 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.[48]

In determining whether an adjustment should be made to EP for this exemption, the Department looks for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation.[49] We do require, however, that the company meet our "two prong" test as described above in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.[50]

In order for Turkish companies to qualify for exemptions from paying customs duties and KKDF on imported inputs for rebar exports under the IPR, each respondent demonstrated that it applied for or "opened," and the GOT maintained an IPC which is the official mechanism under the IPR by which companies justify, and the GOT affirms, entitlement to such exemptions. Each respondent demonstrated that when it opened the DIIBs, it documented 1) projected quantities of imports; and 2) projected quantities of exports of rebar based on an approved production yield loss ratio also documented in the DIIB. Each respondent also demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export-contingent.[51] We note there is no indication that the IPR requires subject imports must be actually consumed in the production of, or even possess the technical specifications necessary to produce, reported exports. Finally, we also note that there is no indication that the IPR requires that imports precede the exports, but only that there be sufficient export quantities of finished rebar to account for the quantities of imported goods.

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[48] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006). The courts affirmed this test. *See Saha Thai*, 635 F.3d at 1340-41.

[49] *See, e.g., Pipe and Tube from Thailand*, and accompanying Issues and Decision Memorandum at 11, *see also OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment 1.

[50] *See, e.g., Pipe and Tube from Thailand*, and accompanying Issues and Decision Memorandum at 11; *see also Mittal Steel USA Inc. v. United States*, 31 CIT 1395, 1412-1413 (2007); *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Intl. Trade 1999), and *OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment 1.

[51] *See* Habas Sales Verification Report at 23-25 and SVE-21; and Icdas Sales Verification Report at 21-22 and SVE-29.

We examined respondents' claims for duty drawback utilizing the criteria outlined above. Habas and Icdas provided a list of items imported during the POI along with the IPC numbers against which they made the imports. Further, respondents provided copies of IPCs as well as the documents they submitted to the GOT when they closed out an IPC.[52] 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.[53] Therefore, based on this information, we 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.

During verification, the Department reviewed the Turkish import system including the customs regulations specific to the IPR, Resolution number 2005/8391, the full Customs Law (number 4458, 10/27/1999), and the IPCs. The IPCs indicated imports of raw materials, a commitment to export a certain amount of goods, and the link between commercial invoices and customs declaration forms. Further, at verification, we conducted queries of the Turkish Government on-line customs database to confirm that IPR certificates were properly matched to specific exports and closed, and tied the respondents' duty drawback calculations to the reported data. We found no discrepancies in respondents' data during our review of respondents' duty drawback information.[54]

Based on this information, we find that the respondents met the requirements of the Department's two-prong test for a duty drawback adjustment. We find the respondents proved that the relevant import duties and rebates were directly linked to, and dependent upon, one another. Second, the respondents demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product. In previous proceedings involving other products from Turkey, we found that the requirements under the IPR, if met by Turkish companies, satisfied the statute with respect to duty drawback adjustments under U.S. law.[55]

Further, because each respondent demonstrated that the GOT approved and maintained DIIBs through the IPR, which documented exports of rebar to the United States, we find that each respondent participated in the IPR for purposes of considering their entitlement to duty drawback adjustments.

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[52] *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-l 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 I, 2014, at SC-12 to SC-15 and Exhibits SC-14 to SC-15; Icdas' Second Supplemental Section A-C response, dated April 7, 2014, at S2C-l - S2C-3 and Exhibits S2C-l to S2C-4.

[53] *Id*.

[54] *See* Habas Sales Verification Report at 23-25 and SVE-21and Icdas Sales Verification Report at 21-22 and SVE-29.

[55] *See, e.g., Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) (*Welded Pipe 11-12*) and accompanying Issues and Decision Memorandum at 17-19; s*ee also OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment 1.

Contrary to the Petitioners' argument, we find that a comparison to the U.S. drawback system does not undermine the legitimacy of Turkey's drawback system. As Icdas notes, the similarity of Turkey's drawback system to that of the United States is not part of the Department's two-prong test. Furthermore, the issue of substitution drawback, which lies at the heart of Petitioners' criticism of Turkey's drawback system, is also permitted under the U.S. system.

We find that none of the cases that the Petitioners cite support petitioners' argument about the linkage requirement as a condition for the duty drawback adjustment to be granted. Specifically, in the cases cited by Petitioners, the Department denied the duty drawback adjustment for reasons that are not applicable here.

Specifically, in *Sorbitol from France*[56], the Court found that the import levy and the export restitution payments were not directly linked to or dependent upon each other within the context of the European Community (EC) regulations. The Court based its finding in this regard on the fact that, under the EC's system, the EC 'export restitution payments' were paid on all exports of sorbitol regardless of whether the corn used to produce that sorbitol was domestic (from within the EC) or imported. As noted above, we find the GOT's system provides a direct linkage that satisfies the first prong of the Department's test.

Similarly, we disagree that the Court's holding in *U.S. Steel* should compel the Department to deny respondents' duty drawback claims in their entirety. In *U.S. Steel*, the Court held that the Department correctly denied a duty drawback adjustment with regard to a single invoice because the Indian respondent failed to link the invoice to documentation generated as a result of its participation in India's drawback scheme.[57] As noted above, we find that the information that Habas and Icdas provided in their questionnaire responses and the Department's findings at verification demonstrate that the two respondents documented that exemptions provided under the GOT's drawback system are linked to the exportation of the subject merchandise.

As to *Rajindir Pipes*, the Court held that the record submitted by the respondent did not demonstrate the necessary link between exports and imports because Rajinder imported raw material into India duty free and that Rajinder, independently, exported finished products pursuant to an Advance License, which is not applicable to this case.[58] Thus, the Court concluded that the respondent failed to demonstrate that its duty free imports were directly linked to and dependent upon its exportation under India's drawback scheme.[59] In contrast, in the instant investigation, we find that respondents demonstrated that their imports of the inputs at issue were made under the GOT's drawback scheme. Thus, the facts of the instant investigation are distinct from those of *Rajindir Pipes*.

Therefore, we find that each respondent demonstrated that it sufficiently met the requirements of the IPR to be entitled to exemptions on import-related duties and taxes based on exports,

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[56] *See Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982).
[57] *See U.S. Steel Corp. v. United States*, No. 08-00216, 2012 WL 1259085, at 5 (CIT Apr. 11, 2012), *aff'd* 500 F.App'x 948 (Fed. Cir. 2013) (emphasis added).
[58] *See Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1359 (CIT 1999).
[59] *Id*.

including exports of rebar to the United States. Specifically, as noted above, Respondents submitted IPR certificates that were properly matched to specific exports and closed. Moreover, the Department examined this information at verification and found no discrepancies.[60]

Accordingly, we are granting Habas and Icdas a duty drawback adjustment for this final determination based on each company's fulfillment of the requirements under the IPR to be entitled to exemptions from import-related duties and taxes.

Comment 2: Whether Exempted Duties Should be Added to Costs Regardless of Whether the Department Grants the Duty Drawback Adjustment

Petitioners' Arguments

- Exempted duties (*i.e.*, the amount of import duties imposed by the country of exportation which have been rebated, or which have not been collected) must be added to the reported cost of manufacturing regardless of whether or not the Department grants the claimed duty drawback adjustments for Habas and Icdas.
- In accordance with *Circular Welded Steel Pipe from Turkey*,[61] it is the Department's practice to add exempted duties to a respondent's reported costs.
- The Department found that exempted duties could not be excluded from costs as a fallback when a claim for duty drawback fails.[62]
- Because respondents did not report the exempted duties in the cost databases in this proceeding, the Department must add the exempted duties to respondents' costs irrespective of the Department's acceptance or rejection of each respondent's duty drawback claim.
- The adjustment to cost for exempted duties must be made on the same basis as the duty drawback adjustment to price is calculated and specific to sales of rebar to the United States.

Habas' Rebuttal

- Any adjustment to cost to account for duty drawback must reflect the fact that all of Habas' products are produced, in part, from the imported materials covered under the IPCs.
- Thus, Habas maintains that the cost adjustment should be applied to all production.

Icdas did not comment on this issue.

Department's Position: As noted in Comment 1 above, we granted Habas' and Icdas' duty drawback adjustments for the final determination. Thus, with regard to Petitioners' argument that the exempted duties should be added to costs even if the Department rejects each company's duty drawback claim, the issue is settled in that we granted the duty drawback adjustment to price for both respondents.

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[60] *See* Habas Sales Verification Report at 23-25 and SVE-21and Icdas Sales Verification Report at 21-22 and SVE-29.

[61] *See Circular Welded Carbon Steel Pipes and Tubes from Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 77 FR 72818 (December 6, 2012) (*Circular Welded Steel Pipe from Turkey*), and accompanying Issues and Decision Memorandum at Comment 4.

[62] *See Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 7503 (February 14, 2003), and accompanying Issues and Decision Memorandum at Comment 4.

In such cases where the Department allows a duty drawback adjustment, it is the Department's practice to correspondingly increase the respondent's COP for the costs associated with the exempted duties, even though such amounts were not actually paid and recorded in the company's normal books and records.[63] The Court has upheld this practice.[64] Accordingly, consistent with our established practice, we adjusted each respondent's COP to account for the exempted import duties on raw materials used to produce the merchandise under consideration.

In calculating the reported costs, each respondent submitted a calculation that allowed the Department to include an amount for exempted import duties. Petitioners take issue with the calculations, arguing that the amount of the duty drawback adjustment included in the price-to-price comparison should be added to COP. However, it would be inappropriate to add the duty drawback adjustment made to U.S. sales directly to the CONNUM-specific cost. The reported costs in the cost files include not only the amount paid for imported materials, but also the amount paid for domestically-sourced materials. The prices of the domestically-sourced materials in a country that has an import duty scheme are affected by the import duty. Under an import duty regime, there is a presumption that domestic prices increase to reflect world market prices, plus the amount of the duties imposed on imports (*i.e.*, the "duty wall").[65] The idea being that the domestic suppliers are able to raise their prices up to the amount of the import price, plus the duty. Thus, Habas' and Icdas' reported costs include the imported materials without the duty (which has been exempted), plus the cost of the domestically sourced materials. Both sources of materials must be considered when accounting for the exempted duties or in making an adjustment. With the exempted duties added, the domestically sourced and imported materials are on the same basis and the weighted-average cost is appropriate for use for both the home and U.S. markets.

In reporting the adjustment to its submitted costs for exempted import duties, Icdas calculated the exempted import duties missing from the reported direct material cost field (DIRMAT), and reported the amount in the exempted duty field (DUTYDB) in the cost database.[66] Habas submitted a similar calculation that allowed the Department to include the exempted duties in its reported costs at the *Preliminary Determination*.[67]

Comment 3: Whether the Department Should Revise Habas and Icdas' Home Market (HM) CONNUMs for the Yield Strength Product Characteristic (MSYSTRH)

Petitioners' Arguments

- Record evidence indicates that respondents misreported the product characteristics of certain HM grades by claiming their yield strength contained carbon equivalency (CE) levels of >0.55 percent. In the *Preliminary Determination*, the Department found that respondents

[63] *See Pipe and Tube from Thailand*, and accompanying Issues and Decision Memorandum at Comment 2.
[64] *See Saha Thai Steel Pipe (Public) Co. v. United States*, No. 08-00380, 2009 WL 3326637 at *4-6 (CIT October 15, 2009), *aff'd*, 635 F.3d 1335 (Federal Circuit 2011).
[65] *See OCTG From Turkey*, and accompanying Issues and Decision Memorandum at Comment 1.
[66] *See* Icdas Cost Verification Report at 16 and 18.
[67] *See* Memorandum from Robert B. Greger to Neal M. Halper, re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Apr. 18, 2014) (Habas Prelim Calc Memo) at Adjustment 1.

misreported the yield strength product characteristic (field "MSYSTRH") for these grades based on its finding that these grades cannot have > 0.55 percent CE.[68]

- At verification, respondents attempted to reargue this issue and again assert that these HM grades should actually have CE levels equal to their U.S. sales of rebar.
- The evidence cited by respondents at verification and by the Department in its verification reports indicate that no new evidence has been submitted on this issue, and no attempt was made to discredit the Department's findings in the *Preliminary Determination*.
- All record evidence indicates that a certain grade reported by respondents actually contains a certain CE and respondents have never argued otherwise. Instead, respondents are now basing their entire argument on the apparent fact that, even though a certain grade of rebar contains less than a certain CE, it should be classified in the "other" category of the yield strength field because it has no maximum specified CE.
- This argument is a perversion of what the yield strength field was designed to capture and should be dismissed by the Department.

Icdas' Arguments

- The Department erred when it recoded specifications for certain grades of rebar in the *Preliminary Determination.* Icdas correctly reported yield strength categories for certain grades of rebar in the yield strength field of the HM database and in accordance with the Department's code specifications.
- During the sales verification, the Department examined this issue in detail and found Icdas' explanation consistent with the Department's code specifications.[69]
- Based on record evidence, the Department should use the yield strength categories for these certain grades as reported by Icdas.

Habas' Arguments

- It is incorrect for Petitioners to claim that all Turkish rebar is > 0.55 percent CE.
- The actual CE as indicated on the mill test certificate is not relevant to the yield strength code because it is not what the Department's questionnaire instructed Habas to report in its CONNUMs. Rather, the yield strength field refers to the "*specified* minimum yield strength."
- The Department verified respondents' CONNUMs at both the cost and sales verifications and found no discrepancies. As such, the Department should use the field, as reported by Habas and Icdas.

Icdas' Rebuttal

- Petitioners' argument, that yield strength for certain grades should be coded as "3" for the yield strength field based on the assertion that all Turkish rebar is > 0.55 percent CE, is flawed for following reasons:

  1) Petitioners provided limited support for their argument by relying on its model match comments, only. In contrast, Icdas provided documentation at verification that supports Icdas' argument that the code reported by Icdas for the grades is correct.

  2) Turkish specifications do not contain any statement that all rebar sold in Turkey should be produced with > 0.55 percent CE.

[68] *See Preliminary Determination*, and accompanying Decision Memorandum at 8.
[69] *See* Icdas' Sales Verification Report at 2 and SVE-11.

3) The Department did not request that Icdas report the actual CE of the product per mill test certificate, thus, this issue is not relevant.

Department Position: Habas used the actual industry specification to correct the internal specification and grade requirements summary chart which Habas submitted prior to the *Preliminary Determination*.[70] The industry specification for the particular grade at issue does not identify a maximum specified CE. However, despite this information in the Turkish rebar specification, the Department obtained certain production information during the verification of Habas which further supports the change which the Department made to the yield strength field for Habas in the *Preliminary Determination*.

We find that the Department's reliance on Habas' actual production experience is relevant to its reporting of yield strength where no maximum specified CE is specified because it accurately identifies the yield strength experienced by Habas during the POI. Therefore, these data are a more appropriate measure of yield strength than the yield strength code that was originally reported by Habas for this particular specification and grade.[71]

The Department does not have the same specific production data for Icdas. Therefore, due to the fact that we have insufficient evidence on the record to demonstrate Icdas' production experience for its reporting of yield strength for the grade where no maximum CE is specified, we determine to use Icdas' originally reported CONNUMs for the final determination.

Due to the business proprietary nature of this issue and position, *see* the Analysis Memorandum for Habas for additional details.[72]

Comment 4: Whether the Department Should Include Rebar Type (REBARTYPEH/U) as a Product Characteristic Forming Part of the Control Number (CONNUM)

Petitioners' Arguments

- Prior to the *Preliminary Determination*, Petitioners argued repeatedly that rebar type (*i.e.*, water/air cooling) should form part of the CONNUM. The Department rejected this argument; however, Petitioners incorporate those same arguments by reference in their case brief and request that the Department reconsider its *Preliminary Determination*.

Icdas' Rebuttal

- Petitioners offer no new or additional support for their position. Icdas further agrees with the Department's decision on this issue to exclude rebar type as a product characteristic in the CONNUM, as stated in the *Preliminary Determination*.

[70] *See* Habas' Supplemental Questionnaire response, dated March 31, 2014 at Exhibit SBC-8 and Icdas' Supplemental Questionnaire Response, dated April 3, 2014 at Exhibit SB-6.
[71] *See* the Department's Section B Initial Questionnaire issued to Habas and Icdas on December 16, 2013.
[72] *See* Memorandum to the File, titled "Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey – Sales Analysis Memorandum for Habas," (Sales Analysis Memorandum for Habas), dated concurrently with this notice.

Department Position: Petitioners' model match comments, which they submitted prior the *Preliminary Determination* and repeated in their case briefs, include the rebar cooling method as a suggested matching characteristic to be used in the control number used for product matching purposes. Petitioners assert that there are two types of rebar involved in this investigation 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. Further, Petitioners claim 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.

We disagree with Petitioners and maintain our decision to use the model match criteria applied in the *Preliminary Determination*. The respondent, Habas, stated the following in its response:

> {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.[73]

We confirmed at verification that specification ASTM A-615 does not specify a particular type of cooling method (*e.g.*, air vs. water cooling).[74] We also find that the physical characteristics included in the Department's 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 carbon equivalency percentages. Furthermore, we find that record evidence does not support Petitioners' claim that the different inputs and production processes result in rebar with commercially significant differences.

The facts remain unchanged from the *Preliminary Determination* and the Department discovered no new information during the verifications of Habas and Icdas regarding rebar type that warrants reconsideration of our position on this issue. We continue to maintain the Department's decision made in the *Preliminary Determination* on this issue.[75] Accordingly, our model match criteria remain unchanged for this final determination.

Comment 5: Whether HM Sales of Foreign Grade Rebar Are Outside the Ordinary Course of Trade

Petitioners' Arguments

- The Department should exclude the sales of ASTM and other foreign grade product sold in the HM as such sales are overruns and outside the ordinary course of trade. Company

[73] *See* Habas' Second Section A-C supplemental questionnaire response, dated April 7, 2014, at 4; *see also* Habas' Section A QNR Response dated January 7, 2014 at Exhibit A-15, *see also Preliminary Determination*, and accompanying Decision Memorandum at 11-12

[74] *See* Habas' Sales Verification Report at 10.

[75] *See Preliminary Determination* and accompanying Decision Memorandum at 6-12.

officials confirmed that these were simply overruns and explained that HM customers never ordered these grades and did not know they were even receiving them.
- Icdas identified all its sales of foreign grade product sold in the HM as overruns in its original questionnaire response and Habas did not.
- There is no real commercial market for the foreign grade rebar sold in Turkey. Given the lack of a demonstrable market, the Department should consider these sales to be outside the ordinary course of trade and exclude them from the margin calculations.
- In *Steel Butt-Weld Pipe Fittings from Italy* [76] the Department determined that the purpose in determining whether a sale is outside the ordinary course of trade is to prevent dumping margins from being based on unrepresentative sales and that is what Respondents' attempt to do in this case.
- According to the Statement of Administrative Action (the SAA), the Department may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.

Habas did not comment on this issue.

Icdas' Rebuttal
- Icdas sold small amounts of foreign grade rebar in its HM during the POI. This rebar met or exceeded the equivalent Turkish grade for the customer.
- The Department confirmed at verification that Icdas identified all these sales {HM sales} as overrun merchandise and reported that all the overruns were sold as prime merchandise during the POI.
- Contrary to Petitioners' assertion, the fact that Icdas had a production overrun on some foreign grade rebar and was able to satisfy a local customer's normal requirements with that product does not make the sale out of the ordinary course of trade.
- Whether or not rebar that was shipped from stock to fill a HM customers' order for stock merchandise originated from a production run that was originally made to fill an export order is irrelevant to a dumping comparison. In a normal stock sale a HM customer orders a commodity product that satisfies a certain set of specifications, and Icdas ships from stock a product that meets or exceeds those specifications. It does not matter how or when that product was made, as long as it meets the customer's specifications.
- Petitioners fail to cite sufficient record evidence or any case law to support its allegation that Icdas' HM sales are made outside the ordinary course of trade.

Department Position: We do not agree with Petitioners' assertion that Habas' and Icdas' HM sales of rebar produced to a foreign specification are outside the ordinary course of trade. Section 771(15) of the Act, defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The SAA clarifies this definition stating, "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have

[76] See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Italy (Butt-Weld Pipe Fittings from Italy)* 65 FR 81830 (December 27, 2000), and accompanied Issues and Decision Memorandum at Comment 3.

characteristics that are not ordinary as compared to sales or transactions generally made in the same market."[77] The Department will normally consider the totality of the circumstances, including the following four factors, in evaluating whether sales in a given market are not ordinary when compared to other sales generally made in the same market: 1) whether there are different standards and product uses, 2) comparative volume of sales and number of buyers in the HM, 3) price and profit differentials in the HM, and 4) whether sales in the HM consisted of production overruns or seconds.

Although Habas and Icdas reported that their foreign specification rebar sold in the HM is overrun production, there is no evidence suggesting that these respondents treated sales of this excess material from inventory any differently than Turkish TSE specification rebar. With respect to Habas, it reported that, "…Habas may supply a non-Turkish specification after ensuring that the product meets the Turkish specification requirements. The specification and grade are embedded in the product code[78], but only the product description, and not the product code, appears on the invoice to the customer.[79] Thus, the customer is aware of the dimensions of the product shipped, but not the specification. The latter information is not material to the transaction, as long as the product in fact satisfies the Turkish standard."[80]

Similarly, Icdas indicates that it reported all of its sales in HM as overruns for which the specification of the foreign like product was not Turkish standard. However, we find that Icdas made these sales in the normal course of business, with normal prices and sales terms which are equivalent to the foreign like products that were Turkish standard."[81] Our analysis of the data submitted by the respondents supports these assertions. Due to the business proprietary nature of this analysis, *see* the Analysis Memorandum for Habas and the Icdas Verification Report for additional details.[82]

We find no evidence on the record to suggest that any foreign specification sales from production overruns were anything other than ordinary sales out of inventory. Further, HM sales of production overruns do not automatically result in a finding that sales are outside the ordinary course of trade, but rather this is but one factor that the Department considers when determining if certain HM sales are outside the ordinary course of trade.[83] Therefore, considering the totality of the circumstances that foreign specification rebar usage is not demonstrably unique, sales volumes of foreign specification rebar fall within the normal range of sales in the HM, relative price and profitability do not set sales of foreign specification rebar apart, and foreign specification rebar are overruns sold out of inventory, we do not consider Habas' and Icdas'

[77] *See SAA* accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1, at 834.
[78] *See* Habas' Section A QNR Response dated January 7, 2014 at Exhibit A-13 (Product Code Key).
[79] See *Id.* at Exhibit A-8 (Habas' Home Market Sales Documentation).
[80] *See* Habas' First Section A-C supplemental questionnaire response, dated March 31, 2014, at 13.
[81] *See* Icdas' Supplemental Section B Response, dated April 3, 2014, at SB-5.
[82] *See* Icdas Verification Report at 11-12 and SVE-13; *see* Sales Analysis Memorandum for Habas.
[83] *See See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review*,70 FR 7237 (February 11, 2005) (*Romanian Pipe*) and accompanying Issues and Decision Memorandum at Comment 14("The Department will normally consider the totality of the circumstances" when determining whether home-market sales are outside the ordinary course of trade); *see also* 19 CFR 351.102(b).

foreign specification rebar sales in the HM to be outside the ordinary course of trade.[84] Accordingly, based on our analysis of the record and considering the totality of the circumstances, we find that Habas and Icdas' overrun sales warrant inclusion in our margin calculations for the final determination.

Comment 6: Whether Critical Circumstances Exist for All Others

Colakoglu's Arguments

- The Department erred by finding in the *Preliminary Determination* that critical circumstances exist with respect to the all other companies.
- There is no history of dumping and material injury in this case and there has been no surge in imports since the filing of the petition.
- Based on total available import data collected by the Department, Turkish imports did not increase by the 15 percent required to find massive imports during the three-month period after the case was filed.
- The Department erroneously deducted import data for the mandatory respondents in its critical circumstances analysis.
- The purpose of critical circumstances is to deter importers who could "deliberately import and stockpile large quantities of a product under investigation prior to the Department ordering suspension of liquidation . . . ," [85] thus all imports during the measurement period should be included in the Department's calculation.
- The Department's analysis unfairly penalizes importers when, in fact, importers have no means of knowing whether certain Turkish importers are increasing their imports prior to the imposition preliminary dumping duties.

Petitioners' Rebuttal

- From 1997 until 2008, there was a U.S. AD order in place on rebar from Turkey, and simply because a few mandatory respondents were able to avoid AD margins in a few administrative reviews does not mean that the rest of the Turkish producers were not dumping rebar in the United States for the entire period that the order was in effect.
- The Department's critical circumstances finding in this investigation is only against the non-mandatory respondents, and the vast majority of these non-mandatory respondents had positive AD margins for the entire length of the previous AD order.
- Turkish rebar has been causing harm to a domestic industry. For example, in 2011, the government of the Dominican Republic found that Turkish imports of rebar were sold at less than normal value and had caused injury to the Dominican Republic's domestic rebar industry.
- Jordan and the United Arab Emirates also initiated AD measures against Turkey. Thus, there is ample record evidence to demonstrate a history of dumping and material injury as a result of dumped subject merchandise.
- Respondents' proposed methodology is contrary to the Department's long-standing standard practice of making a critical circumstances determination for each individual company being investigated and a country-wide determination for all the remaining companies.

[84] *See* Icdas' Verification Report at 11-12 and Sales Analysis Memorandum for Habas for additional information.
[85] *See* the Department's 2009 Antidumping Manual, Chapter 12, at 2 (Critical Circumstances).

- The Department's current approach for determining whether critical circumstances exist for the all others rate companies is reasonable given that it allows the Department to make a critical circumstances determination on as specific a basis as possible.
- Respondent focuses its discussion on fairness to the importer and the importers' inevitable lack of knowledge concerning increased imports, but such considerations are irrelevant to the Department's determination under the statute. Therefore, the Department should continue its standard practice in this investigation and find critical circumstances with respect to the non-mandatory (all other) Turkish exporters.

Department Position: We disagree with Colakoglu and TSA. As explained in Section IV, above, we find that our methodology applied in the *Preliminary Determination* is consistent with the Department's practice and precedent. Specifically, in AD investigations, it has been the Department's practice to deduct the shipment volume reported by the mandatory respondents from the total volume of imports reported in the GTA import data.[86] In making a separate determination for the all other producers and exporters, the deduction of the shipment volumes reported by the two mandatory respondents eliminates potential distortions from our analysis of the all other producers and exporters. Interested parties presented no examples of cases in which the Department applied a different methodology in an AD investigation. Further, we find that interested parties have not demonstrated that this methodology is distortive to our critical circumstances analysis. Accordingly, we made no changes and find that critical circumstances exist for all other companies, but this finding is moot because of the *de minimis* AD margins calculated for Habas and Icdas.

Issues regarding Habas:

Comment 7: Date of Sale for Habas' U.S. Market

Petitioner's Arguments:
- Habas originally reported invoice date as the U.S. date of sale. However, based on record information, the Department subsequently instructed Habas to revise its U.S. sales reporting to report all U.S. shipments with a contract date, or revised contract date, within the POI. In its *Preliminary Determination*, the Department found that contract date or the amended contract date best reflected Habas' U.S. date of sale. The Department based this determination on record information demonstrating no change in the principal sale terms between Habas' contract/amended contract dates and the invoice dates.
- The Department should continue to use contract/amended contract date as Habas' U.S. date of sale in its final determination because this date is the most appropriate date of sale for the U.S. market.

Habas did not comment on this issue.

Department Position: We agree with Petitioners and find that Habas' contract date or amended contract date reflects the date in which the material terms of its U.S. sales are finalized. Specifically, during the sales verification, Habas indicated that, "for U.S. sales, contract date (or amended contract date, where applicable) was appropriate because that date represents a date in

[86] *See, e.g., OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment 1.

their accounting system in which the material terms of sale are finalized and the contract is solidified."[87] Habas conceded at verification that it finalizes its terms of sale on the contract date/amended contract date, and therefore, we find that that the contract date or amended contract date reflects the date in which Habas' material terms of sales are finalized. Thus, we determine that the contract date is the appropriate date of sale for the final determination.

Comment 8: Whether the Department Should Utilize Habas' Revised Mill Scale Offset in the Cost Calculations

Habas' Arguments

- The Department should use the revised cost database that reflects the correction of its mill scale by-product offset.
- In its original cost database, Habas incorrectly reported the mill scale offset as a positive number, rather than as a negative number. However, Habas maintains, the Department verified that the mill scale offset should be subtracted from cost rather than added in the calculation of COP.

Petitioners did not comment on this issue.

Department Position: We agree with Habas and used the revised database, inclusive of the verified mill scale by-product offset in our final determination.

Comment 9: Whether the Department Should Disallow Habas' Offsets Related to Prior Fiscal Years

Petitioners' Arguments

- The Department should disallow income received in 2012 related to prior years as an offset to Habas' total general and administrative (G&A) expenses.

- Per *Live Swine from Canada*,[88] it is the Department's well-established practice to exclude items that were incurred prior to the period under consideration from the cost of production. Accordingly, the Department should adjust Habas' G&A expense ratio to exclude these income offsets at the final determination.

Habas' Rebuttal

- The Department should allow the full amount of the credits received in 2012 as an offset to its reported G&A expenses. The offsets are similar to insurance claims in that there is a delay between the time the claim is made and compensation is received.

[87] *See* Habas' Sales Verification Report at 9.

[88] *See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005) (*Live Swine from Canada*), and accompanying Issues and Decision Memorandum at Comment 23.

- The Department consistently included the proceeds from insurance claims as an offset to G&A in past cases even when the proceeds were related to claims that arose prior to the period under investigation or review.[89]
- The Department allows the proceeds as an offset to G&A expenses because the losses from the claimed transaction are included in a respondent's COP.
- The types off transactions for which Habas is claiming offsets are not extraordinary events, but rather normal operational occurrences where there is a time lag between the event and the corresponding credit received.
- The credits received are recognized as offsets to G&A expense under both Turkish and U.S. GAAP regardless of this time lag. If the income is not recognized in the year received, the accounting methodology does not reflect economic reality as the credits cannot be retroactively applied in a prior fiscal year.
- If the Department decides not to allow the offsets recorded in 2012 against claims that it incurred in prior fiscal years, then it must allow offsets recorded in 2013 for claims incurred in 2012. Habas asserts that to exclude both the 2012 and 2013 offsets received would quite simply deny the indisputable existence of all such claims. According to Habas, this course of action would not only violate Turkish GAAP, but would also illogically inflate Habas' G&A expenses with no underlying basis in reality.

Department Position: We agree with Habas that the transactions in question are more appropriately described as normal operational occurrences, rather than the large reversals of prior period losses that the Department excluded in past cases. We generally do not allow respondents to reduce current period expenses by corrections of overestimated costs associated with non-recurring provisions from prior years.[90] For example, the Department previously disallowed a respondent's offset to G&A expenses by the reversal of a provision relating to the over-estimation of the costs associated with a disposal of fixed assets.[91] It is appropriate, however, to include normal recurring items and related reversals in the G&A expense rate calculation.[92] In this case, similar to *BMRF from Mexico*, the offsets claimed by Habas constitute the type of normal, recurring entries that businesses make each year in carrying out their operations.[93] Therefore, in accordance with our practice, we allowed these entries as offsets to G&A expense in our final determination.

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[89] *See, e.g., Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003) (SS *Bar from India*), and accompanying Issues and Decision Memorandum at Comment 5; *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) (*Silicomanganese from India*), and accompanying Issues and Decision Memorandum at Comment 14.

[90] *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) (*Mexico Coils*) and accompanying Issues and Decision Memorandum at Comment 7.

[91] *See Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

[92] *See, e.g., Mexico Coils*, and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (*BMRF from Mexico*), and accompanying Issues and Decision Memorandum at Comment 31.

[93] *See* Habas' Cost Verification Report at 22.

With regard to Habas' argument that the offsets are akin to insurance claims, we disagree. We found at verification that the offsets in question were related to normal operational occurrences, such as the reversal of amounts owed on purchases made from suppliers, rather than the types of events that might give rise to an insurance claim. Finally, with regard to Habas' argument that the Department must allow the offsets recorded in 2013 if it disallows the offsets recorded in 2012, we find that that the issue is settled in that we have not excluded the 2012 offsets claimed by Habas.

Issues regarding Icdas:

Comment 10: Date of Sale for Icdas' U.S. Market

Petitioners' Arguments

- In the *Preliminary Determination*, the Department correctly relied on contract date for Icdas' U.S. sales and properly determined that the material terms of sale of Icdas' U.S. sales did not change after the contract date, or revised contract date.
- Even though in some cases the terms of sale changed after the original contract date, the record indicates that Icdas made such revisions in the form of contract amendments. Based on the Department prior findings, the existence of amended contracts cannot serve as the basis for disqualifying the contract date as the presumptive date of sale.
- In *Sulfanilic Acid from Portugal* [94] and *Carbon Steel Pipe from Thailand* [95] the Department found that the date of amended contract was the appropriate date of sale. Further, in *Welded Carbon Steel Pipe from Thailand*, the Department found that the date of sale was the date of contract, even though the original agreements were sometimes modified before the final shipments.
- These cases demonstrate that the Department should use Icdas' contract/amended contract date as the date of sale because this date is the most appropriate date of sale for the U.S. market.

Icdas' Arguments

- The Department erred in using contract date as date of sale for purposes of the *Preliminary Determination*. Based on the record evidence the date of invoice is the proper date of sale for all Icdas' U.S. sales and not the contract date.
- The Department's long standing practice is to use the date of invoice as the date of sale. According to 19 C.F.R 351.401(1), the Department is required to utilize a date of sale that "better reflects the date on which the exporter or producer establishes the material terms of sale."
- Invoice date reflects the proper date of sale for Icdas' U.S. market sales because this is the date on which the company establishes the material terms of sale (*e.g.*, price and quantity).

[94] *See Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal* (*Sulfanilic Acid from Portugal*), 67 FR 60219 (September 25, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

[95] *See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272, (October 31, 2013) (*Carbon Steel Pipe from Thailand*), and accompanying Issues and Decision Memorandum at Comment 6.

- Information in Icdas' Sales Verification Report demonstrates that Icdas made revisions to the purchase order/sales contract on a routine basis and routinely changed the material terms of sale after the contract date. This information warrants the use of invoice date as the date of sale.
- Icdas did not make all of its revisions to the material terms of sale in the form of contract amendments. Record evidence indicates that there were no standard contracts or purchase orders for certain Icdas' sales. Further, in many cases Icdas and the customer did not sign the original contracts/purchase orders until the issuance of the invoice.
- Under 19 C.F.R 351.401(1), it is the Department's practice to use the date of sale, as recorded in the records of the exporter or producer, as maintained in the ordinary course of business. For Icdas, it is more appropriate to use the date of invoice as the date of sale because Icdas does not enter a U.S. sale into its accounting system until the invoice is issued.
- Even if material terms of sale were made via contract amendments, this does not necessarily mean that the Department is required to use the date of contract as the date of sale. The date of sale test is not whether subsequent modifications to a contract were made, but when the material terms of the sales were reached.
- By cherry-picking a select number of Icdas sales' correspondences, Petitioners have not met the burden of producing sufficient evidence to warrant the Department's departure from its presumption of finding invoice date as the date of sale.

Icdas' Rebuttal

- The appropriate date of sale is the invoice date because the record reflects that changes in material terms of U.S. sales routinely occur right up until date of invoice.
- According to *Mittal Steel*, the salient point is not whether parties made modifications to a contract, but when the parties' reached material terms of the sale.[96]
- A "meeting of the minds" occurs at the invoice date, which is also the date at which U.S. sales are recorded in Icdas' accounting records.
- According to *Carbon Steel Products from Canada,* the Department's practice is to use the date of contract for sales made pursuant to long term contracts.[97] In contrast, Icdas' bases its U.S. sales on short-term contracts.
- Further, contrary to Petitioners' assertion that contract date is the "presumptive date of sale," *Nucor Corp. v. United States* establishes that invoice date is considered the "presumptive" date of sale.[98]
- Petitioners did not provide sufficient evidence to warrant the Department's continuation of using invoice date as the date of sale. Based on the facts of the case and the Department's regulations, the Department should treat the invoice date as the date of sale for Icdas' U.S. sales in the final determination.

[96] *See Mittal Steel Point Lisas Ltd. v. United States*, 490 F. Supp. 2d 1222, 1231-32 (CIT 2007) (*Mittal Steel*), *aff'd* 548 F.3d 1375 (Fed. Cir. 2008).

[97] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 53621, 53623 (September 9, 2005) (*Carbon Steel Products from Canada*), unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 71 FR 13582 (March 16, 2006).

[98] *See Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1299 (CIT 2009); *Hornos Electricos de Venezuela, S.A. (HEVENSA) v. United States*, 285 F. Supp. 2d 1353, 1367 (CIT 2003); *see also AH Steel Corp. v. United States,* 25 CIT 133, 135 (2001).

Petitioners' Rebuttal

- The Department should reject Icdas' invalid arguments because record evidence demonstrates that Icdas misrepresented its data and made the information at verification appear like there were numerous revisions to the material terms of sale. However, the record evidence demonstrates that there were no revisions between amended contract date and invoice date.
- Icdas wrongly asserts that the invoice date represents the first entry of U.S. transactions in the company's accounting system. Record evidence indicates Icdas captures amended contract dates in its SAP system. Where amended contract dates occur, Icdas records the final amendment as the date at which the material terms are finalized.
- Icdas failed to comply with the Department's request to report the amended contract date in its supplemental questionnaire response (QR). Icdas withheld information requested by the Department and failed to act to the best of its ability with regard to this critical issue.
- Thus, the Department should apply partial adverse facts available with regard to Icdas' date of sale. Specifically, pursuant to partial adverse facts available, the Department should utilize contract date as the date of sale for Icdas' U.S. sales.

Department Position: According to 19 CFR 351.401(i), the Department will presume that invoice date is the date at which parties finalize the material terms of sale and, thus, will use this date as the date of sale. However, the Department may utilize a different date of sale if evidence indicates the terms of sale are set at a different date.

As a point of clarification, interested parties use the term contract and amended contract in their arguments concerning the Icdas' date of sale. However, the information collected at verification indicates that Icdas and its customers based the initial terms of sale on purchase orders (P/O).[99] Icdas provided information at verification indicating that the terms of sale (*e.g.*, quantity and product specifications) changed after the initial P/O date for a certain number of sales.[100] In some instances, Icdas accounted for these changes via amended P/Os.[101] In other instances, Icdas initially based the terms of sale on a P/O, issued amended P/Os, and then issued a signed sales contract.[102] Notably, for several of the P/Os examined at verification, the initial P/O and amended P/Os were unsigned despite the fact that they contained a signature block for Icdas and its U.S. customer.[103] Furthermore, for several of Icdas' U.S. sales, these amended P/Os/contracts were issued within days of the invoice date.[104]

Record evidence indicates that the number of post-P/O modifications Icdas presents is on par with or exceeds the number of modifications that the Department cited as the basis for rejecting contract date as the date of sale in prior proceedings. For example, in *Pipe and Tube from Taiwan* the Department refrained from using contract date as the date of sale based on evidence indicating the terms of sale (*e.g.*, quantity) changed for two out of 62 of the respondent's U.S. sales. In that proceeding, one of the changes involved an amended contract, one did not. In

[99] *See, e.g.*, Icdas Sales Verification Report at SVE-9, at 1, 10, 15,
[100] *Id.*, at SVE-9.
[101] *See, e.g.*, *id.*, at SVE-9 at 14.
[102] *Id.*, at SVE-9 at 14.
[103] *Id.*, at SVE-9 at 1.
[104] *See, e.g.*, SVE-35.

reaching this conclusion in *Pipe and Tube from Taiwan*, the Department stated that "{t}he fact that a revised contract was issued for one of these instances does not detract from the conclusion that material terms of sale were subject to change after contract."[105] Thus, consistent with *Pipe and Tube from Taiwan*, we find that Icdas provided sufficient information indicating that its material terms of sale could, and in some instances did, change within days of the date of invoice.

Furthermore, we find that the facts of the instant investigation are distinct from the proceedings cited by Petitioners. In *Welded Pipe from Thailand* the Department stated that "most of the changes {in quantity} were within the overall weight tolerance agreed to by respondents and customers in each contract," and, thus, the Department concluded that "the evidence on the record . . . shows that there were no changes in prices and overall quantity set forth in the contract for all subject merchandise that was shipped and invoiced."[106] The fact pattern described in *Welded Pipe from Thailand* (*i.e.*, that "no changes in prices and overall quantity set forth in the contract for all subject merchandise that was shipped and invoiced") is distinct and does not exist in the instant investigation, because record evidence demonstrates that there were changes in quantity after the initial P/O was issued, and, moreover, these subsequent changes in quantity exceeded the stated tolerance in the initial P/O.[107] In *Sulfanilic Acid from Portugal*, the Department used various contract amendment dates as the date of sale for certain shipments because prices changed on those dates, but used the original contract date for date of sale of other shipments because the Department was satisfied those shipments were made subject to the terms of the underlying agreement.[108] In other words, in that case, the Department used as the sale date what amounted to a final contract date, after which the terms of sale did not change. For some sales, the Department found the initial contracts constituted the final contract date while for other sales the Department treated the amended contract date as the final contract date.[109] However, as noted above, the facts of the instant investigation are distinct. Verified information from Icdas indicates that the initial terms of sale were set via P/Os, not contracts. Furthermore, these P/Os were not even signed despite the fact that the P/Os contained signature blocks for Icdas and its U.S. customer, thereby calling the finality of the initial P/Os into question. Additionally, as noted above, in certain instances the terms of sales were amended up within days of the invoice date.

Therefore, we determine that Icdas met its burden of proof in demonstrating that invoice date better reflects the date on which the material terms of sale were established. Therefore, in the final determination, we used date of invoice as the date of sale for Icdas' U.S. sales.

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[105] S*ee Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 63902 (October 14, 2011) (*Pipe and Tube from Taiwan*), and accompanied Issues and Decision Memorandum at Comment 1.
[106] *See Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 65 FR 65910 (October 13, 2000) (*Welded Pipe from Thailand*), and accompanying Issues and Decision Memorandum at Comment 1.
[107] See Icdas' Sales Verification Report at SVE-9 at 1.
[108] *See Notice of Final Determination of Sales at Less Than Fair Value; Sulfanilic Acid from Portugal*, 67 FR 67219 (September 25, 2002) (*Sulfanilic Acid from Portugal*), and accompanying Issues and Decision Memorandum at Comment 1.
[109] *Id.*

While Icdas did not supply amended contract dates for its U.S. database, we find that the information on the record indicating that changes were to the material terms of sale after and outside of the contract date moots the lack of information concerning Icdas' amended contract dates.

Comment 11: Differential Pricing Analysis

Icdas' Arguments

- The Department should revise its differential pricing (DP) analysis to account for the extent to which Turkish rebar prices are dependent upon worldwide scrap prices. The Department's applied DP analysis failed to account for commercial reality in that significant fluctuations of rebar prices during the POI are due to changes in the prices of worldwide scrap prices. There is evidence on the record that scrap input is the most significant input for Icdas' production of rebar, therefore the price of rebar is controlled by scrap prices. Because the price of scrap inputs tends to fluctuate considerably, that causes Icdas' rebar prices to fluctuate as well. Therefore, the different prices identified by the Department are the result of changing worldwide scrap prices.
- The Department must explain why the average to average (A-to-A) method cannot take into account the "targeted dumping."
- According to the statute, the Department is limited to applying the average to transaction (A-to-T) method in those cases in which it cannot take the "targeted dumped" sales into consideration by relying on A-to-A method. According to the SAA, application of the A-to-T method is "where targeted dumping may be occurring"[110] which Icdas insists must mean that the intent of the statute "was to allow for application of the A-to-T method to those sales that are found to be dumped."[111]
- In *Mid Continent Nail*,[112] the Court held that "{t}he purpose of this methodology is to enable Commerce to identify dumping when a seller is providing lower prices to only certain United States purchasers 'by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.'"[113]
- Consequently, the Department should not calculate Icdas' weighted-average dumping margin in the final determination by applying the A-to-T method to Icdas' U.S. sales that not "targeted dumped."

Petitioners' Rebuttal

- The Department should not modify its DP analysis in the final determination. The Department's differential pricing analysis properly includes all sales.
- The Department should reject Icdas' argument to consider the scrap prices effect in the differential pricing analysis because, among other reasons, the Department's current practice does not consider excuses why a company's sales pass the Cohen's *d* test and because Icdas provided no support for its claim.

[110] *See* SAA at 843.
[111] *See* Icdas Case Brief at 18.
[112] *See Mid Continent Nail Corp. v. United States*, Court No. 08-00224, Slip Op. 10-47. (CIT May 4, 2010) (*Mid Continent Nail*)
[113] *Id.*, at 1.

- Icdas' argument that the price of rebar is controlled by its input costs, which varied during the POI, is invalid. Icdas failed to provide calculations of how its scrap prices varied or how that variation might have affected the rebar's sales price. Icdas also failed to explain why its sales were found to be differentially priced based upon customer and region which according to Petitioners would be caused by scrap price fluctuations.
- The Department has a procedure it uses to determine whether the A-to-A method can take into account differential pricing or whether the A-to-T method is appropriate.
- Accordingly, all of Icdas' arguments lack merit, and, thus, the Department should dismiss Icdas' claim.

Department Position: Consistent with the Department's practice and regulations we have not altered the differential pricing analysis performed for Icdas in this final determination.[114]

For Icdas in the *Preliminary Determination*, the Department calculated weighted-average dumping margins of 2.07 percent and 2.64 percent using the A-to-A method only and an alternative comparison method based on applying the A-to-T method to all U.S. sales, respectively. According to the definition of meaningful difference enumerated in the *Preliminary Determination*, the Department found that the A-to-A method could not account for the identified pattern of prices that differ significantly because there was a 25 percent relative change in the calculated weighted-average dumping margins using the standard and appropriate alternative comparison methods. For this final determination, the Department found that there is no meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method, only. Accordingly, the Department determines to use the A-to-A method in making comparisons of export price and normal value for Icdas. Given the above, Icdas' comments on the Department's DP methodology are moot.

Comment 12: Denial of Offsets for Non-Dumped Sales When Using the Average-to-Transaction Method

Icdas' Arguments
The Department's policy of zeroing negative antidumping margins when it applies the A-to-T method has been found inconsistent with the WTO Antidumping Agreement.[115]

Petitioners' Rebuttal
- No comment.

Department Position: Because we have reached a negative determination, Icdas' comments are moot.

[114] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 36719 (June 30, 2014) (*SR Copper Pipe from Mexico*), and accompanying Issues and Decision Memorandum at Comment 5; *see also Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review;* 2011-2012, 79 FR 37284 (July 30, 2014) (*Circular Welded Pipe from Korea*), and accompanied Issues and Decision Memorandum at Comment 7.
[115] *See, e.g.,* Report of the Appellate Body, *United States- Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R (Feb. 4, 2009); *see also* Report of the Appellate Body, *United States- Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R (Apr. 30, 2008).

Comment 13: Whether the Department Should Account for Certain COP Differences not Reported by Icdas

Petitioners' Arguments

- The Department should adjust Icdas' reported costs to properly account for the product cost differences between U.S. and HM rebar inherent in the CONNUMs.
- Icdas did not report costs based on the revised CONNUM classification as requested by the Department after the *Preliminary Determination*.
- Icdas admitted it only sells air cooled rebar in the U.S. and water cooled rebar in the HM. Even though the Department chose not to specifically account for the cost differences between air cooled and water cooled rebar in the *Preliminary Determination*, the CONNUM cost should still reflect the higher alloy content of rebar sold to the U.S.
- Further, the costs of the higher carbon, higher alloy content of rebar sold to the U.S. should be accounted for in Icdas' reported costs.
- Icdas refused to provide cost differences resulting from the use of different levels of alloys, even though Icdas admitted it had the necessary information.[116] Icdas' refusal to provide the requested information should not be rewarded by giving them the benefit of ignoring these cost differences.
- The Department could make an adjustment to account for the greater alloy content of Icdas' U.S. sales by adding Icdas' average cost of alloys per metric ton of rebar to the variable cost of manufacturing (VCOM) and total cost of manufacturing (TOTCOM) of all U.S. market CONNUMs; by using the actual cost of production differences provided by Petitioners and based on alloy differences between air and water cooled rebar for a U.S. producer; or, by using the cost adjustment calculated from Habas' data.[117]

Icdas' Rebuttal

- The Department recognized that cooling method is not a physical CONNUM characteristic. The cooling method does not impart a different, commercially relevant physical characteristic.
- Petitioners stated in other proceedings, under oath, that water cooled rebar is only slightly less expensive to produce and that there is really no difference between water and air cooled rebar.[118]
- Petitioners' statements about water cooled rebar being less expensive to produce, and there being no difference between water and air cooled rebar, are consistent with the calculations Icdas provided in its response, which show a very slight cost difference between the two products.
- Petitioners' suggestion that the Department should attribute all alloy costs to air cooled rebar, ignores commercial reality because most rebar production requires the addition of alloys.

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[116] Petitioners cite to Letter from Arent Fox LLP to the Secretary of Commerce, re: *Steel Concrete Reinforcing Bar from the Republic of Turkey; Supplemental Section D Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.* (April 4, 2014) (Icdas' Supplemental D Questionnaire Response) at 40-41.

[117] *See* Letter from Wiley Rein LLP to the Secretary of Commerce, re: *Steel Concrete Reinforcing Bar from Turkey; Case Brief of the Rebar Trade Action Coalition* (July 18, 2014) (Petitioners' Case Brief) at 20-21.

[118] Icdas cites to *Steel Concrete Reinforcing Bars from Belarus, China et al.*, ITC Hearing Transcript at 104 and 113 (EDIS 14031 & 14032), Inv. Nos. 731-TA-873-875, 878-880 & 882 (April 25, 2013) (2d review) (Testimony of Mr. Alvarado, Chairman of CMC Metals and Mr. Kerkvliet, VP of Gerdeau Metals); *see also* Second Supplemental Section D Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (May 21, 2014) (*Icdas 2SDQR)* at 10-11.

- Petitioners also ignore the costs involved in producing water cooled rebar. Icdas affirms that the Department's conclusion made in the P*reliminary Determination* is correct, that there are no meaningful differences between water and air cooled rebar.

Department Position: We disagree with Petitioners that Icdas did not report costs based on the revised CONNUM classification as requested by the Department after the *Preliminary Determination*. Icdas provided an alternative cost database incorporating the grade reclassification, as requested by the Department after the *Preliminary Determination*.[119] We note that Icdas also provided revised versions of both the database with the original grade classification and the alternative database, incorporating the minor corrections presented at the cost verification.[120] Both databases incorporated the minor corrections. For the final determination, following the Department's position at Comment 3 above, we will not rely on Icdas' alternative cost database, as revised at verification. Instead, we are relying on Icdas' cost database with the original grade classification, as revised at verification.[121]

We also disagree with Petitioners that Icdas did not account for alloy differences in the reported costs. As stated in the verification report, in the normal course of business, Icdas calculates product-specific costs.[122] According to company officials, Icdas relied upon the costs reflected in its cost accounting system for reporting to the Department.[123] Specifically, Icdas used the actual product-specific costs calculated in the SAP® system in the normal course of business to determine the reported product-specific costs.[124] In addition, we note that the CONNUMs selected to be reviewed at verification included one CONNUM with the minimum specified yield strength (*i.e.*, MSYSTR) characteristic of 3 and one with a MSYSTR characteristic of 4.[125] Further, the cost buildups obtained at verification for the selected products under each the CONNUM indicate the specific quantities and the value of the different inputs used to produce the billets that were used to produce the rebar, including alloys.[126] As such, record evidence indicates that Icdas' reported costs are based on the actual alloys added to produce each product rather than an average alloy content. Therefore, for the final determination, it was not necessary to adjust Icdas' reported costs to account for alloy differences, as requested by Petitioners, because the reported costs already reflect such differences.

Comment 14: Whether the Department Should Adjust Icdas' TOTCOM for Unreconciled COM Differences

Petitioners' Arguments:

- For the final determination, the Department should increase Icdas' reported TOTCOM to account for the unreconciled cost difference, between the POI cost of manufacturing (COM)

[119] *See* Icdas' 2SDQR at 9, Exhibit S2D-Q10, and "icdicp03" cost database.
[120] *See* Letter from Arent Fox LLP to the Secretary of Commerce, re: Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Revised Cost Database (June 23, 2014) at Exhibits 1-3, and the "icdicp04a" and "icdicp04b" cost databases. See also ICDAS Cost Verification Report at CVE 1.
[121] *See* Icdas' cost database titled, "icdicp04a" submitted on June 23, 2014.
[122] *See* Icdas Cost Verification Report at 6.
[123] *Id.*, at 7.
[124] *Id.*
[125] *Id.*, at 4.
[126] *Id.*, at 15 to 17 and Cost Verification Exhibits (CVEs) 6 - 9.

for rebar products and the extended reported TOTCOM, identified in the cost verification report.
- Icdas did not identify or document a justification for this difference.
- Such an adjustment is consistent with the Department's practice.[127]

Icdas' Rebuttal
- If the Department decides to make an adjustment to Icdas' TOTCOM for the unreconciled cost difference, the adjustment should be based on all manufacturing costs, not just the costs reported for in-scope products.
- The unreconciled amount is the difference between the company's total COM according to their financial accounting and total COM in its cost accounting for all products, including scope and non-scope. As such, Icdas concludes that the difference applies to all manufacturing and not just the reported in-scope products.

Department Position: We agree with Petitioners that the Department should increase Icdas' reported TOTCOM. We disagree with Icdas that the adjustment to TOTCOM for the unreconciled cost difference should be based on all manufacturing costs instead of only the costs reported for in-scope products. At verification, Icdas presented minor corrections that revised the cost reconciliation, which in turn changed the unreconciled difference.[128] However, Icdas failed to provide any evidence or demonstrate which portion of the revised difference, if any, relates to the merchandise not under consideration. When a respondent cannot account for some unreconciled amount, our general practice is to include the amount if the difference indicates a possible under-reporting of costs.[129] The respondent is the sole party who has full knowledge of its reporting methodology, has knowledge of its normal records and has access to the documents that are necessary to explain or clarify the unreconciled difference.[130] As such, for the final determination, we increased Icdas' reported TOTCOM for the full amount of the difference based on the costs reported for in-scope products.

Comment 15: Whether the Department Should Adjust the Cost Calculation of Rebar to Reflect the Production of Short-Length Rebar

Icdas' Arguments
- In the *Preliminary Determination*, the Department revised the reported per-unit costs to exclude the allocation of costs to short-length rebar.

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[127] *See Certain Pasta from Italy: Notice of Final Results of New Shipper Review of the Antidumping Duty Order*, 69 FR 18869 (April 9, 2004), and accompanying Issues and Decision Memorandum at Comment 2; *see also Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying Issues and Decision Memorandum at Comment 24; *Stainless Steel Bar from Italy: Final Determination of Sales at Less Than Fair Value*, 67 FR 3155 (January 23, 2002), and accompanying Issues and Decision memorandum at Comment 50.

[128] *See* Icdas' Cost Verification Report at CVEs 1 and 5.

[129] *See OCTG from Korea*, and accompanying Issues and Decision Memorandum at Comment 28. We note Petitioners cite to comment 24 is incorrect; *see also Certain Pasta From Turkey; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 9672 (February 11, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

[130] *Id.*

- The Department should adjust the cost calculation of rebar to reflect the production of short-length rebar because short-length rebar is a co-product of full length rebar and is within the scope of this investigation.
- Short-length rebar is a joint product according to the definition of the National Association of Accountants (NAA), an organization which the Department has relied on in previous cases.[131]
- The Department generally looks at several factors in order to determine whether joint products are to be considered co-products or by-products following the "split-off" point *i.e.*, 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and, 5) whether the product requires significant further processing after the split-off point).[132]
- Concerning the first factor, the fact that Icdas does not allocate costs to short-length rebar should not lead to the conclusion that Icdas departed from their books and records or that the Department should exclude the allocation of costs. The Department previously relied on reported per-unit costs for non-prime products that departed from the cost in the normal books and records.[133]
- The second factor indicates that short-length rebar is a co-product. Other than for the length, short-length rebar is the same product, with the same physical properties, coming off the same production line as full-length rebar.
- Regarding the third factor, short-length rebar is arguably an unavoidable consequence of producing full-length rebar, but rebar lengths often vary depending upon customer specification and Icdas sells short-length rebar at prices close to that of full-length rebar.
- Regarding the fourth factor, short length rebar is the unintentional result of producing full-length rebar, but management controls it in such a way that Icdas can sell it to rebar customers and realize revenue.
- Regarding the fifth factor, neither product requires further processing after the split-off point. The only processing difference is the way they are bundled and whether grade is identified.
- Short-length rebar is subject merchandise, is sold as rebar, and is used in normal rebar applications. The fact that short-length rebar does not have a specified grade, does not mean it cannot be sold or used in many rebar applications.
- The Department should find that these two products are co-products, because they are used in the same applications.[134] If the Department determines short-length rebar is not a co-product,

[131] *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 78 FR 36168 (June 17, 2013), and accompanying Issues and Decision Memorandum at Comment 14; and, Keller, Bulloch & Shultis, *Management Accountants' Handbook* at 11.6 (4th ed. 1992).
[132] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum at Comment 7.
[133] See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), and accompanying Issues and Decision Memorandum at Comment 7.
[134] *See Final Determination of Sales at Not Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From Thailand*, 79 FR 25574 (May 5, 2014) (*PC Tire Wire from Thailand)*, and accompanying Issues and Decision Memorandum at Comment 3.

the Department should consider it a by-product and offset rebar production costs with the sales revenue from short-length rebar.

Petitioners' Rebuttal

- The Department should treat short-length rebar as a by-product, and continue making an adjustment to increase the cost of the prime product.
- The five-step co-product analysis is irrelevant in the context of prime versus non-prime, as explained by the Department in *OCTG from Korea*.[135] Even under the five-step analysis, it is clear that the Department should treat short-length rebar as a by-product because of the following factors: 1) it is treated as a by-product in the normal course of business; (2) it is less significant relative to the production of prime product; (3) it is an unavoidable consequence of producing the prime product; (4) there is little management can do to control its production; and, (5) it is not further processed.
- Accordingly, Icdas' argument is moot and should be rejected. Furthermore, in the cost verification report, the Department stated that "while these short-lengths can apparently be used in some applications of rebar, they clearly cannot be sold as the same grade as originally intended."[136] This fact is critical because in *OCTG from Korea*, the Department explained that whether a product can be used for its originally-intended use is an important distinction.[137]
- If the Department rejects Icdas' reclassification of short-length rebar, no additional offset to the reported cost is needed.
- Petitioners add that the adjustment calculated by the Department in the *Preliminary Determination*, based on the scrap inventory movement in Exhibit SD-5 of Icdas' Supplemental D Questionnaire Response, included short-length rebar.

Department's Position: We disagree with Icdas that a discussion of co-products is relevant in this case. In the production of rebar, there is no simultaneous production process up to a split point, so there are no co-products. Rather, rebar is made sequentially on a production line, and costs and production activities are generally identifiable to individual products.

The issue here is whether the downgraded rebar (*i.e.*, short-length rebar) can still be used in the same applications as the subject merchandise (*i.e.*, whether it is it still rebar).[138] The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used for the same applications. In the latter case, the product's market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between grades, the Department

[135] *See OCTG from Korea*, and accompanying Issues and Decision Memorandum at Comment 18.
[136] *See* Icdas Cost Verification Report at 2.
[137] *See OCTG from Korea*, and accompanying Issues and Decision Memorandum at Comment 18.
[138] *See PC Tire Wire from Thailand*, and accompanying Issues and Decision Memorandum at Comment 3; *see also id.*

adopted the reasonable practice of examining whether the downgraded product can still be used in the same applications as its prime counterparts.[139]

With this distinction in mind, we reviewed the information on the record of this investigation related to Icdas' downgraded merchandise that is detected at the end of the production process. The downgraded rebar is rebar of random lengths that is remaining after the standard-length rebar is cut to the desired length. The short-length rebar is set aside as it cannot be bundled because they are mixed lengths (*i.e.*, not 12 meters or less than the customer-specified length).[140] Downgraded rebar is sold, in bundles of mixed sizes and unidentified grades, without mill test certificates. They are sold at prices close to that of "prime" rebar because the short-length rebar can be used in many of the same rebar applications.[141] However, while these short-lengths can apparently be used in some applications of rebar, they clearly cannot be sold as the same grade as originally intended. This is evidenced by their treatment in the normal records where it is not assigned a cost until it is reintroduced into the production process or sold.[142] For reporting purposes, Icdas classified these products as non-prime and included them as reportable products. Icdas then adjusted the production quantities of rebar to include the production of downgraded rebar in the calculation of the reported costs.[143]

Thus, based on record evidence, we find that Icdas sells the downgraded rebar for use as rebar.[144] As such, for the final determination, we assigned a full cost to the downgraded rebar treating it as rebar production.

Comment 16: Whether Icdas Correctly Reported the By-Product Offset Amount for Scrap and Related Materials

Icdas' Arguments

- In the *Preliminary Determination*, the Department only included the revenue from the sales of scrap to third parties in its calculations of the POI and fiscal year (FY) by-product offset.
- The Department's practice is to allow a by-product or scrap offset limited to the quantity generated during the POI production of merchandise under consideration, if it is demonstrated that it has commercial value.[145]
- The information on the record indicates that Icdas generated the scrap pieces, slag, mill scale, and defective billets during the POI and that they have commercial value (*i.e.*, they were sold or reintroduced into the production process).

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[139] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from the India*, 79 FR 41981 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 8; see also *OCTG from Korea*, and accompanying Issues and Decision Memorandum at Comment 18.
[140] *See* Icdas Cost Verification Report at 17-18.
[141] *Id.*
[142] *Id.*, at 2.
[143] *Id.*
[144] *Id.*, at 2 and 17-18.
[145] Icdas cites to *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012), and accompanying Issues and Decision Memorandum at Issue 3; see also *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 23.

- Accordingly, the calculation of the by-product offset rate should include all revenue earned from internal invoices (*i.e.*, for items reintroduced into the production process) and sales to unaffiliated parties of scrap pieces, slag, mill scale, and defective billets.

Petitioners' Rebuttal
- The Department should use the by-product offset rate it calculated in the *Preliminary Determination*.
- Icdas' arguments contradict the cost verification report. CVE-12 does not provide the information needed in order for the Department to calculate the scrap offset.
- The only source of information on sales of scrap to unaffiliated parties is Exhibit SD-5 of Icdas' Supplemental D Questionnaire Response, used in the *Preliminary Determination* to calculate the scrap offset rate.
- Icdas has not claimed that the information in this exhibit is deficient or that it would be inappropriate to use the exhibit to calculate the scrap offset rate.

Department Position: We disagree with Icdas that, in the *Preliminary Determination*, the Department only included the revenue from the sales of scrap to third parties in its calculations of the by-product offset. The Department's practice with respect to by-product offsets is to allow such offsets based on the amount of by-product generated once the by-product has been shown to have commercial value through evidence of sale or reintroduction.[146] As such, in the *Preliminary Determination*, the Department revised the calculation of the by-product offset rate to reflect the quantity of scrap generated, valued at the average price of scrap sold to unaffiliated parties during the POI.[147] In other words, the Department valued the quantity of scrap generated at the market price of the scrap (*i.e.*, per-unit sales value of Icdas' sales of scrap to unaffiliated parties).

The information the Department needs to calculate a by-product offset (*i.e.*, the quantity of by-products generated during the POI and the market price for the by-products) is available on the record of the instant case. Regardless of Icdas' claims, or lack thereof, about the information in Exhibit SD-5 or Icdas' arguments which appear to contradict the cost verification report, CVE 12 does provide information about Icdas' production of scrap, slag, defective billets, *etc.*, and the sales to unaffiliated parties.[148] In addition, CVE 12, also submitted as Exhibit S2D-Q5 of Icdas' 2SDQR, validates that additional scrap and by-product offsets are warranted.

Therefore, for the final determination, we revised the calculation of the by-product offset rate to reflect the generated quantity of scrap, slag, defective billets, *etc*., valued at the average price sold to unaffiliated parties.

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[146] *See Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 17.
[147] *See* Memo from A. Sepulveda to N. Halper, re: *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.* (Apr. 18, 2014) (*Icdas Prelim Calc Memo*) at Adjustment 2.
[148] *See* Icdas Cost Verification Report.

Comment 17: Whether the Department Should Include Insurance Proceeds in Calculating Icdas' G&A Expenses

Icdas' Arguments

- The Department should include the insurance proceeds received during the POI, for claims on losses that occurred prior to the POI, as an offset to Icdas' G&A expenses.
- The Department has included these proceeds as an offset to G&A expense in prior cases.[149] Rejecting the offsets for insurance proceeds because the underlying loss occurred in a prior period, conflicts with past practice and is not in accord with commercial reality.
- Because the Department includes the expense for insurance and any losses incurred during the POI in the reported costs, it should also include the revenue from insurance reimbursements received during the POI.
- Therefore, the Department should include the insurance proceeds received during the fiscal year ended December 31, 2013 (FY 2013), for claims on losses that occurred in 2012, as an offset to Icdas' G&A expenses.

Petitioners' Rebuttal

- An argument could be made for including either one of the insurance proceeds amounts, but not for including both.
- Including the items recorded during the fiscal year ended December 31, 2012 (FY 2012) would be appropriate because it follows Icdas' normal books and records.

Department Position: The Department normally allows an offset for insurance reimbursements up to the amount of losses incurred during the same reporting period.[150] However, we note that in the instant case: 1) the insurance proceeds Icdas received were for small losses of the nature typically experienced by a business (*e.g.*, auto accidents involving company vehicles); 2) the losses and proceeds did not relate to a significant event, such as a fire, where we are concerned with matching the proceeds to the year in which the related loss was recorded; and, 3) the insurance proceeds during the year in question closely approximates losses. Further, we note that the information at issue was certified and subject to verification. Verification is a spot check of the accuracy of the information submitted in the company's responses. Because of the small size of the events and amounts at issue, we elected not to review details of the losses during verification. Taking all of these facts into consideration, for the final determination, we consider it reasonable to rely on Icdas' books and records and include the full amount of the insurance proceeds received during the FY 2012 as an offset to Icdas' G&A expenses.

We disagree with Icdas characterization of our practice and their reliance on the cases cited. Icdas' reliance in *SS Bar from India* and *Silicomanganese from India* is misplaced. In *SS Bar from India*,[151] the Department allowed the insurance proceeds as an offset in the calculation of the respondent's G&A expense rate. However, due to the insignificant value of those offsets, the Department elected not to test the related expenses to ensure they were incurred during the POR.

[149] *See SS Bar from India*, and accompanying Issues and Decision Memorandum at Comment 5; s*ee also Silicomanganese from India*, and accompanying Issues and Decision Memorandum at Comment 14.
[150] *See Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 73 FR 79789 (December 30, 2008), and accompanying Issues and Decision Memorandum at Issue 4.
[151] *See SS Bar from India*, and accompanying Issues and Decision Memorandum at Comment 5.

In *Silicomanganese from India*,[152] the Department addressed the issue of insurance payments that were categorized as extraordinary expenses, rather than the timing of such proceeds.

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2014
Date

[152] *See Silicomanganese from India,* and accompanying Issues and Decision Memorandum at Comment 14.