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Investigation
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March 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat
Products from the Republic of Turkey

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On August 11, 2015, the Department received an antidumping duty (AD) petition covering imports of certain hot-rolled steel products from Turkey,¹ which was filed in proper form by AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Petitioners). The Department initiated this investigation on September 9, 2015.²

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, (August 11, 2015) (the Petition).

² See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair Value Investigations*, 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on September 3, 2015, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of hot-rolled steel to be reported in response to the Department's AD questionnaire.⁵ From September through October 2015, the following interested parties submitted comments on the scope of the investigation: POSCO; Tata Steel IJmuiden BV; BlueScope Steel Ltd.; Nippon Steel & Sumitomo Metal Corporation; and JFE Steel Corporation.⁶ On October 5, October 21, and November 5, 2016, Petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.⁷

On September 16, 2015, in addition to Petitioners, BlueScope, Companhia Siderúrgica Nacional, Ereğli Demir ve Çelik Fabrikaları T.A.Ş. (Erdemir), Hyundai Steel Company (Hyundai Steel), Nippon Steel & Sumitomo Metal Corporation, POSCO, Tata Steel IJmuiden BV, Tata Steel UK Ltd., and Usinas Siderurgicas de Minas Gerais - Usiminas S.A. submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁸ On September 21, 2016, BlueScope filed rebuttal comments. On September 22, 2015, Petitioners, Colakoglu Metalurji A.S. (Colakoglu), Colakoglu Dis Ticaret A.S. (COTAS), and Hyundai Steel filed rebuttal comments.⁹

On September 30, 2015, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel.¹⁰

In November 2015, the Department extended the date for the issuance of the preliminary determination in this investigation until 190 days after the date of initiation and published a postponement of the preliminary determination until no later than March 8, 2015.¹¹ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due

³ See *Initiation Notice*, 80 FR at 54265.

⁴ See memorandum to the file, "Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Turkey: Customs Entry Data for Respondent Selection," (September 3, 2015).

⁵ See *Initiation Notice*, 80 FR at 54262.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations" dated concurrently with this preliminary determination (Scope Memorandum).

⁷ *Id.*

⁸ These companies are interested parties in the hot-rolled steel investigations, *i.e.*, Australia, Brazil, Japan, the Netherlands, Turkey, the Republic of Korea and the United Kingdom.

⁹ *Id.*

¹⁰ See *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations*, 80 FR 58787 (September 30, 2015).

¹¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 73702 (November 25, 2015).

to the recent closure of the Federal Government.¹² All deadlines in this investigation have been extended by four business days.¹³ The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

On September 18, 2015, Petitioners submitted comments stating that the Department should: 1) provide a copy of the query submitted to CBP to allow parties to double check the tariff classifications used; 2) obtain and disclose CBP information regarding import values of the subject merchandise; and 3) expand the CBP query to include 14 additional HTS categories.¹⁴ No other parties submitted comments on this matter. On October 21, 2015, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume.¹⁵ Accordingly, we selected COTAS and Iskenderun Demir Ve Celik (Iskenderun) as the mandatory respondents in this investigation.¹⁶

On October 21, 2015, the Department issued the AD questionnaire to COTAS and Iskenderun. On November 17, 2015, Colakoglu filed a complete Section A (*i.e.*, the section relating to general information) response on behalf of itself and its affiliates COTAS and Medtrade Incorporated (Medtrade) (collectively Colakoglu). On the same date, Erdemir filed a complete Section A response on behalf of itself and its affiliate Iskenderun (collectively Erdemir). *See* the “Affiliation and Collapsing” section below for further discussion of Colakoglu’s and Erdemir’s affiliated relationships. Both companies timely filed responses to sections B through D (*i.e.*, the sections relating to home market and U.S. sales, and cost of production information) between December 4 and December 9, 2015.

Between December 2015 and January 2016, we issued supplemental questionnaires to Colakoglu and Erdemir. We received responses to these supplemental questionnaires between January and February 2016. During the same time frame, Petitioners submitted comments regarding Colakoglu’s and Erdemir’s questionnaire responses.¹⁷

On February 22, 2016, Colakoglu submitted an unsolicited and untimely revised cost database. We rejected and removed from the record the additional database Colakoglu submitted after it submitted the timely filed database.¹⁸

¹² *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

¹³ *Id.*

¹⁴ *See* letter from Petitioners, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products-Comments on CBP Data and Respondent Selection,” (September 18, 2015).

¹⁵ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Respondent Selection for the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Turkey,” (October 21, 2015).

¹⁶ *Id.*

¹⁷ The Department’s initial questionnaire and supplemental questionnaires to respondents Colakoglu and Erdemir, and respondents’ respective responses are on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

¹⁸ *See* letter from the Department, “Antidumping Duty Investigation of Hot-Rolled Steel Flat Products from Turkey: Rejection of Colakoglu’s February 22, 2016, Revised COP Database,” (March 14, 2016).

Petitioners filed comments in advance of this preliminary determination on February 29, 2016.¹⁹ Colakoglu filed a rebuttal response to Petitioners' comments on March 7, 2016.²⁰ To the extent possible, we have considered these comments in making this preliminary determination.

In addition, Petitioners, Colakoglu, and Erdemir made filings between March 10 and March 14, 2016 which the Department will not address in the instant preliminary determination.²¹

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION (POI)

The POI is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was August 2015.²²

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On March 8, 2016, pursuant to 19 CFR 351.210(b) and (e), Colakoglu and Erdemir requested that, contingent upon an affirmative preliminary determination of sales at LTFV for their respective companies, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.²³ In addition, Petitioners filed a request, pursuant to 19 CFR 351.210(b), to postpone the final determination and to extend the provisional measures in the event the Department's preliminary determination is negative.²⁴ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

¹⁹ See Letters from Petitioners, "Hot-Rolled Steel Flat Products from Turkey-Comments on Preliminary Determination Calculations for Colakoglu," (February 29, 2016) and "Hot-Rolled Steel Flat Products from Turkey-Pre-Preliminary Determination Comments on Erdemir," (February 29, 2016).

²⁰ See letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoğlu's Response to Petitioner's Comments on Preliminary Determination Calculations," (March 7, 2016).

²¹ See letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoğlu's Request for Applying Quarterly Average Cost Data," (March 10, 2016); letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey - Response to Colakoglu's March 7, 2016 Comments," (March 10, 2016); letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir corrections to HM sales database," (March 14, 2016).

²² See 19 CFR 351.204(b)(1).

²³ See Letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu's Request to Extend the Final Determination," (March 8, 2016); and Letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Request to Extend Final Determination," (March 8, 2016).

²⁴ See letter from Petitioners, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey-Petitioners' Request to Fully Extend Final Determination," (March 8, 2016).

V. SCOPE OF THE INVESTIGATION

The products covered by this investigation are hot-rolled steel from Turkey. For a full description of the scope of this investigation, *see* this investigation's accompanying preliminary determination notice at Appendix I.

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,²⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.²⁷ The Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

VII. AFFILIATION AND COLLAPSING

Section 771(33) of the Act states that the following persons shall be considered "affiliated" or "affiliated persons": (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁸

Further, 19 CFR 351.401(f) states that the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and if there is a significant potential for the manipulation of price or production. In considering whether there is a significant potential for the manipulation of price or production, the Department considers: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales

²⁵ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

²⁶ *See Initiation Notice*, 80 FR at 54261.

²⁷ *See Scope Memorandum*.

²⁸ *See also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 2727298 (May 19, 1997).

information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliates.

Colakoglu/COTAS/Medtrade

We preliminarily determine that Colakoglu, COTAS, and Medtrade are affiliated. Colakoglu states in its Section A questionnaire response that all three companies are affiliated due to their common ownership by various Colakoglu family members (*i.e.*, brothers, their children, and spouses) and due to having common officers and interlocking directorates.²⁹ Accordingly, we find that the three companies are affiliated within the meaning of section 771(33)(F) of the Act, because they are under the common control of the Colakoglu family grouping.

Colakoglu is the sole producer of the subject merchandise, while all sales of the merchandise under consideration in the United States were made through COTAS. While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.³⁰ We preliminarily determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies in the production and sale of subject merchandise.³¹ Therefore, in accordance with 19 CFR 351.401(f) and the Department's practice,³² we are treating Colakoglu and COTAS as a single entity for the purposes of this preliminary determination.³³

Erdemir/Iskenderun/Ersem

We preliminarily determine that the record evidence supports a finding that Iskenderun and Erdemir Celik Servis Merkezi Sanayi ve Ticaret A.S. (Ersem) are affiliated with Erdemir, pursuant to sections 771(33)(E) and (F) of the Act. Erdemir states that it, as well as Iskenderun and Ersem, are members of the Erdemir Group of companies owned in whole, or in major part, by Erdemir.³⁴ Both Erdemir and Iskenderun produce the subject merchandise while Ersem purchases the subject hot-rolled steel from Erdemir and Iskenderun to produce cut-to-length

²⁹ See letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Section A of the AD Questionnaire," at A-7 (November 17, 2015) (Colakoglu SAQR).

³⁰ See, e.g., *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances In Part*, 80 FR 34893 (June 18, 2015) and *Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

³¹ See Memorandum to the File, "Investigation of Certain Hot-Rolled Steel Products from the Republic of Turkey: Preliminary Analysis Memorandum for Colakoglu Dis Ticaret A.S. and its Affiliates," (March 14, 2016) (Colakoglu Preliminary Calculation Memorandum).

³² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

³³ See Colakoglu Preliminary Calculation Memorandum. We are not including Medtrade, the U.S. importer and affiliate, in this single entity determination.

³⁴ See letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir response to section A of the questionnaire," at 9-10 (November 17, 2015) (Erdemir SAQR).

sheet and slit coils.³⁵

We also preliminarily determine that Erdemir and Iskenderun have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and that a significant potential for the manipulation of price or production between these two companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies in the production and sale of subject merchandise.³⁶ Therefore, in accordance with 19 CFR 351.401(f) and the Department's practice,³⁷ we are treating Erdemir and Iskenderun as a single entity for the purposes of this preliminary determination.³⁸

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Colakoglu's and Erdemir's sales of the subject merchandise from Turkey to the United States were made at less than normal value (NV), the Department compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³⁹ The Department finds that the

³⁵ *Id.* at 12.

³⁶ See Memorandum to the File, "Investigation of Certain Hot-Rolled Steel Products from the Republic of Turkey: Preliminary Analysis Memorandum for Eregli Demir ve Celik Fabrikalari T.A.S. and its Affiliates" (March 14, 2016) (Erdemir Preliminary Calculation Memorandum).

³⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) and accompanying Issues and Decision Memorandum.

³⁸ See Erdemir Preliminary Calculation Memorandum.

³⁹ See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For Colakoglu, purchasers are based on the reported consolidated customer codes and for Erdemir, purchasers are based on the reported customer codes.⁴⁰ Regions are defined using the reported destination code (*i.e.*, zip codes for Colakoglu and for Erdemir) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

⁴⁰ See letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Section C of the AD Questionnaire," (December 9, 2015) at 14 (Colakoglu SCQR); and see letter from Erdemir, "Section C Questionnaire Response of Eregli Demir VE Çelik Fabrikalari T.A.S. and Iskenderun Demir VE Çelik A.S.," (December 4, 2015) at 15 (Erdemir SCQR).

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

Colakoglu

For Colakoglu, based on the results of the differential pricing analysis, the Department preliminarily finds that 54.27 percent of the value of U.S. sales passes the Cohen’s *d* test,⁴¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen’s *d* test and the average-to-average method to those sales which did not

⁴¹ See Colakoglu Preliminary Calculation Memorandum.

pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Colakoglu.

Erdemir

For Erdemir, based on the results of the differential pricing analysis, the Department preliminarily finds that 67.41 percent of the value of U.S. sales passes the Cohen's *d* test,⁴² and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margins resulting from the average-to-average method and the appropriate alternative method differ by 25 percent or greater. Thus, for this preliminary determination, the Department finds that there is a meaningful difference between using the different comparison methods, and is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Erdemir.

IX. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, "in identifying the date of sale of subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴³

Colakoglu

For home market sales, Colakoglu reported the date of sale as the earlier of invoice date or shipment date. Once a customer has been notified by Colakoglu that its order is complete, the customer completes an order form to specify the delivery details and the terms of sale.⁴⁴ The merchandise is then shipped and an invoice is issued either the same day as shipment or the next business day.⁴⁵ Our analysis of the evidence on the record from Colakoglu shows that the material terms of sale can, and in fact, do change between the order date and the invoice date. Therefore, the Department is using the earlier of Colakoglu's sales invoice date or shipment date as the date of sale for the home market.

For the U.S. market, Colakoglu reported invoice date as the date of sale for all of its sales in all sales channels. Our analysis of the evidence on the record from Colakoglu shows that the

⁴² See Erdemir Preliminary Calculation Memorandum.

⁴³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁴⁴ See Colakoglu SAQR at 20.

⁴⁵ *Id.*

material terms of sale can, and in fact, do change between the order date and the invoice date. Therefore, the Department is using Colakoglu sales invoice date as the date of sale for the U.S. market.

Erdemir

Erdemir reported order date as the date of sale in the home market because from that date, Erdemir maintains that it is committed to supplying the customer, and the customer is committed to buying the goods ordered, at the price set forth in the online system.⁴⁶ Our analysis of the home market sales documentation on the record indicates that there were differences in the material terms of sale between order and sales invoice. Thus, we find that Erdemir has not established that order date better reflects the date on which it establishes the material terms of sale of its home market sales. Therefore, the Department is using Erdemir's sales invoice date as the date of sale for the preliminary determination.

For the U.S. market, Erdemir reported the pro-forma invoice date as the date of sale.⁴⁷ However, the Department's analysis indicates that there are differences in the material terms of sale between the pro-forma invoice and the final sales invoice.⁴⁸ Thus, we find that Erdemir has not established that pro-forma invoice date better reflects the date on which it establishes the material terms of sale of its U.S. sales. Therefore, the Department is using Erdemir's sales invoice date as the date of sale in the U.S. market.

X. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Turkey during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For Colakoglu's and Erdemir's respective sales of hot-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of hot-rolled steel as it entered the United States.

For a discussion of the sales of overruns as well as prime/non-prime merchandise, see Colakoglu's and Erdemir's respective calculation memoranda.⁴⁹

⁴⁶ See letter from Erdemir, "Section B Questionnaire Response of Eregli Demir VE Celik Fabrikalari T.A.S. and Iskenderun Demir VE Celik A.S. at 26 (Erdemir SBQR).

⁴⁷ See Erdemir SCQR at 17.

⁴⁸ The details of the differences between the pro-forma invoice and final sales invoice are business proprietary and are thus discussed in more detail in Erdemir's Preliminary Calculation Memorandum.

⁴⁹ See Colakoglu's Preliminary Calculation Memorandum and Erdemir's Preliminary Calculation Memorandum for

XI. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold in the United States to the first unaffiliated purchaser prior to importation. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In accordance with section 772(b) of the Act, for Colakoglu's U.S. sales, we used CEP. In accordance with section 772(a) of the Act, we calculated Erdemir's sales sold to the first unaffiliated purchase in the United States prior to importation on an EP basis.

Colakoglu

Colakoglu reported that it sold all of its subject merchandise through its U.S. affiliate Medtrade.⁵⁰

We calculated the CEP based on Medtrade's first sale to an unaffiliated U.S. customer. We made deductions from the starting price (adjusted for billing adjustments and discounts) for any movement expenses (*e.g.*, foreign inland freight, foreign warehousing, inspection fees, export fees, foreign insurance, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. warehousing, U.S. insurance, U.S. inland freight, U.S. freight, demurrage, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*e.g.*, imputed credit expenses and foreign and U.S. inventory carrying costs) and indirect selling expenses.⁵¹ We also made an adjustment for profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Medtrade on its sales of the subject merchandise in the United States and the profit associated with those sales.⁵²

Colakoglu claimed a duty drawback adjustment to U.S. price.⁵³ Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced

the business proprietary details of both companies sales of overruns and prime/non-prime merchandise.

⁵⁰ See Colakoglu SAQR at A-17 through A-21 and SCQR at C-13.

⁵¹ See Colakoglu SCQR at Exhibit C-1.

⁵² *Id.*

⁵³ *Id.* at C-32 through C-34; see also letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu's Response to the Outstanding Third Supplemental Sections B-C Antidumping Questionnaire Questions 26, 34, 41 and 43 and updated sales databases," (February 10, 2016) at 2-6 and Exhibit SBC-13a (Colakoglu Supplemental Section BCQR, part 2).

directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to EP or CEP.⁵⁴ 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.⁵⁵

For the instant preliminary determination, we are not granting a duty drawback adjustment for Colakoglu because it has not provided sufficient documentation that demonstrates that it has satisfied the criteria described above for Turkey’s duty drawback program, or Inward Processing Regime (IPR) also known as DIIBs. In its response, Colakoglu claimed a duty drawback adjustment for exports made under seven IPR/DIIBs: 484, 2923, 3091, 4246, 4354, 6147, and 6400. We note that Colakoglu reported IPR/DIIBs that were “closed” (*i.e.*, claims based on the import certificates to which the company was no longer permitted by the Turkish government to add import or export information) within the last 18 months, as well as for a DIIB which is still open. Consistent with our practice as indicated in the recently completed final determination of *Welded Line Pipe from Turkey*,⁵⁶ we considered only “closed” claims for purposes of determining whether or not to grant a duty drawback adjustment. Thus, DIIB 6147 was not considered.

In response to a Department supplemental questionnaire, Colakoglu provided documentation for all of the DIIBs for which it was requesting a duty drawback adjustment to demonstrate the link between the imported inputs and the duties exempted upon export.⁵⁷ Based on the documentation Colakoglu placed on the record for the closed DIIBs, the Department preliminarily determines that Colakoglu has not sufficiently demonstrated that a duty drawback adjustment is warranted. Specifically: 1) Colakoglu provided illegible documents and documents that were not completely translated or translated enough that we could determine their significance; and 2) the documents provided by Colakoglu failed to establish a link between the imported inputs and the duties exempted upon export because there was no evidence that the inputs subject to the IPR were used in exported subject merchandise.⁵⁸ Due to the insufficient documentation and the incomplete translations of the documents on the record, Colakoglu has not met the first prong of the two-prong test, specifically, Colakoglu’s documentation does not show that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another. Therefore, we are not granting a duty drawback adjustment to Colakoglu for this preliminary determination.

⁵⁴ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (Saha Thai).

⁵⁵ *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁶ See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁷ See Colakoglu Supplemental Section BCQR, part 2 at Exhibit SBC-13a.

⁵⁸ In particular, we note that Colakoglu’s documents could not be tied to an official Turkish government source, and therefore, did not support its claim that subject merchandise was exported to claim drawback under the above-mentioned program.

Erdemir

Erdemir reported that it and Iskenderun sold subject merchandise directly to unaffiliated U.S. customers.⁵⁹ Accordingly, we based EP on a packed price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign brokerage and handling, export fees, inspection fees, demurrage, and international freight. Also in accordance with section 772(c)(2)(A) of the Act, we made adjustments for credit, bank charges, and indirect selling expenses.

XII. NORMAL VALUE

A. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that Colakoglu's and Erdemir's respective aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Colakoglu and Erdemir, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁶⁰ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶¹

⁵⁹ See Erdemir SAQR at 14 and Erdemir SCQR at 14.

⁶⁰ See 19 CFR 351.403(c).

⁶¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

During the POI, Erdemir made sales of hot-rolled steel in the home market to affiliated parties, as defined in section 771(33) of the Act.⁶² Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While the Department's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁶³

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁵ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶⁶ we consider the starting prices to be the gross unit prices less all discounts and rebates. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶⁷

⁶² See Erdemir SAQR at 24.

⁶³ See section 771(15) of the Act and 19 CFR 351.102(b).

⁶⁴ See 19 CFR 351.412(c)(2).

⁶⁵ *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁶⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁶⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of subject merchandise to the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶⁸

In this investigation, we obtained information from Colakoglu and Erdemir regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁶⁹ Our LOT findings are summarized below.

Colakoglu

In the home market, Colakoglu reported that it made sales through one channel of distribution (*i.e.*, direct shipments to unaffiliated customers). Colakoglu reported that it performed the following selling functions for sales to its home market customers: sales forecasting; strategic/economic planning; engineering services; advertising/market research; post sale warehousing; technical assistance; packing; inventory maintenance; direct sales personnel; order input/processing; freight and delivery arrangements; after sales services; and distributor/dealer training.

Selling activities can be generally grouped into five selling function categories for analysis: 1) engineering and warranty services; 2) packing; 3) inventory maintenance; 4) delivery arrangement; and 5) sales and marketing (*i.e.*, sales forecasting, strategic/economic planning, advertising, sales promotion, procurement/sourcing services, order input/processing, market research, technical assistance, and after-sales services). Based on these selling function categories, we find that Colakoglu performed all five selling activities for its reported sales to unaffiliated customers in the home market. Because Colakoglu performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Colakoglu reported that it made CEP sales through three channels of distribution: sales to unaffiliated U.S. customers by Medtrade but invoiced by COTAS (Channel 1); sales to unaffiliated U.S. customers and invoiced by Medtrade (Channel 2); and sales to unaffiliated U.S. customers from Medtrade's inventory (Channel 3).⁷⁰

With respect to the U.S. LOT for all three channels, Colakoglu reported that its selling activities were limited to processing purchase orders, packing, and arranging for delivery to the U.S.

⁶⁸ See, *e.g.*, *OJ from Brazil* at Comment 7.

⁶⁹ See Colakoglu SAQR at A-16 through A-17 and letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Supplemental Section A Questionnaire," (December 29, 2015) at Exhibit SA-9 (Colakoglu Supplemental SAQR); and Erdemir SAQR at 14-17 and Exhibit A-7.

⁷⁰ See Colakoglu SAQR at A-20 through A-22.

port.⁷¹ Based on the selling function categories noted above, we find that with respect to all channels, Colakoglu performed sales and marketing, packing, and delivery arrangement for U.S. sales. Because Colakoglu performed the same selling functions at the same relative level of intensity for its U.S. sales in all three channels, we find that the differences among Channels 1, 2, and 3 are too insignificant to warrant three different LOTs. Thus, we determine that Colakoglu made all of its U.S. sales at the same LOT.

We then compared the CEP LOT to the home market LOT and found that the selling functions Colakoglu performed for its home market customers are at a more advanced stage of distribution than those performed for its U.S. customers. That is, while the selling functions performed in the U.S. and home market LOTs are of the same intensity, there is a broader range and number of selling functions performed for home market sales than for CEP sales.⁷² Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home market sales during the POI were made at a different LOT than the CEP sales. Because Colakoglu's home market LOT is at a more advanced stage of distribution than its CEP sales, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Erdemir

In the home market, Erdemir reported that it made sales through two channels of distribution: Channel 1-sales to unaffiliated customers; and Channel 2-sales through affiliated customers. Erdemir reported that it performed the following selling functions for sales to its home market customers: inland freight, marine freight, port expenses, packing, and inventory maintenance.⁷³

Based on the selling function categories described above, we find that Erdemir performed all five selling activities (*i.e.*, engineering and warranty services, packing, inventory maintenance, delivery arrangement, and sales and marketing) for its reported sales to affiliated and unaffiliated customers in the home market. Because Erdemir performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales were made at the same LOT.

In the U.S. market, Erdemir reported that it made EP sales through one channel of distribution (*i.e.*, sales to unaffiliated U.S. customers). Erdemir reported that it performed the following selling activities: technical assistance, brokerage and handling services, packing, obtaining an independent surveying report, financing, and arranging for delivery to the U.S. port.⁷⁴ Based on the selling function categories noted above, we find that with respect to its EP sales, Erdemir performed engineering and warranty services, sales and marketing, packing, and delivery arrangement for U.S. sales. Because Erdemir performed the same selling functions at the same relative level of intensity for all of its EP sales, we determine that all U.S. market sales are at the same LOT.

⁷¹ *Id.* at A-17.

⁷² *Id.* at A-19.

⁷³ See Erdemir SAQR at 17.

⁷⁴ See Erdemir SAQR at 16 and letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir response to §BC second supplemental questionnaire," (February 8, 2016) at 7-9 (Erdemir Supplemental SBCQR).

We then we compared the LOT for the U.S. sales to the home market LOT and found that, with the exception of financing and providing a load survey report for some export sales, the selling activities Erdemir provided to each LOT were at the same or similar level. The minor differences in selling functions are not a sufficient basis to determine that Erdemir's LOT for U.S. sales is different from the home market LOT. Therefore, we preliminarily determine that U.S. sales and home market sales were made at the same LOT, and that no LOT adjustment is warranted.

D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁷⁵ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁷⁶ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings.⁷⁷ Accordingly, the Department requested this information from Colakoglu and Erdemir.⁷⁸ The information indicated that there are reasonable grounds to believe or suspect that sales have been made at less than the cost of production, and we preliminarily determine that Colakoglu and Erdemir in fact made sales in the home market during the POI that were below their respective costs of production (COP).

1. *Application of Facts Available*

Section 776(a)(1) and (2) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the

⁷⁵ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁷⁶ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁷⁷ *Id.*, 80 FR at 46794-95.

⁷⁸ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

There were no processing costs reported or requested for Erdemir's affiliate Ersem's downstream sales on the record of the instant investigation. Therefore, the Department is preliminarily excluding Ersem's downstream sales from the margin calculation.

2. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.⁷⁹

Colakoglu

We relied on the COP data submitted by Colakoglu in its Section D and supplemental Section D questionnaire responses,⁸⁰ except in the following instances where the submitted data was not valued appropriately. We adjusted Colakoglu's submitted general and administrative expense rate to include certain non-operating expenses and exclude certain non-operating income. We also changed Colakoglu's financial expense ratio. Finally, for CONNUMs sold but not produced in the POI we used the most similar CONNUM produced based on the Department's hierarchy for comparison, and for CONNUMs with characteristics that were not properly reported we used as facts available the cost for the CONNUM with the highest COP.⁸¹

Erdemir

We relied on the COP data submitted by Erdemir in its Section D and supplemental Section D questionnaire responses⁸² except in the following instances where the submitted data was not valued appropriately. We adjusted Erdemir's submitted COP data to reflect our application of the major-input rule pursuant to section 773(f)(3) of the Act. Additionally, we made an adjustment to reflect our application of the transactions-disregarded rule pursuant to section 773(f)(2) of the Act. We also adjusted Erdemir's reported general and administrative expense (GNA) rate so as to include research and development expenses in the calculation. Additionally, we recalculated Erdemir's financial expense rate to exclude certain offset items which were not attributable to short-term investments of working capital. Finally, we adjusted the cost of goods sold (COGS) figure used as the denominator in the GNA and financial expense rate calculations so as to exclude freight and certain GNA items which Erdemir normally records as a part of

⁷⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁸⁰ See memorandum to Neal M. Halper Director Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Çolakoğlu Metalurji A.S. and its affiliates," (March 14, 2016) (Colakoglu Preliminary Cost Calculation Memorandum).

⁸¹ *Id.*

⁸² See memorandum to Neal M. Halper Director Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determinations – Ereğli Demir ve Çelik Fabrikaları T.A.Ş. and Iskenderun Demir ve Çelik T.A.Ş.," (March 14, 2016) (Erdemir Preliminary Cost Calculation Memorandum).

COGS.⁸³

3. *Test of Comparison Market Sales Prices*

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

4. *Results of the COP Test*

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that more than 20 percent of Colakoglu's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. We also found that less than 20 percent of Erdemir's home market sales were at prices less than the COP; therefore, we have kept all of their sales for the purposes of determining NV.

E. *Calculation of NV Based on Comparison Market Prices*

Colakoglu

The Department calculated NV based on prices of home market sales to customers on various sales terms.⁸⁴ We made deductions, where appropriate, from the starting price for billing adjustments and late payment fees in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight and port handling charges in accordance with section 773(a)(6)(B)(ii) of the Act. Also, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made, where indicated,

⁸³ *Id.*

circumstance-of-sale adjustments for home market direct selling expenses, including imputed credit expenses, inventory carrying costs, and commissions.

When applicable, we also made adjustments in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. market sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, and (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same method. In accordance with sections 773(a)(6)(A), (B) and (C)(ii) of the Act, we also deducted home market packing costs, added U.S. packing costs and made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise.⁸⁵

Erdemir

The Department calculated NV based on prices of home market sales to customers on various sales terms.⁸⁶ We made deductions, where appropriate, from the starting price for late payments and billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight, domestic ocean freight, warehousing, and port expenses, in accordance with section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and indirect selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

In accordance with sections 773(a)(6)(A), (B) and (C)(ii) of the Act, we also deducted home market packing costs, added U.S. packing costs and made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise.⁸⁷

XIII. CURRENCY CONVERSION

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

XIV. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION COUNTERVAILING DUTY INVESTIGATION

Pursuant to section 772(c)(1)(C) of the Act, the Department makes adjustments for countervailable export subsidies. However, the preliminary determination in the concurrent countervailing duty investigation was negative.⁸⁸ Therefore, no adjustments for export subsidies will be applied to the estimated weighted-average dumping margins calculated for each

⁸⁴ For additional detail, *see* Colakoglu Preliminary Calculation Memorandum.

⁸⁵ *Id.*

⁸⁶ For additional detail, *see* Erdemir Preliminary Calculation Memorandum.

⁸⁷ *Id.*

respondent, and for the “all-others” rate, which are reflected in the accompanying *Federal Register* notice.


XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 MARCH 2016

Date

⁸⁸ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2166 (January 15, 2016).