UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-489-826
Investigation
Public Document
E&C/Office VII: The Team

DATE: August 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 Determination in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey

I. SUMMARY

We analyzed the comments submitted by the interested parties in the investigation of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey). As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the mandatory respondents in this investigation: Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and its affiliates Iskenderun Demir Ve Celik (Isdemir) and Erdemir Celik Servis Merkezi Sanayi ve Ticaret A.S. (Ersem) (collectively Erdemir) and Colakoglu Metalurji A.S. (Metalurji), and its affiliates Colakoglu Dis Ticaret A.S. (COTAS) and Medtrade Incorporated (Medtrade) (collectively Colakoglu). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments:[1]

Comment 1: Colakoglu's Duty Drawback Adjustment
Comment 2: Colakoglu's U.S. Indirect Selling Expenses
Comment 3: Colakoglu's International Ocean Freight
Comment 4: Colakoglu's U.S. Commissions
Comment 5: Corrections to Colakoglu's Cost Database
Comment 6: Colakoglu's Cost-Averaging Methodology
Comment 7: Colakoglu's Electricity Offset
Comment 8: Colakoglu's General and Administrative Expense Ratio
Comment 9: Using Partial Facts Available for Erdemir's Downstream Reseller Ersem

[1] A list of abbreviations and short cites for case filings, administrative cases, court cases, and commonly used acronyms are attached to this notice in the Table of Authorities.

Comment 10: Erdemir's Date of Sale
Comment 11: Erdemir's Unreconciled Cost
Comment 12: Erdemir's Major-Input and Transactions-Disregarded Adjustments
Comment 13: Erdemir's Financial Expenses
Comment 14: Erdemir's Cost of Goods Sold Denominator
Comment 15: Erdemir's General and Administrative Expenses

II. BACKGROUND

On March 22, 2016, the Department published the *Preliminary Determination* in the less-than-fair-value investigation of hot-rolled steel from Turkey.[2] The Department conducted the sales verifications of Erdemir and Colakoglu in Istanbul, Turkey from March 28 through April 8, 2016, and the verification of Colakoglu's U.S. sales in Houston, Texas from May 5 through May 7, 2016. The Department also conducted cost verifications of Erdemir in Eregli, Turkey from April 18 through April 22, 2016 and of Colakoglu in Istanbul, Turkey from April 25 through April 29, 2016.[3]

The Department received case and rebuttal briefs from Petitioners, Erdemir, and Colakoglu between June 7 and June 20, 2016.[4] Erdemir and Colakoglu both requested that the Department conduct a hearing in this investigation, which the Department conducted on June 23, 2016.[5]

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. For a complete description of the scope, please refer to Appendix II of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.[6] No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to the margin calculations for both respondents' margin calculations.[7]

[2] *See Preliminary Determination* and accompanying PDM.
[3] *See* the "Table of Authorities" for a complete list of verification reports.
[4] *See* the "Table of Authorities" for a complete list of case and rebuttal briefs filed.
[5] *See* Erdemir Hearing Request, Colakoglu Hearing Request, and Hearing Transcript.
[6] *See Preliminary Determination* PDM at "Scope Comments."
[7] *See* Colakoglu Final Calculation Memorandum; Colakoglu Final Cost Calculation Memorandum; Erdemir Final Calculation Memorandum; and Erdemir Final Cost Calculation Memorandum.

VI. MARGIN CALCULATIONS

We calculated EP, CEP, and NV using the same methodology stated in the *Preliminary Determination*, except for the changes described *infra* and in the final analysis memoranda for Colakoglu and Erdemir.[8]

VII. DISCUSSION OF ISSUES

Comment 1: Colakoglu's Duty Drawback Adjustment

Colakoglu's Arguments

- The Department's conclusion that the documents on the record provided by Colakoglu failed to establish a link between the imported inputs and the duties exempted upon export is incorrect because:

    a. In accordance with the Turkish Inward Processing Law (IPL), Colakoglu used imported slab to produce hot-rolled steel that was ultimately exported;
    b. There is evidence on the record[9] that ties imported inputs to listed Inward Processing Regime (IPR) numbers and exported subject merchandise;
    c. The Department never requested information requiring Colakoglu to specifically link particular imported inputs to production of exported subject merchandise; and
    d. Neither the IPL nor the U.S. case law require that there be a direct link between the particular imported input and the exported subject merchandise. Specifically, in *Maverick Tube*, the CIT denied the duty drawback because the imported material could not be used to make subject merchandise and not because the respondent was unable to link specific inputs with specific exports.[10]

- The Department should have verified duty drawback in accordance with *Wheatland Tube Co*., section 782 of the Act, and the WTO agreements.[11]
- Even though the Department did not verify the program, the sales trace documentation taken at verification includes references to duty drawback.
- The Department failed to give Colakoglu an opportunity to rectify any issues it had with the company's submitted duty drawback information at verification, such as actually verifying the company's participation in the duty drawback program and/or accepting legible copies of duty drawback documents as minor corrections.
- The Department also failed to give Colakoglu another opportunity to clarify its duty drawback adjustment by issuing a supplemental questionnaire requesting information it believed was missing.

[8] *See* Colakoglu Final Calculation Memorandum and Erdemir Final Calculation Memorandum.
[9] *See* Colakoglu SCQR at 32 and Exhibit C-12; Colakoglu Supplemental Section BCQR, part 2 at 2-6 and Exhibits SBC-13a through SBC-13d; Colakoglu Supplemental Section DQR at Exhibit SD-32; and Colakoglu SAQR at Exhibit A-9.
[10] *See Maverick Tube Corp.* at *10.
[11] *See Wheatland Tube Co.* at 1286.

- In conclusion, the Department should grant Colakoglu a full duty drawback to U.S. price in accordance with section 772(c)(1)(B) of the Act because it applied for an adjustment in a fashion similar to other Turkish respondents claiming duty drawback under the Turkish system.

Petitioners' Arguments

- Merely submitting paperwork asserting that there were exports of finished goods may satisfy Turkey's IPL requirements, but it does nothing under U.S. law to establish the direct link between the imported inputs and the exported finished goods, or to demonstrate that the inputs were used in the exports.
- The documents Colakoglu provided do not support eligibility for a drawback adjustment under U.S. law because they were either not fully translated, not fully legible, or were inconclusive as to the alleged link between imported slab and the downstream exports of hot-rolled steel.
- The disparity of drawback-eligible imports versus exports suggests no direct link between, or inter-dependency of, duties paid and the claimed drawback.
- The slab imports in Exhibit SBC-13c of the Supplemental SBCQR, part 2 do not appear to reconcile with the information in the IPR documents submitted in Exhibit SBC-13a, with significantly lower quantities listed on the documents versus the tabulation prepared by Colakoglu.
- Spreadsheet tabulations are also not necessarily official documents and should be considered to be more for explanatory or clarification purposes than as source documents.
- Documents taken at verification do not support Colakoglu's drawback claims because an invoice for non-subject merchandise has no bearing on a drawback claim relating to slab used in the production of hot-rolled steel. In addition, the fact that quantities and values on the documentation were revised with hand-written adjustments makes the purported connection even less probative.
- Colakoglu's drawback claim suffers from numerous flaws including, but by no means limited to, illegible documentation. These issues could not have reasonably been remedied via the minor corrections process and the Department properly declined to accept or review further information seeking to re-open this issue.

Department's Position: This comment raises two distinct issues. First whether the information on the record is sufficient to grant Colakoglu a duty drawback adjustment, and second whether the Department properly determined not to verify the program or accept various factual submissions regarding Colakoglu's duty drawback claim. The Department continues to find that Colakoglu has not met the criteria to warrant a duty drawback adjustment, and continues to decline to accept or seek out new factual information.

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 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.[12] 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.[13]

We continue to find that the documents Colakoglu provided in this investigation fail 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 to manufacture the exported subject merchandise. Colakoglu argues that the Turkish IPL requires that exported products contain the imported inputs to qualify for the drawback program. However, as, noted in Colakoglu's Section C questionnaire response, the company only has to demonstrate that finished goods are exported and there is no mention of whether the exported final product must contain the inputs it imported duty free.[14] In addition, due to incomplete translations and the illegibility of some of the documents on the record, the Department could not ascertain if the slabs imported by Colakoglu were indeed the types of slabs necessary for the production of hot-rolled steel.[15] As noted by Petitioners, the imported slabs and the finished hot-rolled steel product will have certain characteristics that remain constant but these characteristics were not listed for the imported slab. In prior Turkish cases, the Department has required that there be evidence on the record that the imported inputs can be used in the production of the final product.[16]

In particular, 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. As noted by Colakoglu, they provided several excel spreadsheets and printouts purportedly from the Turkish government showing the amount of imported slab and exported finished hot-rolled steel. However, none of these provided worksheets have a government seal, stamp, or any other identifying marker from the Turkish government. Even if the Department relied on the worksheets provided in Exhibit SBC-13c, from the legible information that we could glean they cannot be reconciled with the information in the IPR documents submitted in Exhibit SBC-13a. Both exhibits are purported to convey information regarding Colakoglu's imports of inputs and exports of hot-rolled steel under the program and appear to cover the same time period. However, when comparing the quantities and values that were legible of the imported inputs listed in the IPR closing documents in Exhibit 13a with the quantities and values of imported inputs provided in the excel worksheets, there are notable discrepancies between the amounts reported among these documents for the relevant IPRs.[17] In addition, the Department was unable to conduct a complete analysis and/or make a connection between the IPRs and the excel spreadsheets regarding the ultimate quantities and

[12] *See Saha Thai Steel Pipe (Public) Co.* at 1340-41.
[13] *Id.*; *see also CORE from Korea-11th AR* and accompanying IDM at Comment 2.
[14] *See* Colakoglu SCQR at 33.
[15] *See, e.g.*, the IPR closing documents in Colakoglu Supplemental Section BCQR, part 2 at Exhibit SBC-13a.
[16] *See OCTG from Turkey* IDM at Comment 1 ("Each respondent demonstrated that when it opened the DIIBs, it documented 1) projected quantities of imports, which qualify based on an 8-digit level HTS number (which include API-5CT coil used for OCTG)…"); *see also Rebar from Tukey* IDM at Comment 1 ("{r}espondents provided information concerning the usage or waste rate utilized under the drawback program for exports of rebar. 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…").
[17] *See, e.g.*, the reported quantities and values of slab imported for IPR 2923 in Colakoglu Supplemental Section BCQR, part 2 at Exhibits SBC-13a and SBC-13c.

values of the exported finished products for each IPR due to insufficient translations as well as the illegibility of some of the documents on the record. In addition, from the information that was legible and translated enough for us to partially analyze, there were still notable discrepancies between the two exhibits for the amounts of reported exported hot-rolled steel.[18]

Contrary to Colakoglu's argument, the sales traces provided at verification are not sufficient to support its claim for a drawback adjustment. First, verification is not an opportunity to submit information that is not already on the record. Rather, "{T}he Department's responsibility at verification is to verify the accuracy and completeness of the questionnaire response."[19] Colakoglu's attempts to introduce new factual information to be used in a Department determination runs counter to our responsibility, and unfairly gives Colakoglu an additional opportunity to respond to the questionnaire that other respondents did not receive. Second, the sales trace documents collected at verification just denote that Colakoglu had an export under a particular IPR number. These sales documents do not indicate that the particular export was made with the slab imported under the same IPR. Finally, because exports qualifying under the IPR system encompass multiple sales, the information on the record regarding exports under the IPR system is insufficient in making a determination of the whole program.

With respect to Colakoglu's argument that there is evidence on the record that ties imported inputs to listed IPR numbers and exported subject merchandise, merely denoting the specific IPR numbers on various documents is not enough to determine a duty drawback adjustment. Colakoglu cites to instances in its various filings where IPR numbers are referenced.[20] However, as stated above, there needs to be support for the fact the imported slab can be used and was used to make the final product. The documents in these questionnaire responses do not indicate that the particular export was made with the slab imported under the same IPR.

Furthermore, the Department disagrees with Colakoglu's argument that it was required to issue another supplemental questionnaire, conduct verification of the duty drawback program, or accept untimely new factual information. The SAA, explains that "as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment."[21] In addition, the CAFC has explained that "Commerce has reasonably placed the burden to establish entitlement to adjustments on FGL, the party seeking the adjustment and the party with access to the necessary information."[22] Accordingly, the Department has acknowledged in its practice with respect to duty drawback, the burden of the claiming respondent to demonstrate its eligibility for such an adjustment, specifically with regard to linking the imported inputs to exports of subject merchandise.[23]

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[18] *See, e.g.*, the quantities of exported hot-rolled steel for IPR 4246 in Colakoglu Supplemental Section BCQR, part 2 at Exhibits SBC-13a and SBC-13c.
[19] *See Corrosion-Resistant Plate from Canada*, 61 FR 13815, 13818.
[20] *See* Colakoglu SCQR at 32 and Exhibit C-12; Colakoglu Supplemental Section BCQR, part 2 at 2-6 and Exhibits SBC-13a through SBC-13d; Colakoglu Supplemental Section DQR at Exhibit SD-32; and Colakoglu SAQR at Exhibit A-9.
[21] *See* SAA at 829.
[22] *See Fujitsu Gen.* at 1034.
[23] *See, e.g., Pipe and Tube from Turkey 2012-2013 AR* IDM at Issue 3; *Pipe and Tube from Turkey 2011-2012 AR* IDM at Comment 4; and *Steel Flanges from India* IDM at Comment 10.

Colakoglu's argument that the Department should have issued another supplemental questionnaire with respect to its duty drawback responses is misplaced. The record shows that Colakoglu had ample opportunity to submit information needed to substantiate its duty drawback claim. Specifically, Colakoglu had 48 days to submit its initial questionnaire responses. Colakoglu then had 20 days to answer the supplemental Section C questionnaire, and 22 days to answer the supplemental Section D questionnaire, each of which asked questions that sought to clarify and provide support for Colakoglu's duty drawback claim in its initial questionnaire responses.[24] As discussed above, the information provided in the initial and supplemental questionnaire responses was still lacking. Colakoglu also never requested an opportunity to place new factual information regarding this program on the record prior to the *Preliminary Determination*. Instead, they attempted to place information on the record as a rebuttal to Petitioners' pre-preliminary comments and during the verification as minor corrections.

Colakoglu's claim that we should have accepted information at verification also lacks merit. Colakoglu's arguments that Department should have verified duty drawback in accordance with *Wheatland Tube Co.*, section 782 of the Act, and the WTO agreements is unavailing. *Wheatland Tube Co.*, section 782 of the Act, the WTO agreements and section 351.307(b)(1) of the Department's regulations provide that verification is conducted to verify the factual information upon which the Department relies. In this case, the information Colakoglu proffered to support its duty drawback claim in its questionnaire responses was too deficient to rely upon and thus not capable of verification. The amount of new information the Department would have had to collect to overcome the deficiencies of the information on the record would not have merely been an issue of verifying facts already on the record, but rather the acceptance of a new questionnaire response.[25] As the due date for these responses had already passed, allowing Colakoglu to submit the information at verification would effectively allowed them to submit the information in a time period they established rather than under the deadlines the Department established. It would have precluded the Department from analyzing the information thoroughly and it would have denied other parties to the proceeding the opportunity to comment meaningfully. In this regard, we note that verification is not the venue where the Department accepts a substantial amount of new information. The purpose of verification is to verify the information already on the record and review the underlying supporting information.[26] Finally, the minor correction provision was not applicable here because Colakoglu wasn't trying to correct information within its duty drawback responses. Rather, Colakoglu was attempting to replace its previously submitted, deficient duty drawback responses which potentially affected all home market and U.S. sales.

[24] *See* Colakoglu SCQR at 32-34 and Exhibit C-12; Colakoglu Supplemental Section BCQR, part 2 at 2-6 and Exhibits SBC-13a through SBC-13d; and Colakoglu Supplemental Section DQR, part 2 at 1-5.
[25] *See Preliminary Determination* PDM at 12-13.
[26] While the Department accepts minor corrections before verification begins, the quantity and nature of the information that Colakoglu attempted to submit at verification did not constitute minor corrections. *See* Colakoglu Sales Verification Report at 2; *see also* Department Phone Call with Colakoglu Counsel.

Comment 2: Colakoglu's U.S. Indirect Selling Expenses

Colakoglu's Arguments

- The Department should revise Colakoglu's calculated ISE ratio for the final determination because:

    a. The ratio calculated for the preliminary determination only used six months of sales and expense data (January to June 2015) from Medtrade's P&L; and
    b. The calculated ratio did not include Colakoglu's direct sales to the United States and Canada.

- The Department should allocate Medtrade ISE expense over all North American sales by Colakoglu and Medtrade.
- If the Department determines not to include Colakoglu's direct sales to the United States and Canada in the denominator, then it should set indirect selling expenses incurred in the United States (INDIRSU) to zero for all U.S. sales made by its affiliate COTAS.

Petitioners' Arguments

- It is reasonable to approximate POI expenses with a ratio based on Medtrade's P&L for January to June 2015. A ratio based on six months of data should not differ significantly from a l2-month ratio as long as the numerator and denominator are for the same period.
- It is also appropriate to allocate Medtrade's recorded selling expenses over Medtrade's recorded sales to determine the ISE ratio.
- Given that the companies work together, Colakoglu personnel also provided assistance to Medtrade for Medtrade's North American sales. There is no reason to adjust, and artificially reduce, the ISE ratio to include sales not on Medtrade's P&L.
- The Department should not reward the failure to report all expenses (including assistance to Medtrade from Colakoglu personnel) by setting the indirect selling expenses incurred in the United States (INDIRSU) field to zero for certain sales where Medtrade may also have assisted.

Department's Position: The Department will continue to only consider Medtrade's sales and expenses in calculating the INDIRSU field for all U.S. sales. Therefore, for the final determination, we will use Medtrade's POI expenses and sales to determine the indirect selling expenses ratio. Section 772(d)(1) of the Act states:

> Additional Adjustments to Constructed Export Price. For purposes of this section, the price used to establish constructed export price shall also be reduced by the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)

The INDIRSU field in the questionnaire is meant to capture indirect selling expenses incurred in the United States. As stated by Colakoglu, Medtrade assisted with all sales in the United States and North America, including the ones attributed to Colakoglu/COTAS in the U.S. sales

database, and thus all U.S. sales are on a CEP basis. Because Medtrade assists with all of the CEP U.S. sales, then all expenses for those sales would be captured in Medtrade's expenses as well. In addition, when the Department queried where the expenses for Colakoglu's/COTAS' U.S. direct sales were included, the company responded that those expenses were included in the expenses for U.S. sales incurred in the home market (DINDIRSU) field.[27] As noted by Petitioners, since the companies "work together" on North American sales, Colakoglu personnel also provided assistance to Medtrade for Medtrade's North American sales.[28] Thus, there is no reason to adjust or reduce the indirect selling expense ratio to include sales not on Medtrade's P&L. Therefore, the Department continues to base INDIRSU on Medtrade's sales and expenses.

During the verification the Department verified Medtrade's calendar year and POI sales and expenses. Therefore, we will use Medtrade's POI sales and expenses to determine Colakoglu's INDIRSU ratio.

Comment 3: Colakoglu's International Ocean Freight

Petitioners' Arguments

- The Department should apply AFA to Colakoglu's international ocean freight expenses because verification revealed that:

    a. The reported ocean freight charges were incorrect;
    b. The invoiced freight amounts were subject to further revisions; and
    c. The errors were so extensive that they could not be corrected and then tested for overall completeness and accuracy.

- Without the ability to comment directly as to the substance of a document that is not on the record, the Department's judgment as to revised international freight was that the proposed revisions to this incorrectly reported movement charge that were offered at the start of verification were extensive and not minor.

Colakoglu's Arguments

- Colakoglu's correction of its international freight expenses should have been accepted by the Department and would have had a negligible impact on expenses.
- The requested minor corrections did not affect the accuracy or the verifiability of the reported international freight adjustment.
- Colakoglu's international freight was based on actual freight invoices and other source documents. What Colakoglu did not realize when reporting its freight expenses is that it also received discounts on certain ocean freight invoices.
- The Department's refusal to take Colakoglu's corrections for its ocean freight expenses is not grounds for facts available with adverse inferences.

[27] *See* Colakoglu CEP Sales Verification Report at 10.
[28] *Id.*

Department's Position: We have continued to rely on Colakoglu's reported international ocean freight expenses for this final determination.[29] As noted by Colakoglu and the Department, the company's reported international freight expenses were based on actual freight invoices. We verified and noted no discrepancies with what Colakoglu reported for actual ocean freight paid.[30] Therefore, we will continue to rely on Colakoglu's reported total ocean freight expenses for this final determination.

Colakoglu attempted to present revisions to its reported ocean freight expenses as minor corrections at verification, which we did not accept.[31] Notwithstanding Colakoglu's arguments, we determined at verification that these corrections were not minor[32] as the "corrections" affected most of Colakoglu's U.S. sales. That said, we do not consider Colakoglu's reporting of ocean freight without the claimed discounts on certain ocean freight invoices to be a failure to cooperate to the best of its ability. As noted above, Colakoglu reported and calculated its freight expenses based on total/actual freight expenses paid as denoted on all invoices and entered in its accounting system.[33] The discount amounts were also noted on some of the invoices and in the company's accounting system. As also noted above, we verified the total amount of Colakoglu's international freight expenses as noted on the invoices and in its accounting system as well as what was reported to the Department.[34] Therefore, since we verified the total amount of ocean freight in Colakoglu's books and records and we were able to use the reported information, there is no basis to apply AFA to Colakoglu's reported ocean freight expenses for this final determination.

Comment 4: Colakoglu's U.S. Commissions

Petitioners' Arguments

- The Department should change Colakoglu's margin program to reflect that Colakoglu paid U.S. commissions in U.S. dollars.

Department's Position: The Department will change the language in Colakoglu's margin program to show that the company paid U.S. commissions in U.S. dollars for the final determination. At the preliminary determination, the Department noted that Colakoglu reported commissions as being paid in U.S. dollars in its U.S. sales database summary but also reported them as being paid in Turkish Lira in the printout of its U.S. sales listing.[35] The Department confirmed with Colakoglu officials at verification that commissions for U.S. sales were paid in U.S. dollars.[36]

[29] *See* Colakoglu Supplemental Section BCQR, part 1 at 16 and Exhibit SBC-9.
[30] *See* Colakoglu CEP Sales Verification Report at 7.
[31] *See* Colakoglu Sales Verification Report at 2.
[32] *Id*.
[33] *See* Colakoglu CEP Sales Verification Report at 7.
[34] *Id*.
[35] *See* Colakoglu Preliminary Calculation Memorandum at 6; *see also* Colakoglu SCQR at Exhibits C-1 and C-2.
[36] *See* Colakoglu CEP Sales Verification Report at 10.

Comment 5: Corrections to Colakoglu's Cost Database

Colakoglu's Arguments

- Contrary to the Department's statement in its rejection notice, Colakoglu submitted its cost database corrections in accordance with 19 CFR 351.102(b)(21).
- The Department's rejection seems to suggest that all filings need to cite 19 CFR 351.102(b)(21), thus all filings that don't should be rejected.
- The corrected cost database was submitted on February 22, 2016 and was rejected three weeks prior to the *Preliminary Determination* and two months prior to the cost verification when there was time to consider more accurate data for the record.
- The Department accepted cost data in a later submission and also accepted data for the record of this investigation as late as March 7, 2016 in this investigation.
- Rejecting a corrected cost database that was requested by the Department means that the Department is not determining margins as accurately as possible nor in a manner that is fair and equitable to the parties in accordance with various court rulings.[37]

Petitioners' Arguments

- The Department must control the factual record and has exclusive authority to decide when information is permitted and at what point the record should be closed.
- Information should not be accepted piecemeal based on the preferences of an interested party.
- Factual information that is placed on the record should be in response to questions from the Department, either in the initial questionnaire or supplemental requests.

Department's Position: The Department continues to find that we should not accept Colakoglu's untimely and unsolicited revised cost database. As noted in the Department's letter rejecting the revised database, Colakoglu's revised COP database filing failed to identify the provision of 19 CFR 351.102(b)(21) under which the new information was being submitted.[38] Contrary to Colakoglu's argument, this does not mean that every filing has to cite this section in the regulation. Again, as noted in the Department's letter and discussed below, Colakoglu's supplemental Section D questionnaire response was due and timely filed on February 10, 2016. There is no reason to ask for permission to file information on time that the Department has requested within an established deadline. However, as the deadline to respond to the Department's supplemental questionnaire had passed, Colakoglu should have cited to and requested permission under19 CFR 351.102(b)(21) to fix the errors it discovered after it had filed its response.

The Department also noted that Colakoglu's revised COP database submitted on February 22, 2016 included information requested in our first Section D Supplemental Questionnaire,[39] and accordingly was untimely filed as the deadline for a response had passed. Colakoglu's response to the Section D 1st Supplemental Questionnaire was originally due on

[37] *See Yangzhou Bestpak Gifts & Crafts Co.* at 1379-80; *Baoding Mantong Fine Chemistry Co. at* 1338; and *Rhone Poulenc, Inc.*, at 1191.
[38] *See* The Department's Rejection of Colakoglu's Revised COP Database.
[39] *See* Colakoglu Section D 1st Supplemental Questionnaire.

February 2, 2016,[40] but extended to February 10, 2016.[41] On that date, Colakoglu timely submitted a portion of its Section D 1st Supplemental Questionnaire response, which addressed the Department's request that Colakoglu revise its COP database to update its CONNUM in general and the CONNUM costs specifically.[42] Colakoglu did not request an extension of the February 10, 2016 deadline for the submission of its revised COP information.[43] Therefore, Colakoglu's submission of a revised COP database on February 22, 2016, 12 days after the due date for its revised COP database in response to the Department's 1st Section D Supplemental Questionnaire, constituted an untimely filed questionnaire response within the meaning of 19 CFR 351.301(c)(1)(ii).

In addition, Colakoglu's relies on *Yangzhou Bestpak*, *Rhone Poulenc Inc.*, and *Baoding Mantong* for the proposition that the Department's rejection of untimely information is punitive. However, enforcement of the Department's new factual information deadlines does not render a determination punitive. The Department's regulations establish on what basis information will be considered timely.[44] Furthermore, as the CAFC has recognized, "it is fully within Commerce's discretion to 'set and enforce deadlines'" and courts generally will not "'set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered.'"[45] The Department also notes that under its regulations a party may make a request for an extension of time limit after a deadline when extraordinary circumstances are present.[46] In this case, Colakoglu did not request such an extension and did not establish that extraordinary circumstances were present such that an untimely filed extension request would have been appropriate.[47] For all these reasons, there is no basis on which the Department should have accepted Colakoglu's untimely and unsolicited revised cost database. In the *Preliminary Determination*, the Department stated that for the CONNUMs with characteristics that were not properly reported we used as facts available the cost for the CONNUM with the highest COP, which was the best information available, and we will continue to do so for the Final Determination.[48]

Comment 6: Colakoglu's Cost-Averaging Methodology

In the *Preliminary Determination*, the Department declined to deviate from its normal methodology of calculating an annual weight-average cost for Colakoglu because in analyzing

[40] *Id.*
[41] *See* Colakoglu's 2nd Granted Extension Request for Sections B-D.
[42] *See* Colakoglu Supplemental Section DQR, part 2 at Exhibit SD-39.
[43] Prior to February 10, 2016, Colakoglu requested, and was granted, an extension of time to respond to other portions of the Department's Supplemental Questionnaire. *See* letters from Colakoglu, Colakoglu Questionnaire Sections A-D Extension Request; Colakoglu Questionnaire Sections C-D Extension Request; Colakoglu Supplemental Questionnaire Section A Extension Request; Colakoglu 2nd Supplemental Questionnaire Extension Request; Colakoglu 3rd Supplemental Questionnaire Extension Request; Colakoglu Supplemental Questionnaire Section D Extension Request; Colakoglu Supplemental Questionnaire Sections B-D Extension Request. However, none of those extension requests pertained to the cost of production information at issue here.
[44] *See* 19 U.S.C. 351.102(a)(21) & 351.301.
[45] *See Dongtai Peak Honey Industry Co. Ltd.* at 1352 (*quoting PSC VSMPO-Avisma Corp.* at 760-61).
[46] *See* 19 CFR 351.302(c).
[47] *See* 19 CFR 351.302(c)(2) (defining extraordinary circumstances for purposes of an untimely filed extension request).
[48] *See Preliminary Determination* PDM at 19; *see also* Colakoglu Preliminary Cost Calculation Memorandum.

the cost changes for the three most significant inputs, the change in quarterly costs did not appear to meet the Department's established 25 percent threshold.[49]

Colakoglu's Arguments

- The Department based its analysis only on the three significant cost inputs, which does not cover all of COM. This calculation significantly understates the change in total COM.
- Selling prices in the home market declined by more than the Department's customary significant cost change requirement of 25 percent. In addition, the combination of falling material costs and increasing exchange rates results in a greater than 25 percent change in costs over the POI.
- The Department has established a 25 percent change in COM as a threshold for applying quarterly costs in prior cases. However, the statute does not prescribe a specified time period over which COP must be calculated. Thus, the Department has discretion in determining when to apply quarterly average costs.
- Accordingly, a distorted cost comparison does not become less distortive simply because it does not meet the 25 percent standard. The standard is too harsh and fails to capture significant cost changes that should be considered in calculating an accurate margin.

Petitioners' Arguments

- Early in the investigation, Colakoglu failed to demonstrate significant cost changes in its three major inputs and linkage between costs and prices.
- In a subsequent submission, Colakoglu submitted monthly costs and instead of the cost for the top three input materials, they provided total monthly costs for all inputs.
- Even if you analyze Colakoglu's total COM data, the changes in costs within the POI do not satisfy the Department's 25 percent threshold test.
- Finally, the Department should reject Colakoglu's request that the test of "significance" incorporate exchange rate factors, because companies can hedge currency exposure.

Department's Position: Consistent with the preliminary determination, the Department continues to use its normal methodology of calculating an annual weight-average cost for Colakoglu because the change in its COM does not meet the Department's established 25 percent threshold.

From the outset of the case, Colakoglu submitted two COP databases, one database was based on the Department's normal POI annual weighted-average cost methodology and the other was based on an alternative cost methodology. In the preliminary determination, we explained that the Department has established a predictable and consistent practice for determining whether or not we should deviate from the normal methodology of calculating an annual weight-average cost and resort to an alternative cost reporting methodology. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, the Department has established two criteria that must be met, *i.e.*, significance of cost changes and the linkage between costs and sales information. The first criteria, significance of cost changes, must first be

[49] *See* Colakoglu Preliminary Cost Calculation Memorandum at 1.

met before evaluating the linkage between cost and sales information. A significant change in cost for this purpose is defined as a greater than 25 percent change in COM between the high and low quarters during the POI/POR. As described below in *Plate from Belgium*[50] and upheld by the CIT[51]:

> The Department's threshold of 25 percent originates from generally accepted accounting standards promulgated in International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 was developed to provide guidelines for enterprises reporting in the currency of a hyperinflationary economy so that the financial information provided is meaningful. Essentially, IAS 29 establishes when it is appropriate for an entity to depart from normal IFRS accounting standards and adopt an alternative method, because the existing method (i.e., historical costing) will result in distortions. We find that a similar comparison can be made here, where a particular basket of goods (i.e., stainless steel inputs) are experiencing rapid changes in price levels which largely impacts the total cost of manufacturing (COM). To benchmark these changes in COM to our significance threshold, we have used U&A Belgium's data to compute the cost difference, in terms of a percent, between the lowest quarterly ***COM*** and the highest quarterly ***COM (emphasis added)***. For the highest volume control numbers (CONNUMs) sold in the home market and U.S., the cost difference exceeds our significance threshold. This significance threshold is high enough to ensure that we do not move away from our normal practice without good cause and forgo the benefits of using an annual average cost, but allows for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations."

Colakoglu disputes several facts regarding the Department's analysis and decision at the preliminary determination to not resort to using our alternative cost methodology. Colakoglu argues that the Department performed its significant cost change test based only on the three submitted significant cost inputs (*i.e.*, which does not cover all of COM), that the 25 percent threshold is too harsh and fails to capture significant cost changes, and that currency changes should be accounted for when analyzing the significant change in cost test. Each of these arguments is misplaced, as addressed below. First, the Department's practice for determining whether the change in production costs is significant is based on analyzing the quarterly change in the CONNUM-specific COM, not the three significant cost inputs as asserted by Colakoglu. However, because the Department's normal methodology is to use annual average cost, in most cases the record does not contain a quarterly cost database. Consequently, to allow the Department to test for significant cost changes and to alleviate the burden of a respondent having to report both an annual weighted-average and quarterly weighted-average cost database, the Department solicits in its section D questionnaire monthly cost information for the three most significant inputs. From the information submitted for the three most significant inputs, the Department can gauge the extent to which costs for these inputs has changed. If the cost changes appear significant in relation to COM, we will request quarterly cost information for the five

[50] *See Plate from Belgium* and accompanying IDM at Comment 4.
[51] *See Seah Steel Corporation* (in support of *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009)) at 21-24.

largest home and U.S. market CONNUMs to determine the actual changes in the CONNUM-specific quarterly costs.

In this case we have a quarterly cost database on the record. As such, we are able to analyze the precise change in costs over the POI for the five largest volume home and U.S. market CONNUMs. Our analysis shows that for 10 out of the ten highest volume CONNUMs tested, the change in quarterly costs did not meet our 25 percent threshold.[52]

Second, we agree with Colakoglu that the statute does not prescribe a specific time period over which the COP must be calculated. This is precisely why the Department has developed its consistent and predictable alternative cost averaging methodology and cost change threshold for determining when it is appropriate to deviate from our normal annual weighted-average cost methodology. The Department finds that transparency and predictability are served in the administration of antidumping duty cases by developing clear criteria, such as a numeric threshold, which, once met, will require respondents to report costs using an alternative cost calculation methodology. Therefore, as noted above, the Department has established a predictable and reasonable threshold of 25 percent which was established based on guidance from IAS 29, and the use of this threshold has been upheld by the CIT.[53]

Lastly, we disagree with Colakoglu that we should have to consider currency fluctuations in our analysis of changes in COM. Specifically, Colakoglu attempts to modify the Department's practice of using the costs as recorded in Colakoglu's normal books and records to analyze the change in COM. Colakoglu wants us to convert its normal accounting records, which are stated in Turkish Lira, to US dollars, and then analyze the changes in COM. The analysis of significant cost change should be performed in the same currency as contained in the cost database, which is Turkish Lira. Colakoglu's reported costs already take into account exchange rate differences because purchases in U.S. dollars are converted to Turkish Lira in the month of the purchase in the normal course of business. Moreover, the CIT has upheld our practice of performing the significant cost change analysis by relying on the currency used by the respondent in their normal books and records and which the respondent used to report its costs.[54]

Comment 7: Colakoglu's Electricity Offset

Petitioners' Arguments

- For the final determination, the Department should revise Colakoglu's reported costs by limiting the electricity offset for excess heat revenue to just the cost of natural gas related

[52] *See* Colakoglu Final Cost Calculation Memorandum.
[53] *See Seah Steel Corporation* at 21-24.
[54] *See SSSSC from Mexico* and accompanying IDM at Comment 5. "We also disagree with petitioners' conclusion that the Department should have considered currency fluctuations in its analysis of changes in COM as it did in Habas Sinai. In Habas Sinai, the Department noted that the respondent presented its analysis of cost changes in a currency (US dollars) other than the currency the respondent used in its normal books and records (Turkish lira). As a result, of converting its costs from lira to dollars, the changes in cost claimed by the respondent in that case were overstated. As a result, the Department in its remand redetermination to the CIT disregarded the costs analyses presented in dollars and relied on the costs recorded in lira to determine if the shorter cost averaging periods were warranted. For these final results, we have continued to rely on the analysis used for the Preliminary Results which was based on Mexican pesos, the currency used by Mexinox in its normal course of business and the currency in which Mexinox appropriately reported its costs."

to the excess heat generated and sold. This would reduce the claimed offset included in the variable overhead-electricity (VOH_EL) field of the cost file.

Colakoglu's Arguments

- Consistent with the preliminary determination, the Department should grant the full revenue offset for the sale of excess heat to Ova Elektrik (OVA).
- The Department's previous determinations of limiting the offset to only the cost of natural gas and conversion costs significantly undervalues the excess heat sold to OVA.
- The excess heat prices are set by an independent unaffiliated party and should therefore be considered the proper market prices for the excess heat Colakoglu sold to OVA.

Department's Position: For the final determination, the Department will not grant the full revenue offset to Colakoglu's production of electricity for the sale of its excess heat to OVA. Specifically, granting Colakoglu an offset for the revenue earned on the sale of excess heat results in treating the production of excess heat as a by-product of producing electricity. However, for the reasons stated below, we have disallowed Colakoglu's treatment of excess heat revenue as a by-product, and instead treated the production of electricity and excess heat as co-products.

Colakoglu operates a gas turbine (GT1), used to generate power for its steel division, that produces both electricity and excess heat. For reporting purposes, Colakoglu included GT1's operating expenses (*i.e.*, natural gas and conversion costs) as part of its total electricity costs, and claimed the revenues generated from the sale of excess heat to its affiliate OVA as a by-product offset to the electricity costs used in its steel production.[55] Colakoglu sold the excess heat generated by its GT1 to OVA for use in OVA's steam turbine. In addition to a steam turbine, OVA owns a gas turbine (GT2) from which the excess heat is also used in OVA's steam turbine. OVA's steam turbine operates exclusively on its purchased and self-generated excess heat received from GT1 and GT2, respectively. The revenue Colakoglu generated from sale of the excess heat is recorded as sales revenue in Colakoglu's normal books and records, not as an offset to the cost of manufacture.

The NAA defines a joint product as two or more products so related that one cannot be produced without producing the other(s), each having relatively substantial value and being produced simultaneously by the same process up to a split-off point. The NAA defines a by-product as a secondary product recovered in the course of manufacturing a primary product, whose total sales value is relatively minor in comparison with the sales value of the primary product(s). In a similar vein, it has been noted that the products in a jointly produced group often vary in importance. Products of greater importance are termed major products and products of minor importance are termed by-products. When two or more major products appear in the same group, they are called co-products. The term joint product includes major products, by-products, and co-products because all are jointly produced.[56]

[55] The price between OVA and Colakoglu is established by the electricity regulatory authority has four components, gas price, excess heat price, operating costs and an amount for profit/taxes/capital. *See* Colakoglu Supplemental Section DQR, part 2 at SD-6. *See also* Colakoglu Cost Verification Report at 22.
[56] *See* Management Accountants' Handbook at 11.6; *see also Orange Juice from Brazil Final Determination* IDM at Comment 7.

The Department generally looks at several factors in order to determine whether joint products are to be considered co-products or by-products.[57] Among these factors are the following: 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. We emphasize that no single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding each case.

In this case, we find that Colakoglu improperly classified excess heat as a by-product of electricity production based on our analysis of the factors outlined above. The first factor is how the company records and allocates costs in the ordinary course of business to the joint products. In its normal books and records, Colakoglu does not appear to treat excess heat as a by-product, rather it tracks its production and assigns a cost to the excess heat and records sales of excess heat as a main income. The close tracking of production, the assignment of costs and separate reporting of revenue are an indication of the relative significance Colakoglu attributes to the excess heat as compared to electricity. Thus, this treatment supports the conclusion that in its normal course of business Colakoglu treats excess heat as a co-product of the electricity production process.

The second factor in our analysis is the significance of each product relative to the other joint products. In assessing the significance of each product generated from a joint production process, we look at the relative value of each of the products generated at the split-off point.[58] In this case, the electricity and the excess heat are generated from the joint production process. Based on our analysis of the relative product values of each, we note that the value of the excess heat is significant relative to the value of electricity.[59] Moreover, the amount of kilowatts of excess heat generated in relation to the electricity generated at Colakoglu's GT1 is significant.[60] Therefore, this factor supports a finding that excess heat is not a by-product, but, rather, should be considered a co-product of electricity.

The third factor in determining whether joint products should be considered co-products or by-products is whether the product is an unavoidable consequence of producing another product. While record evidence does not clearly support whether or not the production of excess heat can be avoided, the fact remains that Colakoglu intentionally entered into the agreement with its affiliate OVA to sell its excess heat for use in OVA's steam turbine in order to produce electricity that is sold to the grid. In any event, in this case we do not believe that determining whether or not a product is an unavoidable consequence of the production process supports either a by-product or co-product treatment.

The fourth factor in determining whether joint products should be considered co-products or by-products is whether management intentionally controls their production. As noted above,

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[57] *See Elemental Sulphur from Canada* at 61 FR 8239, 8241-8242; *Pure Magnesium from Israel* and accompanying IDM at Comment 3; and *Orange Juice from Brazil* and IDM at Comment 7.
[58] *See, e.g., Elemental Sulphur from Canada*; *see also, Orange Juice from Brazil* and accompanying IDM at Comment 7, and *Pure Magnesium from Israel* and accompanying IDM at Comment 3.
[59] *See* Colakoglu Final Calculation Memorandum at Attachment 2.
[60] *Id*.

management did intentionally enter an agreement with its affiliate to sell excess heat generated from its GT1, and a significant amount of the output from the GT1 is excess heat. However, there is no record evidence that it has the ability to intentionally control the amount of excess heat that is produced. As such, this factor alone cannot confirm a finding as to whether excess heat is a by-product or a co-product.

With respect to the fifth factor, whether a product requires significant further processing after the split-off point, we consider this factor to have conflicting implications. For financial reporting purposes, this factor is relevant in that if there is significant further processing required, presumably the end product's value will increase to the point where its value may be significant in relation to the other end products produced. On the other hand, however, the fact that a product requires significant further processing after the split-off point may indicate that the value of the output product is minimal, with the bulk of its value being added by the further processing. In such a case, it would appear unreasonable to allocate joint costs to the output product which is basically worthless at the split-off point, but somewhat valuable after significant further processing. In the instant case, we found that both the electricity and the excess heat resulting from the joint production process required minimal to no additional processing by Colakoglu after the split-off point. However, in this case we do not believe that minimal to no additional processing supports either a by-product or co-product treatment.

Consequently, based on our analysis of the factors listed above, we consider excess heat to be a co-product of the electricity production process. Specifically, Colakoglu appears to treat excess heat as a co-product in its normal books and records, the amount of kilowatts of excess heat generated in relation to the electricity generated at Colakoglu's GT1 is significant, the value of the excess heat is significant relative to the value of electricity. Finally, we would also note that this co-product finding is consistent with prior proceedings associated with steel products produced by Colakoglu.[61] Therefore, in determining the cost associated with the excess heat generated from GT1, we followed our co-product methodology and allocated GT1's natural gas cost to GT1's electricity and excess heat production in proportion to GT1 electricity production and OVA's steam turbine electricity production from GT1's excess heat.[62]

Regarding Colakoglu's arguments and case cites[63] referring to the fact that two separate companies are involved, and the analysis should be on the arms-length nature of the transactions, we disagree.[64] This argument assumes that excess heat is a by-product of electricity production and the Department only needs to test the by-product offset value transacted with the affiliated party. However, as noted above, we determined that it is more appropriate to treat the joint products generated by the GT1 as co-products. Thus, instead of the electricity generated bearing the total cost of producing only electricity and offsetting that cost by the revenue from the excess heat, the total cost of producing electricity and excess heat is allocated to both products (*i.e.*, co-products). As such, the arms-length nature of the transaction between affiliated parties becomes moot.

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[61] *See* Accounting Memorandum for *Rebar from Turkey* AR at Comment 1.
[62] *See* Colakoglu Final Cost Calculation Memorandum at 2 and Attachment 1.
[63] *See Silicomanganese from India* and accompanying IDM at Comment 22.
[64] *See, e.g., Lumber from Canada CCR* and accompanying IDM at 45 and *Silicomanganese from India* IDM at Comment 22, Cost of Electricity.

Colakoglu also references *SKF USA Inc.*, where the CIT approved the Department's revenue offset for freight and packing revenues. The issue in this case was whether the Department should limit the deductions from normal value for packing and freight costs with packing and freight revenues. Again this case is not on point, because the issue here is whether the joint products produced are co-products or by-products, not the limitations on deductions to normal value. Further, Colakoglu's reference to *Polyethylene Carrier Bags from the PRC*[65] and *U.S. Steel Group*[66] does not address the specifics of this investigation either. The issue in *Polyethylene Carrier Bags from the PRC* was whether to cap a freight offset against all movement expenses or offset against just freight alone. Regarding Colakoglu's reliance on *U.S. Steel Group*, it is similarly unavailing because the CIT only addressed the matching of sales revenue and costs associated with the sale of intermediate products, and that is not the issue at hand here.

Comment 8: Colakoglu's General and Administrative Expense Ratio

Colakoglu's Arguments

- The Department should not add "Undeductable Expenses (HQ)" to the G&A expenses since, as observed by the Department, these expenses represent the losses from the revaluation of a subsidiary unrelated to steel production and therefore are neither costs related to the current year nor related to production and sales activities of Colakoglu.
- In the *Preliminary Determination*, the Department made a minor clerical error in the calculation of the G&A expense ratio, and this error should be corrected for the final determination.

Petitioners' Arguments

- The losses from the revaluation of a subsidiary ("Undeductable Expenses") were properly included in the G&A expense since they need not be directly related to production operations.

Department's Position: The Department finds that the "undeductable expenses" in question here should not be included in the G&A expenses. It is the Department's well-established practice to include in the G&A expense ratio calculation those expenses that relate to the general operations of the company as a whole.[67] In determining whether it is appropriate to include particular items in G&A expenses, the Department reviews the nature of the items and their relationship to the general operations of the company.[68] Regarding the expenses in question here, we agree with Colakoglu that it relates to investment activity, specifically the write-down in the value of a subsidiary whose principal business purpose is investments.[69] The Department normally does not include losses or gains from investment activity in G&A expenses because they do not relate to the general operations of the company. The reasoning, articulated in *Cattle*

[65] *See Polyethylene Retail Carrier Bags from the PRC* and accompanying IDM at 14.
[66] *See U.S. Steel Group* at 1153-54 (Revenue offsets permitted for revenue from sales of technical assistance, intermediate products).
[67] *See Steel Products from Japan at* 64 FR 24329, 24350.
[68] *See Stainless Steel Bar From Italy* IDM at Comment 46.
[69] *See* Colakoglu Supplemental Section DQR at SD-8 and Exhibit SD-21. *See also* Colakoglu Cost Verification Report at 4.

from Canada is that, in calculating the COP and CV, we seek to capture the COP of the foreign like product and subject merchandise, and to exclude the cost of investment activities.[70] Therefore, consistent with our practice, we have excluded these undeductable expenses in the calculation of COP and CV from Colakoglu's G&A expenses for the final determination. In addition, we agree with Colakoglu that the Department used the incorrect G&A expense amount for the preliminary determination as identified in the cost verification report, and have adjusted the G&A expenses accordingly.[71]

Comment 9: Using Partial Facts Available for Erdemir's Downstream Reseller Ersem

Petitioners' Argument:

- Ersem's downstream home market sales response did not include: (1) "Erdemir's CONNUM-specific cost of manufacturing, G&A and consolidated interest expenses; (2) CONNUM-specific costs for Ersem attributable to further processing, such as cutting and slitting, and Ersem's G&A expenses; (3) Erdemir's CONNUM-specific average transfer price to Ersem (Ersem's acquisition cost); and (4) CONNUM-specific acquisition quantities."[72]
- During the sales verification, the Department found additional deficiencies for all of Ersem's home market sales, namely incorrect payment dates (PAYDATEH) which resulted in incorrect credit expenses (CREDITH).[73]
- The Department requested corrected and revised CONNUM-specific cost data for Erdemir in its Second Supplemental Questionnaire in reference to reclassification of quality codes reported in the Erdemir's HM database as well as for Ersem's downstream home market sales file.[74]
- Erdemir's "disregard for the Department's reporting instructions…prevented the Department from using the downstream home market sales data in the calculations of normal value in the preliminary determination…(which) has produced distorted calculations of CONNUM-specific NVs, which results in distorted and inaccurate margin calculations for Erdemir Steel."[75]
- "By failing to provide complete and accurate cost data for Ersem's downstream home market sales, the Department should find that Erdemir Steel 1) withheld information requested by the Department; 2) failed to submit requested information by the deadline for submission; 3) significantly impeded the investigation and, therefore, failed to cooperate to the best of its ability."[76]
- "For the final determination, as partial facts available, the Department could assign the highest dumping margin for U.S. sales from the U.S. transaction margin data set as the overall dumping margin rate for Erdemir Steel."[77]

[70] *See Cattle from Canada* at 64 FR 56739, 56758.
[71] *See* Colakoglu Cost Verification Report at 25, footnote 1 and Verification Exhibit CVE-11; Colakoglu SDQR at Exhibit D-21; and Colakoglu Final Cost Calculation Memorandum at 3 and Attachment 3.
[72] *See* Petitioners' Erdemir Case Brief at 3.
[73] *Id.*, at 4.
[74] "For all newly created and/or corrected CONNUMs, please recalculate costs and resubmit Erdemir's Section D database." *See* Department 2nd Supplemental Questionnaire to Erdemir at 7.
[75] *Id*., at 5.
[76] *Id*., at 5-6.
[77] *Id*., at 6.

- The Department could also "apply partial facts available to the portions of Erdemir Steel's home market sales for which there is missing and incomplete cost data on the record."[78]
- A final alternative would be for the Department "to use Erdemir Steel's home market sales to Ersem in the calculation of NV and increase the unit home market price reported in the field GRSUPRH by using the highest unit price for prime merchandise to unaffiliated home market customers…for all home market sales to Ersem."[79]

*Erdemir's Argument*s

- There is no legal basis for the Department to use FA since there is no necessary information missing from the record that would justify application of FA. All of Erdemir's U.S. sales of subject merchandise were in coil form. When Ersem sells coils, it simply acts as a reseller of Erdemir's coils, with no further processing. Therefore, the cost of production of Ersem's coils is Erdemir's COP.[80]
- Moreover, Erdemir argues that adverse inferences are not warranted as it has not 'failed to … comply with a request for information from the administering authority,' because the Department never asked Erdemir for an Ersem cost database; *see* PDM at 19."[81]
- "At no time during the proceeding was Erdemir or Ersem informed that the Department had run the arm's-length test on its own and found that its sales to Ersem failed the test."[82]
- "The Department's arm's-length programming assumes that Erdemir's date of sale is the invoice date … When the arm's-length test is run with order date as date of sale, the sales (to Ersem) pass the test."[83]
- Petitioners' argument that Erdemir should have provided a cost database for Ersem in response to the Department's request for cost data for all "newly created and/or corrected CONNUMs" is misplaced. That question had nothing do with Ersem, and, in fact, the Department acknowledges this fact in the PDM at 19. "Thus, Erdemir did not fail to answer any questionnaire or to provide any requested information. Hence, AFA cannot lawfully be applied."[84]
- "All of Erdemir's U.S. sales were nonpickled coils … But *Ersem has no cost of production for nonpickled coils*, because these were simply purchased products which Ersem subsequently resold …Therefore, the cost of production for these articles is simply the Erdemir/Isdemir cost of production."[85]

Department's Position: We have included Ersem's resales of non-pickled hot-rolled steel in the home market in the final calculations.

We have not applied FA or AFA with respect to this issue as the necessary information is on the record and there is no basis to determine that Erdemir failed to cooperate to the best of its ability.

[78] *Id*., at 6-7.
[79] *Id*., at 7.
[80] *See* Erdemir's Rebuttal Brief at 1.
[81] *Id*., at 1 and 4.
[82] *Id*., at 2.
[83] *Id*., at 3.
[84] *Id*., at 4-5.
[85] *Id*., at 5-6.

As stated in the *Preliminary Determination*, 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."[86] The Department did not resort to AFA in the preliminary determination as we did not request that Erdemir report Ersem's further processing costs. Petitioners' arguments that the Department asked for this information are incorrect. The question referred to by Petitioners was in relation to the Department's request for Erdemir to change the QUALITYH and QUALITYU codes for certain types of subject merchandise.[87] Erdemir provided the requested changes (and the accompanying revised cost database) on time, and in complete accordance with the regulations.[88] Because the Department did not ask for Ersem's further processing costs, there is no justification for the application of AFA in this final determination.

Moreover, the record shows that Erdemir reported that Ersem's sales passed the arms-length test when using order date as the date of sale in each market.[89] In the *Preliminary Determination*, however, the Department determined that invoice date was the appropriate date of sale in each market.[90] Given that the Department did not instruct Erdemir to report Ersem's downstream sales after the preliminary determination, there is no basis for the application of AFA with respect to these sales in this final determination.

We note that record shows that the products sold by Ersem that match to Erdemir's U.S. sales were simply resales of Erdemir's or Isdemir's products (without further processing) and that the cost of production for this merchandise would be Erdemir's/Isdemir's cost of production."[91] Erdemir's and Isdemir's COP data for these Ersem sales is on the record. We have included Ersem's resales of non-pickled hot-rolled steel in the home market in the final calculations.[92] Furthermore, we have assigned Erdemir/Isdemir's cost of production to each of Ersem's downstream sales.[93]

Comment 10: Erdemir's Date of Sale

Erdemir's Arguments

- The Department should rely on Erdemir's reported date of sales in the U.S. and home market.[94]
- The record establishes that there is no applicable tolerance on line items where the quantity ordered is under 200 MT. For these small shipments, U.S. customers are bound to accept the quantity shipped regardless of the quantity ordered, therefore, the Department's construction of the meaning of the 'zero' in the 'tolerance %' field of Exh.

[86] *See Preliminary Determination* PDM at 19.
[87] *See* Department Supplemental Questionnaire re: Quality Codes for Erdemir.
[88] *See* Erdemir Supplemental QUALITYH/U Response.
[89] *See* Erdemir SBQR at 26-27; Erdemir SCQR at 17; and Erdemir Supplemental SBCQR at 17-18.
[90] *See Preliminary Determination* PDM at 11.
[91] *See* Erdemir's Rebuttal brief at 5-6.
[92] *See* Erdemir Final Calculation Memorandum.
[93] *Id*.
[94] *See* Erdemir's Case Brief at 1 and 24.

SBC-21 for shipments under 200 MT to mean that the quantity shipped must equal the quantity ordered is incorrect.[95]

- "The date of sale for home-market sales is the date when the customer 'clicks' on the order confirmation for the given sale in the ERDEMIR ONLINE sales management system; for U.S. sales, the date of sale is the date when the parties have both signed the *pro forma* invoice and accompanying technical specifications for the given sale."[96]
- The Department's analysis was also in error with respect to its quantity tolerance the home market. All of Erdemir's home market sales are subject to Erdemir's Standard Terms and Conditions, including the quantity tolerances.[97] This documentation establishes quantity tolerances as follows: <100 Mtons = ±50%; 100-150 Mtons = ±20%; and ≥ 150 Mtons = ±10%.[98] The documentation in the questionnaire responses demonstrates that Erdemir's orders establish the quantity and value ultimately shipped, within the shipment tolerances of each order,[99] which are established in Erdemir's General Terms and Conditions.[100]
- Erdemir and its customers consider the orders to be binding: "in the HM market, when the customer clicks its acceptance in ERDEMIR ONLINE, and in the U.S. market when the parties have both signed the *pro forma* invoice with its accompanying technical specifications … (these dates) must be the applicable dates of sale for the purposes of the final determination, in accordance with 19 C.F.R. §351.401(i)."[101]

Petitioners' Arguments

- "{The} Department correctly based the date of sale as invoice date for Erdemir Steel's U.S. and home market sales."[102]
- The burden of establishing a date of sale other than invoice date is on Erdemir Steel, however throughout this proceeding, the company has been unable to consistently identify which alternate date it has reported, let alone support that use of that date with substantial evidence.[103]
- Erdemir's description and identification of its date of sale for both the U.S. and home market sales has been marred by inconsistencies, lack of clarity, lack of proper documentation and changing facts.[104]
- "Erdemir stated that it reported the date of sale to be the 'contract date' for U.S. sales and order date for home market sales, but Erdemir is incorrect, as a review of Erdemir's data demonstrates."[105]
- Erdemir's statement that the date of sale is the 'contract date' for U.S. sales directly contradicted Erdemir's statement that it reported its HM and US date of sale as the order date.[106]

[95] *Id*., at 7 and 10.
[96] *Id*., at 1.
[97] *Id*., at 14.
[98] *Id*., at 11-12.
[99] *Id*.
[100] *Id*., at 20.
[101] *Id*.
[102] *See* Petitioners' Erdemir Rebuttal Brief at 1.
[103] *Id*.
[104] *Id*., at 2.
[105] *Id*.

- Erdemir argued that the date of sale is the contract date for U.S. sales. Erdemir added that it 'reported its *pro forma* invoice date as the date of contract under the field "CONDATEU" and the contract number in field "CONTNOU."' This was the first instance where Erdemir identified the referenced 'contract' as being the '*pro forma* invoice,' and specifically stated that it reported the date of the *pro forma* invoice as the reported date of sale.[107]
- Erdemir's worksheet showing the comparison of the quantities shipped and price for all reported U.S. sales contained several discrepancies: "The worksheet included the date of the *pro forma* invoice document, but failed to include the 'signature date' of the *pro forma* invoice that was used to report the date of sale in field SALEDATU and CONDATEU in the U.S. sales file; there are also U.S. transactions that appear in the U.S. sales invoice, but are not included in the *pro forma* invoice…in Erdemir Steel's U.S. sales file."[108]
- Other discrepancies with the *pro forma* invoices include "delivery terms such as delivery date and period, which were submitted along with complete sales documentation in Exhibit SBC-21."[109]
- In the U.S. Sales – 2 documentation package, a number of transactions were shipped much later than the agreed delivery date in the *pro forma* invoice.[110]
- Other discrepancies with regard to the terms of payment specified in the *pro forma* invoice involve the L/C, the date of issuance of the L/C, and the date the actual payment was made exist.[111]
- "A failure to open the L/C by its U.S. customer in the timeframe required by the *pro forma* invoice indicates that the payment terms set forth in the *pro forma* invoices not only have the potential to change, but do in fact change. In *Welded Line Pipe from Turkey*, the Department found that 'a failure to open the letter of credit within the timeframe required by the contract' constitutes a change in the material terms of sale."[112] "Finally, in its Supplemental B&C Response, Erdemir Steel acknowledges that the material terms of sale (for certain sales) are not established in the *pro forma* invoice at all, but are reflected in the invoice because they fall outside the tolerance established in the *pro forma* invoice."[113]
- The Department "previously has refused to rely on the earlier contract date, and relied on invoice date as date of sale, where two U.S. sales out of 62 were outside the contractual quantity tolerance."[114]
- In that case, the Department "(based) the date of sale on invoice date, rather than contract date, where quantities shipped were outside the contractual tolerance for two of 62 U.S. sales transactions, and finding that issuance of an amended contract for one sale was not dispositive because the 'material terms of change {*sic*} were subject to change' after the contract."[115]

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[106] *Id*.
[107] *Id*.
[108] *Id*., at 4 (BPI omitted).
[109] *Id*., at 7.
[110] *Id*.
[111] *Id*., at 8.
[112] *Id*., at 9.
[113] *Id*., at 5
[114] *Id*. *See also Circular Welded Pipe from Taiwan* and accompanying IDM at Comment 1.
[115] *Id*., at 5, footnote 15.

- Given the limited number of U.S. sales, the number of Erdemir's transactions that fell outside of the tolerance threshold is sufficient to reject Erdemir's proposal, and to continue to rely on invoice date.[116]
- "Erdemir's limited focus on conformance with weight tolerances in the *pro forma* invoice, however, ignores other material terms, especially given that Erdemir bears the burden of establishing that a date other than invoice date 'better reflects' when the material terms of sale are set."[117]
- The Department has relied on "price, quantity, delivery, and payment terms" to define the material terms of sale.[118]
- Erdemir contradicted itself in its Supplemental Section A Response by stating that it relied on "the date of the last signature on its *pro forma* invoice as the date of sale, since this is the earliest date on which customer and supplier have agreed to the material terms of the transactions."[119]
- "… for some U.S. sales there are multiple document dates for the *pro forma* invoice, with the printed date manually crossed out and replaced with a handwritten date. In addition, some U.S. sales contain *pro forma* invoices with different signature dates."[120]
- For its home market sales, "Erdemir does not provide a complete analysis of changes in quantities and ignores other changes in material terms of sale, like delivery and payment terms."[121]
- "Erdemir Steel originally claimed in its sales response that 'the order confirmation date,' issued through its online ordering system 'ERDEMIR ONLINE,' is the date of sale for home market sales…In its case brief, Erdemir argues that for home market sales, 'the customer's clicking its acceptance of the order – is the date of sale.' Whether the 'click' date is always the same as the 'order confirmation date' is unclear because Erdemir has again introduced a new explanation, while failing to provide substantial evidence that would allow Commerce to fully vet its claim."[122]
- Petitioner has identified discrepancies in Erdemir's HM – 4 sales trace.[123] The invoice documentation, shows that the sale occurred and was shipped…and payment was made…much later than the payment date period…stipulated in the Erdemir Online entry system and in the *pro forma* invoice.[124]
- The Department has stated that "in many industries, even though the buyer and seller may initially agree on the terms of sale, those terms remain negotiable and are not finally established until the sale is invoiced."[125]
- The CIT has stated that "the Department may exercise its discretion to rely on a date other than invoice date for the date of sale if 'the agency provides a rational explanation as to why the alternative date 'better reflects' the date when 'material terms' are established."[126]

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[116] *Id*., at 6.
[117] *Id*.
[118] *Id*. For more specific BPI details on these issues, *see* Erdemir Final Calculation Memorandum.
[119] *Id*.
[120] *Id*.
[121] *Id*., at 10.
[122] *Id*.
[123] *See* Erdemir Sales Verification Report at Exhibit SVE HM 4.
[124] *See* Petitioners' Erdemir Rebuttal Brief at 13 (BPI omitted).
[125] *Id*., at 13-14.
[126] *Id*., at 14.

- Erdemir's analysis of the material terms for U.S. and home market sales is incomplete as it provides a limited analysis, focusing solely on changes in quantity tolerances, while ignoring other material terms of sale, like delivery and payment terms.[127]
- Several CIT cases where found that the material terms of sale include price, quantity, delivery, and payment terms.[128]
- Finally, "the administrative record reflects the fact that material terms have the potential to change, and actually do change, up to the invoice date. This is further confirmed by the home market and U.S. sales reconciliations, which are based on the invoice date since, as Erdemir states, 'the company's books are maintained by invoice.'"[129]
- "This evidence further suggests that material terms of sale can and do changes {*sic*} after the 'click' date, and that Commerce should continue to rely on invoice date as date of sale for the final determination."[130]

Department's Position: We continue to find that the date of sale for this investigation will be the invoice date in both the home and U.S. markets.

The burden for establishing a date of sale other than the invoice date falls upon the interested party attempting to establish a date of sale different from the invoice date, in this case Erdemir.[131] As we stated in the *Preliminary Determination*, "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."[132] Erdemir stated in its Section B questionnaire response that it added a field "DIRCREDITH," as shown in the sales verification report for Erdemir, "the total credit extension amount and per unit amount reported in this field are established and finalized in the home market sales invoices."[133] The Department has considered delivery and payment terms in addition to price and quantity as material terms of sale for its date of sale analysis. In *Wire Decking from the PRC*, the Department stated, "while changes in delivery terms and payment terms are not always a factor in the date of sale analysis, the Department has stated it is its normal practice to consider changes in delivery terms and payment terms."[134] The CIT and the CAFC have affirmed the Department's practice in this regard.[135]

The record of this investigation establishes that for these small shipments, U.S. customers are bound to accept the quantity shipped regardless of the quantity they ordered. Moreover, the record also shows that there were differences between the quantity shipped compared to the quantity ordered. Finally, the record of this investigation continues to show that some of Erdemir's larger U.S. sales failed to meet the tolerance threshold set forth in the terms of sale.[136] In *Circular Welded Pipe from Taiwan*, the Department found that two out of the 62 sales had

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[127] *Id*., at 15.
[128] *Id*., at 14.
[129] *Id*.
[130] *Id*., at 13.
[131] *See Allied Tube and Conduit Corp.* at 219-20.
[132] *See Preliminary Determination* PDM at 11.
[133] *See* Petitioner's Erdemir Rebuttal Brief at 11. *See also* Erdemir's Sales Verification Report at Exhibits SVE-7, 9, and 10.
[134] *See Wire Decking from the PRC* IDM at Comment 10.
[135] *See, e.g., Sahaviriya Steel Indus. Public Co.* at 1278-81; *Nakornthai Strip Mill Pub. Co.* at 1333-34; *USEC Inc.* at 1343; and *Activated Carbon from the PRC* 71 FR at 59732.
[136] *See* Petitioners' Erdemir Rebuttal Brief at 5.

changes in their material terms of sale between the order and invoice. That relatively small percentage of sales was enough to base the date of sale on the invoice date.[137] Due to Erdemir's relatively small number of U.S. sales, the discrepancies found by the Department, are sufficient to conclude that Erdemir has failed to establish that the material terms of sale are set on a date other than invoice date.

Though Erdemir argued in its case brief that the date of sale for U.S. sales is the date when both parties have signed the *pro forma* invoice for the given sale,[138] we agree that the record evidence is insufficient to establish that this signature date is the date of sale in the US market. Specifically, as Petitioners note, for some U.S. sales there are multiple document dates for the *pro forma* invoice, with the printed date manually crossed out and replaced with a handwritten date.[139] This indicates that either the material terms changed at the last minute, or were not yet finalized when the document was signed. Also, some U.S. sales contain *pro forma* invoices with different signature dates. This precludes the Department from determining which date should be considered the signature date for those sales.[140]

Erdemir has argued that each U.S. sale is subject to the terms and conditions set forth in the *pro forma* invoice. These *pro forma* invoices indicate that letters of credit must be set up within a certain time. However, the record evidence indicates that some of the letters of credit were not established in the timeframe required by the terms and conditions set forth in the *pro forma* invoice.[141] This is another factor that leads the Department to conclude that the correct date of sale for this instant investigation should be the invoice date. We agree with Petitioners that a failure to open the L/C by its U.S. customer in the timeframe required by the *pro forma* invoice supports finding that the payment terms set forth in the *pro forma* invoices not only have the potential to change, but do in fact change in the U.S. market. In *Welded Line Pipe from Turkey*, the Department found that 'a failure to open the letter of credit within the timeframe required by the contract' constitutes a change in the material terms of sale."[142]

Finally, Erdemir states that "*…{i}f* the Department is presented with *satisfactory* evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department *will* use that alternative date as the date of sale."[143] In this case, the Department does not find that the evidence presented by Erdemir to be satisfactory.

Comment 11: Erdemir's Unreconciled Costs

Petitioners' Arguments

- Since Erdemir was unable to either explain or support the line item labeled "miscellaneous" in the overall cost reconciliation, the Department should increase Erdemir's reported costs accordingly.

[137] *See Circular Welded Pipe from Taiwan* IDM at Comment 1.
[138] *See* Erdemir's Case Brief at 1.
[139] *See, e.g.*, Erdemir Sales Verification Report at SVE 11.
[140] For the BPI discussion of this issue, *see* Erdemir Final Calculation Memorandum.
[141] *Id.*
[142] *See* Petitioners' Erdemir Rebuttal Brief at 9. *See also Welded Line Pipe from Turkey* IDM at comment 9.
[143] *See* Erdemir's Case Brief at 3.

Department's Position: We have adjusted Erdemir's reported costs to include the unreconciled cost difference.

The Department's practice is to include cost items in the calculation of a respondent's cost of production and constructed value unless the respondent can identify and document why the amount is not attributable to the production of the merchandise under consideration.[144]

Comment 12: Erdemir's Major-Input and Transactions-Disregarded Adjustments

Erdemir's Arguments

- During the cost verification, the Department determined that Erdemir had overstated the percentages that its major inputs purchased from affiliated parties represented of its total cost of manufacturing.
- Erdemir requests that the Department re-calculate the major-input and transactions-disregarded adjustments using the percentages noted in the cost verification report.

Department's Position: For this final determination, in accordance with Department practice we have used the verified percentages in our recalculation of Erdemir's major-input and transactions-disregarded adjustments.[145]

Comment 13: Erdemir's Financial Expenses

Erdemir's Arguments

- During the cost verification, the Department determined that a portion of the financial-income offset that the Department disallowed for the preliminary determination was attributable to either foreign-exchange gains or interest income which was short-term in nature.
- Erdemir requests that the Department revise its calculation of Erdemir's financial-expense rate to reflect its verification findings.

Department's Position: The adjustment made by the Department at the preliminary determination of disallowing certain financial income line items as offsets to the financial expenses should be revised. Erdemir provided supporting documents at verification that showed that a certain portion of the disallowed financial income line items were related to foreign exchange gains and interest income generated from short-term assets.[146] Therefore, for the final determination, in accordance with the Department's normal practice we have included financial income attributable to foreign-exchange gains and short-term interest income in the calculation of Erdemir's net financial expenses.[147]

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[144] *See Pasta from Turkey* IDM at Comment 5; *see also Steel Products From Brazil* IDM at Comment 43.
[145] *See CMC from the Netherlands* IDM at Comment 2 (explaining that the Department uses the percentage an input represents of a respondent's cost of manufacturing in the calculation of the major-input adjustment).
[146] *See* Erdemir Cost Verification Report at 35 through 37.
[147] *See Chloro Isos from Spain* IDM at Comment 10 (explaining that the Department's practice is to include foreign exchange gains and losses as well as short-term interest income attributable to a company's working capital in the calculation of net financial expenses).

Comment 14: Erdemir's Cost of Goods Sold Denominator

Petitioners' Arguments

- The Department should reduce the cost of goods sold COGS figure used as the denominator in the calculation of both the G&A and financial expense rates.
- Specifically, the Department should reduce the COGS figure by the total amount of the by-product offset so as to ensure that it is on an equivalent basis as the reported per-unit CONNUM-specific cost of manufacturing amounts.

Erdemir's Arguments

- Since the per-unit costs calculated in Erdemir's cost-accounting system, which reflect the by-product offset, are the same as the finished-goods inventory values used to calculate COGS, the COGS figure shown on the financial statements already reflects the by-product offset.
- Accordingly, no further adjustment is necessary or appropriate.

Department's Position: We have not reduced the COGS denominator used in the calculation of either the G&A or financial expense rates by the amount of the by-product offset because it would result in double counting the offset.

The Department's practice is to calculate the cost of producing the merchandise under consideration by calculating a respondent's G&A and financial expense rates and then multiplying these rates by the cost of manufacturing the merchandise under consideration.[148] Because the purpose of both the G&A and financial expense rates is to allocate these expenses to the cost of all products, in order to avoid either over-allocating or under-allocating these expenses, the denominators used in the calculations must be on the same basis as the costs to which the rates are applied.[149] In this proceeding, the per-unit costs submitted to the Department reflect the by-product offset calculated in Erdemir's normal books and records. Additionally, the per-unit costs recorded in Erdemir's normal books and records serve as the basis for the calculation of the COGS figures used in the calculation of Erdemir's G&A and financial expense rates. Accordingly, because the per-unit costs used in the calculation of Erdemir's COGS reflect the by-product offset, and the resulting rates are applied to per-unit costs which reflect the by-product offset, contrary to Petitioners' arguments the figures are on an equivalent basis. As such, neither the G&A nor financial expenses are under-allocated and a reduction to the COGS figures is not necessary.

Comment 15: Erdemir's General and Administrative Expenses

Erdemir's Arguments

- The Department erred when it increased Erdemir's net G&A expenses to include the balance of a summary account which pertained to research and development.

[148] *See Orange Juice From Brazil* IDM at Comment 2.
[149] *Id*.

- Specifically, since the underlying individual account totals had been included in its reported G&A expenses, the inclusion of the summary account total resulted in the double counting of these expenses.
- Accordingly, the Department should recalculate its G&A expense rate to eliminate the double counting.

Department's Position: The adjustment made to Erdemir's reported net G&A expenses at the preliminary determination resulted in the double counting of certain R&D costs because we included both the cost of a summary account (*i.e.*, that included the included the R&D costs) and the subaccount for the R&D costs within the same summary account. Accordingly, we have reversed this adjustment for the purpose of this final determination.

VIII. 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

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

August 4, 2016

(Date)

Table of Authorities

Department Memoranda and Interested Party Submissions

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 Fabrikalari T.A.Ş. and Iskenderun Demir ve Çelik T.A.Ş.," (March 14, 2016) (Erdemir Preliminary Cost Calculation Memorandum)

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Letter from Colakoglu, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu's Extension Request to File Its Responses to Sections A-D," (November 9, 2015) (Colakoglu Questionnaire Sections A-D Extension Request)

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Constructed Export Price (CEP)

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Management Accountants' Handbook, Fourth Edition; Keller, Bulloch and Shultis (Management Accountants' Handbook)

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