A-489-829
Investigation
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E&C/Office VII: The Team

DATE: May 15, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey

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I. SUMMARY

The Department of Commerce (the Department) determines that steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The petitioner in this investigation is the Rebar Trade Action Coalition and its individual members.[1] The period of investigation (POI) is July 1, 2015, through June 30, 2016.

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

A complete list of the issues in this investigation on which we received comments is provided below.

Comment 1: Whether Respondents' Duty Drawback Adjustment Should be Granted as Reported and How to Calculate any Adjustment
Comment 2: Whether Respondents' Margins Should be Calculated Using Quarterly Costs

Habas
Comment 3: Whether the U.S. Date of Sale is the Contract Date

[1] The individual members of the Rebar Trade Action Coalition are Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc. (collectively, the petitioner).

Comment 4: Whether the Department Should Impute Interest Expense on Zero-Interest Financing Provided by Anadolubank
Comment 5: Whether Zero-Interest Loans Should be Included in the Interest Rate for CREDITH

Icdas
Comment 6: Whether the Department Should Revise Icdas' Costs Consistent with Turkish GAAP
Comment 7: Whether the Department Should Revise Icdas' Short-Length Rebar Cost
Comment 8: Whether the Department Should Disallow Offsets to Icdas' G&A Expenses for Reimbursements Related to Port Services Provided to Third Parties
Comment 9: Whether the Department Should Revise the Manufacturer Code Assignments in the Home Market Resellers' Sales File in the Comparison Market Program
Comment 10: Whether the Department Should Apply Partial AFA to Icdas with Respect to Missing Manufacturer Codes in the Home Market Resellers Sales File
Comment 11: Whether the Department Should Adjust Normal Value for Certain Home Market Movement Expenses
Comment 12: Whether the Department Should Use the Correct Home Market Credit Expense Amount CREDIT2H in its Calculation of Normal Value
Comment 13a: Whether the Department Should Adjust Arten's Sales to Exclude VAT
Comment 13b: Whether the Department Should Adjust Home Market Freight Expense for Certain Sales in Order to Eliminate Understatement of this Expense Due to Double Counting of VAT
Comment 14: Whether the Department Should Use the Correct Home Market Gross Unit Price Data in its Margin Calculation
Comment 15: Whether the Department Should Continue to Differentiate Between Air and Water Cooled Rebar
Comment 16: Whether the Department Should Reconsider and Reverse its Decision to Refuse to Accept Icdas' Timely and Properly Submitted Minor Corrections of February 15, 2017
Comment 17: Whether the Computer Programming Error Regarding Icdas' Ending Period Date for U.S. Sales Should be Corrected

II. BACKGROUND

On March 7, 2017, the Department published the *Preliminary Determination* in the less-than-fair-value investigation of rebar from Turkey.[2] The Department conducted the sales verifications of the respondents in Belgrade, Serbia from March 6 through March 17, 2017. The Department also conducted cost verifications of the respondents in Belgrade, Serbia from March 13 through March 24, 2017.[3]

[2] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 12791 (March 7, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Memorandum, "Verification of the Sales Response of Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. in the Antidumping Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey," dated April 12, 2017 (Habas Sales Verification Report); *see also* Memorandum, "Verification of the Sales Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Investigation of Steel Concrete Reinforcing Bar from the

The Department received case and rebuttal briefs from the petitioner and the respondents between April 19[4] and April 24, 2017.[5] The petitioner and Habas both requested that the Department conduct a hearing in this investigation. A public hearing was held on May 3, 2017.[6]

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are rebar from Turkey. For a complete description of the scope of this investigation, *see* Appendix I of the *Federal Register* notice.

IV. SCOPE COMMENTS

In the *Preliminary Determination*, we modified the scope language as it appeared in the *Initiation Notice*.[7] On April 4, 2017, the Department set the briefing schedule in regards to scope comments.[8] No interested parties submitted scope comments, and the scope of this investigation remains unchanged for this *Final Determination*.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review of supplemental responses received after the *Preliminary Determination*, our analysis of the comments received from parties, and minor corrections presented at verifications, we made certain changes to the margin calculations for both respondents.[9]

Republic of Turkey," dated April 12, 2017 (Icdas Sales Verification Report); *see also* Memorandum, "Verification of the Cost Response of Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey," dated April 12, 2017 (Habas Cost Verification Report); *see also* Memorandum, "Verification of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey," dated April 12, 2017 (Icdas Cost Verification Report).

[4] *See* Petitioner's Case Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Case Brief," dated April 19, 2017 (Petitioner's Case Brief); *see also* Habas' Case Brief, "Steel Concrete Reinforcing Bar from Turkey: Habas Case Brief," dated April 19, 2017 (Habas' Case Brief); *see also* Icdas' Case Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Turkish Respondents' Case Brief," dated April 19, 2017 (Icdas' Case Brief).

[5] *See* Petitioner's Rebuttal Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC's Rebuttal Brief," dated April 24, 2017 (Petitioner's Rebuttal Brief); *see also* Habas' Rebuttal Brief, "Steel Concrete Reinforcing Bar from Turkey: Habas Rebuttal Brief," dated April 17, 2017 (Habas' Rebuttal Brief); *see also* Icdas' Rebuttal Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas' Reply Brief," dated April 24, 2017 (Icdas' Rebuttal Brief).

[6] *See* Habas Letter, "Steel Concrete Reinforcing Bar from Turkey: Habas Hearing Request," dated March 19, 2017; *see also* Petitioner Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Hearing," dated April 6, 2017; *see also* Hearing Transcript, "Public Hearing in the Matter of: The Administrative Review of the Antidumping Investigation on Steel Concrete Reinforcing Bar from Turkey," dated May 3, 2017.

[7] *See Preliminary Determination* PDM at "Scope Comments."

[8] *See* Memorandum, "Scope Briefing Schedule for the Antidumping and Countervailing Duty Investigations of Steel Concrete Reinforcing Bar from Japan, the Republic of Turkey, and Taiwan," dated April 4, 2017.

[9] *See* Memorandum, "Final Determination Margin Calculation for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated concurrently with this memorandum (Habas Final Calculation Memorandum); *see also* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated concurrently with this memorandum (Habas Final Cost Calculation Memorandum); *see also* Memorandum, "Final Determination Margin Calculation for Icdas Celik Enerji Tersane ve

VI. Application of Facts Available and Use of Adverse Inferences

In its original questionnaire response regarding home market sales made by affiliates, Icdas stated: "in a few cases Icdas was unable to verify that Icdas was the producer. For the transactions that are not identified, ICDAS leaves this field as blank."[10] The Department issued a supplemental questionnaire that asked Icdas to "provide the manufacturer code" for the "home market transactions that reported no manufacturer code in the field MFRH."[11] In its February 13, 2017, response to the Department's supplemental sections B-D questionnaire, Icdas informed the Department that downstream resellers were unable to provide this information to Icdas for a certain number of downstream sales.[12] Thus, the record of this administrative review shows that Icdas provided incomplete information with respect to the manufacturer of certain sales made by its home market affiliates.

1. Legal Authority

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the

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Ulasim Sanayi A.S.," dated concurrently with this memorandum (Icdas Final Calculation Memorandum); *see also* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated concurrently with this memorandum (Icdas Final Cost Calculation Memorandum).

[10] *See* Icdas' January 13, 2017 Section B Questionnaire Response at 48.

[11] *See* February 1, 2017 Supplemental Questionnaire for Sections B, C, and D.

[12] *See* Icdas' February 13, 2017 Supplemental Questionnaire Response (SQR) at 13.

applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[13] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[14]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[15] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[16]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.

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[13] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[14] *Applicability Notice*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[15] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

[16] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

2. Icdas Did Not Act to the Best of Its Ability

Because Icdas submitted incomplete information regarding these sales, Icdas has withheld information that had been requested by the Department and significantly impeded the proceeding under sections 776(a)(2)(A) and (C) of the Act. We note that the information in question (*i.e.*, the identity of the manufacturers of the rebar at issue that was resold by Icdas' affiliates) is the type of information that a large steel manufacturer such as Icdas should reasonably be able to provide. We further note that, in accordance with section 782(d) of the Act, the Department provided Icdas, through a supplemental questionnaire, the opportunity to remedy the deficiencies in reporting the manufacturer for all of its affiliates' downstream sales.[17] The Department verified that Icdas creates "mill test certificates" which identify the manufacturer of the rebar as well as its chemical content on a heat by heat basis.[18] Moreover, Icdas' supplemental questionnaire responses demonstrate that it routinely provides documentation which identifies the manufacturer on sales of rebar in the home market. Specifically, we note that the waybills in Icdas' home market sales traces identify the Icdas mill where the rebar at issue was manufactured.[19] Thus, we find that Icdas would have been able to provide this information if it had made the appropriate effort when it received the Department's antidumping duty questionnaire and was notified that it was required to report its affiliates' downstream sales.[20] Therefore, we find that Icdas' failure to report the requested manufacturer information, accurately and in the manner requested, using the records over which it maintained control, indicates that Icdas did not act to the best of its ability under section 776(b) of the Act. Therefore, partial adverse facts available is warranted.

3. Partial Application of AFA is Warranted

As partial AFA, we have assigned the highest non-aberrational net price from Icdas' downstream home market sales to those home market sales where Icdas failed to report the manufacturer.[21] *See* comment 10 below.

[17] *See* Icdas' February 13, 2017 SQR at 13.
[18] *See* Icdas' Cost Verification Report at 14 and Cost Verification Exhibit (CVE) 12.
[19] *See* Icdas' Sales Verification Report at Sales Verification Exhibit (SVE) 20.
[20] *See* the Department's Section B antidumping duty questionnaire issued to Icdas, dated November 30, 2016, at page B-5 ("If you had sales to an affiliated party that consumed all or some of the merchandise …, then report all of your sales to that affiliate, whether the merchandise was consumed or resold by the affiliate…. If you cannot demonstrate that your sales to the affiliate were at arm's-length prices, then you must also report the affiliate's sales to unaffiliated customers; however, in any case you must report your sales to the affiliate.").
[21] *See* Icdas' Final Calculation Memorandum.

VII. DISCUSSION OF ISSUES

Comment 1: Whether Respondents' Duty Drawback Adjustment Should be Granted as Reported and How to Calculate any Adjustment

Habas' Case Brief

- The record is exceptionally complete with regard to Habas' duty drawback. The Department has investigated the Inward Processing Regime (IPR) many times and has always found it consistent with the requirements of the U.S. antidumping law.[22]
- Denial of Habas' duty drawback (DDB) adjustment was without legal basis; the Department's claim that yield rates were not ascertainable is incorrect, as these rates are observable from the imports and exports under an inward processing certificate (IPC). Further, stating so at the *Preliminary Determination*, after the record was closed, effectively denied Habas the opportunity to participate meaningfully.
- If the Department wished to predicate the grant of a drawback adjustment on government-mandated yields, rather than the respondent yields (as in prior cases),[23] the Department was obliged to notify the respondents of this novel test. The government's yield loss standard is not the correct basis.
- The requirement that the record reflect government-sanctioned yields and/or Customs-sanctioned yields is abundantly met on the record. Habas' actual yields and the ratios of actual imports to actual exports are also fully documented.
- Habas' supplemental response, submitted after the *Preliminary Determination*, contains all of the information sought by the Department.
- Habas' imports and exports are linked and it imported a more-than-sufficient quantity of inputs to produce the exports under each IPC. Therefore, the DDB adjustment to U.S. price must be granted, as per Habas' calculation.
- The Department's drawback policies remain in flux. The statute and the Court of International Trade (CIT) require that, when given criteria are met, the drawback adjustment must be granted in full on U.S. sales.[24] Habas has met these criteria.

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[22] *See* Habas' Case Brief at 4-5 (citing as *e.g., Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (*Rebar 2013*)); *see also, Rebar Trade Action Coalition v. United States*, Court No. 14-00268, Slip Op. 16-88 at 9 (CIT Sept. 21, 2016)(*RTAC II)* (finding defendant-intervenor Icdas "lawfully entitled" to "the full adjustment to EP/CEP*); Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, in Part, 79 FR 41971 (July 18, 2014) (*OCTG from Turkey*); and accompanying Issues and Decision Memorandum (IDM) at 14-16; *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) (*Line Pipe*) and accompanying Issues and Decision Memorandum (IDM) at 6-7.

[23] *See* Habas' Case Brief at 7 (citing as *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71087 (December 1, 2014) (*Standard Pipe 2014*) and accompanying Issues and Decision Memorandum (IDM) at 32.

[24] *See* Habas' Case Brief at 9 (citing *Rebar 2013, supra*, Final Issues and Decision Memorandum (IDM) at 14; *Line Pipe LTFV, supra*, IDM at 6; *RTAC II, supra*, Slip Op. 16-88 at 9).

- The Department developed the cost-side adjustment at issue in *Pipe and Tube from Thailand*.[25] The decision was subsequently appealed to the CIT,[26] and the CAFC in *Saha Thai.*[27] The CAFC upheld the Department's adjustment in that case. Habas argues that the adjustment is unlawful not because it imputes a duty cost into the overall cost of manufacture (COM), but because it ignores the equal and offsetting duty drawback revenue that occurs when duties are rebated. Habas urges the Department to reject the notion that an upward adjustment to COM is required in order to account for DDB. The discretion to adjust cost for drawback must be exercised without introducing inaccuracy into the calculations. An adjustment that captures the cost without capturing the revenue is simply inaccurate.[28]
- Moreover, Habas argues that the CAFC's premise in *Saha Thai* is flawed. In *Pipe and Tube from Thailand*, the Department imputed to the cost of production (COP) the value of import duties that had been exempted during the POR. Habas argues that this idea of increasing the COP by the amount of duties attributable to the drawback, on the grounds that matching of sales and cost demands such an adjustment to cost is wrong for two reasons. First, there is no imbalance that requires correction in order to match sales and costs. Second, the COP adjustment is predicated on the erroneous assumption that, because the respondent "never paid cash duties, it was wrong to impute duties to the cost of production."[29]
- The more probative argument is that "even if respondent paid cash duties, the cost of production would never, in any case, reflect the payment of duties."[30]
- Habas claims that it is counterfactual to suppose that domestic goods would have been burdened with a duty component if Habas had not exported the goods. In fact, if Habas had not planned the export, it would not have imported raw materials in the first place.
- Finally, in *RTAC II*, Habas argues that the CIT expressed reservations about the method applied for the cost-side adjustment. Notably, the Department bypassed the CIT's concerns and applied a circumstance-of-sale (COS) adjustment equal to the U.S.-side adjustment, to "balance" the impact of the adjustment on which the Court is yet to issue a decision.[31]
- Any COS adjustment to HM sales for DDB is also unlawful. The concept of rebalancing HM price and U.S. price is nowhere in the laws or regulations.
- The Department should limit its DDB adjustment to an increase in U.S. price

[25] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 73 FR 61019 (October 15, 2008), and accompanying Issues and Decision Memorandum.
[26] *See Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 2009 Ct. Intl. Trade LEXIS 122 (Oct. 15, 2009) (*Saha Thai CIT*).
[27] *See Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335 (Fed. Cir. 2011) (*Saha Thai*).
[28] *See* Habas' Case Brief at 13.
[29] *See* Habas' Case Brief at 12.
[30] *Id*.
[31] *See* Habas' Case Brief at 11.

Icdas' Case Brief

- Icdas has provided the requested approved production yield loss ratios that establish that Icdas' actual import, production, and export plans are in compliance with the Turkish IPR requirements.[32]
- The Department verified the accuracy of the yield loss ratios during its observation of the Government of Turkey (GOT) on-line drawback system.
- The documented yield loss ratio confirms there were sufficient imports to account for the duty drawback received, since no other issue relating to Icdas' claim for a duty drawback adjustment was raised in the *Preliminary Determination*, Icdas expects the Department to grant it a full duty drawback adjustment to U.S. price.
- Section 772(c)(1)(B) of the Act requires the Department to increase U.S. price for eligible duty drawback received in the respondent's home market.
- The Act clearly states that the adjustment to increase U.S. price must be calculated using such amounts rebated or not collected "by reason of the exportation of the subject merchandise to the United States."[33]
- The Act expressly declares that the drawback adjustment is causally related to the exportation, and it follows that the adjustment should be allocated to the exports to which it relates.
- In *Saha Thai*, the CAFC held that: "When read as a whole, the statute defines a plain and simple rule: a duty drawback adjustment shall be granted when, but for the exportation of the subject merchandise to the United States, the manufacturer would have shouldered the cost of an import duty."[34]
- Section 772(c)(1)(B) of the Act allows for full upward adjustment to EP for the duties which have not been collected.[35]
- Icdas has also provided ample evidence to support that it has met the Department's two-prong test.[36]
- "The data submitted by Icdas, which has been verified, clearly establishes the link between imported inputs and exported finished rebar, and that the duty exemption for imported inputs is directly linked to and dependent upon specific exports."[37]
- The Department should not make any circumstance of sales adjustment to duty drawback.
- Icdas has argued in the pending Remand Redetermination for the 2014 AD investigation of rebar from Turkey that there is no legal basis for making any circumstance of sales adjustment to normal value.[38]

[32] *See* Icdas' Case Brief at 2.
[33] *Id*. at 4 (citing Section 772(c)(1)(B) of the Act).
[34] *See Saha Thai*, 635 F.3d at 1341.
[35] *See* Icdas' Case Brief at 5 (citing Section 772(c)(1)(B) of the Act).
[36] *Id*. *See also* Icdas' Sales Verification Report at 11-12.
[37] *See* Icdas' Case Brief at 5.
[38] *Id*. at 6.

- Any such adjustment would be a radical change in practice requiring the Department to provide a reasoned explanation and an opportunity for respondents to comment fully on the proposed change.
- The Department rejected the proposal to make a compensating circumstance of sale adjustment for duty drawback in *Welded Carbon Steel Standard Pipe and Tube Products from Turkey*[39] and any significant change in the Department's practice requires a full explanation justifying the Department's departure from decades of duty drawback practice: "Once Commerce establishes a course of action, however, Commerce is obliged to follow it until Commerce provides a sufficient, reasoned analysis explaining why a change is necessary."[40]
- The CAFC has affirmed the Department's policy of making a corresponding upward adjustment to a respondent's COP when the Department grants a duty drawback adjustment to U.S. price.[41] Even though the CAFC agreed with the Department that the ambiguous language in the statute required deference to the Department's determination to impute an implied duty cost to account for the presence of domestic as well as imported materials in COP and constructed value (CV), there is no ambiguity in section 772(c)(1)(B) of the Act: "The adjustment for drawback is causally related to exportation, not to home market sales, and so it is to be allocated to the exports to which it applies."[42]
- "*Saha Thai* made clear that the entire amount of drawback granted is to be reflected in an increase to U.S. price and that normal value is unaffected: 'As discussed above, the entire purpose of increasing EP is to account for the fact that the import duty costs are reflected in NV (home market sales prices) but not in EP (sales prices in the United States). An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV.'"[43]
- Icdas has met the Department's two prong test, it has reported the corresponding adjustment to costs as outlined in *Saha Thai* and, therefore, no adjustment to normal value related to duty drawback should be applied.

Petitioner's Rebuttal Brief

- The DDB adjustment should be denied to the respondents because neither company has demonstrated a direct link between imported inputs and associated exports. The entire premise for the adjustment is that merchandise sold to the United States is *cheaper* to produce than comparable home market merchandise because inputs used to produce the

[39] *Id*. at 6-7 (referencing Welded *Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum (*Welded Pipes and Tubes from Turkey*)).
[40] *Id*. at 7 (citing *NMB Sing. Ltd. v. United States*, 557 F.3d 1316, 1328 (Fed. Cir. 2009) (*NMB* Sing)); *see also Save Domestic Oil, Inc. v. United States*, 357 F.3d 1278, 1283-84 (Fed. Cir. 2004) (*Domestic Oil*); *see also British Steel PLC v. United States*, 127 F.3d 1471, 1475 (Fed. Cir. 1997) (*British Steel*).
[41] *See Saha Thai*, 635 F.3d at 1342.
[42] *See* Icdas' Case Brief at 7 (citing *Saha Thai*, 635 F.3d at 1342-1343).
[43] *Id*. at 8 (citing *Saha Thai*, 635 F.3d at 1342).

U.S. product are duty-free. Thus, if the use of the inputs into the export products cannot be demonstrated, there is no basis for an adjustment.

- Contrary to the respondents' statements on the record that the GOT closes IPCs "after confirming that all inputs imported under customs exemption were used for production of the exported goods," information submitted on the record indicates there is no link or the information undermines any direct link between the imports and exports under the IPCs.
- Mere demonstration that there were sufficient exports to account for imported inputs is not sufficient, especially in cases where imported billets represent such a large portion of total production costs and carry a heavy-duty burden, but can be used equally for home market and U.S.-destined products.
- The Turkish IPR is not a traditional duty drawback or duty exemption program at all, as beneficiaries are not required to demonstrate that exports incorporate the imported input, which is a fundamental requirement for finding linkage under the duty drawback provisions of the U.S. antidumping law. Rather, the Turkish IPR incorporates concepts of substitution and "equivalency," allowing exports of goods that may not actually contain the duty-free imports or allowing the close out of an IPC with a different finished product than that which was projected to be exported.
- The respondents have had ample opportunity to demonstrate the direct link that the imported billets were used in their U.S. sales of subject merchandise, but have failed to trace the product through the production process.
- The respondents use inconsistent methodologies for the sales-side and cost-side adjustments by calculating them on a different basis. Further, there are other unexplained discrepancies. For example, claimed adjustments are disproportionate to the actual use of imported inputs, and figures do not tie to source documents.
- If the Department grants an adjustment, it should use the methodology from the second remand:[44] add the full amount of DDB to export price (EP); exclude exempted or refunded duties from cost of production (COP); and at the FUPDOL (foreign unit price in U.S. dollars) stage make a circumstance of sale (COS) adjustment to Normal Value (NV) equal to the U.S. DDB for each transaction. This methodology satisfies the statutory requirement while also achieving tax neutrality needed for a fair price comparison.
- The respondents' arguments against the methodology used in the second remand are flawed and should be rejected.
- A COS adjustment is especially justified in this case, given the lack of a direct linkage between duty-free imported inputs and exports to the United States. This methodology also ensures that NV and EP are both calculated on the same duty-inclusive basis. It is a straightforward and effective method of accurately ensuring both sides of the calculation are on the same basis, as affirmed by the CAFC in *Saha Thai*.

Department Position:

The Department has, based on record evidence, granted a DDB adjustment to Habas and Icdas for this *Final Determination*.

[44] *See RTAC II*; *RTAC v. United States*, Consol. Court No. 14-00268, Slip Op. 16-88 (Sept. 21, 2016), *Final Results of Redetermination Pursuant to Court Remand* (Jan 13, 2017).

Pursuant to section 772(c)(1)(B) of the Act, the statue provides that U.S. price should be increased by the import duty exempted by reason of the export of the subject merchandise. Furthermore, our two-prong test requires that: (1) that the exemption is linked to the exportation of the subject merchandise; and (2) there are sufficient imports of the raw material to account for the duty drawback on the export of subject merchandise. In the *Preliminary Determination,* we found that both respondents had not submitted projected quantities of exports of rebar based on an approved production yield/loss ratio also documented in the IPC. The IPCs submitted by the respondents in this investigation did not document the GOT-approved production yield/loss ratios for rebar and the other products exported by our respondents.[45]

In supplemental questionnaire responses received after the *Preliminary Determination*, the respondents each provided the yield/loss ratios which had been approved by the Turkish Chamber and Exchange Union.[46] (The ratios were based on each company's capacity reports.) We note that these ratios indicate that the GOT allowed companies to report more exports of rebar than that which could be produced with the raw materials imported duty-free under the program.[47] This information confirms that the quantity of imported raw materials account for the duty drawback or exemption granted and thereby pass the second prong of our test.

Since the respondents have satisfied the criteria described above, we have granted a duty drawback adjustment to both companies consistent with our practice.[48] Under this methodology, the Department will make an upward adjustment to EP and constructed export price (CEP) based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.[49] This ensures that the amount added to both sides of the comparison of EP or CEP with NV is equitable, *i.e.*, duty neutral meeting the purpose of the adjustment as affirmed in *Saha Thai*.[50] Based on the facts of this investigation, the Department finds that the import duty costs, based on the consumption of imported inputs during the POI, including imputed duty costs for imported inputs, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act.

The duty drawback provision, regulations, and the Department's current practice do not require actual use of the imported input in the production of the exported subject merchandise as a condition to receiving a duty drawback adjustment. The purpose of the duty drawback adjustment to EP or CEP is to ensure that the results of participating in a duty drawback program do not affect the dumping calculation to either create or eliminate dumping margins, *i.e.*, to make

[45] *See Preliminary Determination* and accompanying PDM at 9-10.
[46] *See* Habas March 3, 2017 Supplemental Questionnaire Response (Habas March 3, 2017 SQR) at 2-4 and Exhibit S4-3; *see also* Icdas March 7, 2017 Supplemental Questionnaire Response (Icdas March 7, 2017 SQR) at 3-4 and Exhibit S4-5.
[47] *See* Habas March 3, 2017 SQR at 2-4; *see also* Icdas March 7, 2017 SQR at 3-4.
[48] *See Rebar 2013.*
[49] *See* Habas Final Calculation Memorandum and Icdas Final Calculation Memorandum.
[50] The CAFC stated in the *Saha Thai* litigation that "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha's actual import duty exemptions under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." *See Saha Thai*, 635 F.3d at 1344.

the dumping calculations duty drawback neutral. In order to accomplish this, it is unnecessary to trace specific inputs into the production of specific exports. As long as the Department's duty drawback adjustment results in a drawback duty neutral margin calculation, the tracing is unnecessary. In this case, the Department is adding the same amount to the U.S. price that is included in the normal value cost calculations, essentially rendering the margin calculation duty drawback neutral.

We note that, late in the proceeding, parties raised a number of issues with respect to the GOT's IPR program (*e.g.*, substitutability of domestic and imported inputs, timing of imported and exports of manufactured products). We believe that the Department's response to the use arguments addresses these concerns. However, the Department intends to continue to actively analyze these issues in future AD proceedings involving this Turkish program.

Comment 2: Whether Respondents' Margins Should be Calculated Using Quarterly Costs

Habas' Case Brief

- The Department should apply its quarterly cost methodology to calculate the margins in this proceeding.
- Habas' direct materials cost (*i.e.*, DIRMAT) fluctuated by as much as 37 percent within the POI. Habas' sales prices closely tracked these fluctuations.
- The history of the quarterly cost issue strongly supports that the threshold determination should be based on direct materials cost.[51] In *Habas II*, the Department made clear that the focus of the quarterly cost analysis is the situation where the cost of inputs fluctuates significantly across the period.
- Methodological inconsistencies lead to inaccurate results when the test for quarterly cost is run on total cost of manufacturing (TOTCOM) rather than DIRMAT. These inaccuracies arise from the suppression of cost fluctuations when POI-constant transformation cost is added to a significantly fluctuating DIRMAT.
- The Department's hybrid test of whether quarterly DIRMAT plus fixed annual transformation costs fluctuated by more than 25 percent introduces an intrinsic bias against the use of quarterly costs because it smooths out any quarterly fluctuations. This bias creates mismatches between sales and costs when price follows cost closely, as it does here.
- The use of TOTCOM rather than DIRMAT for the 25 percent test is arbitrary and capricious, as it treats companies with identical DIRMAT percentage fluctuations and identical transformation costs differently according to the relative weight of DIRMAT and transformation costs.

Icdas' Case Brief

- The Department should apply quarterly costs to the sales below cost test at the final determination.

[51] *See, e.g., Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 625 F. Supp. 2d 1339 (CIT 2009) (*Habas II*).

- The 25 percent threshold applied by the Department in this proceeding fails to take sufficient account of large fluctuations in the cost of key inputs into the cost of manufacturing with a significant impact on the accuracy of the margin calculations.
- An analysis of the direct materials costs in Icdas' submitted quarterly COP/CV file shows that fluctuations in materials costs are well above the Department's threshold level.[52]
- The purpose of using cost periods other than the normal annual average is to avoid distortions that arise when there are significant cost and price changes during the POI. Icdas' raw material input cost fluctuations create such distortions.

Petitioner's Rebuttal Brief

- The Department should not rely on either respondent's quarterly cost data in the final determination.
- The Department's standard test for determining whether to resort to quarterly costs requires that there be a change in the cost of manufacturing greater than 25 percent.[53] At the *Preliminary Determination*, the Department did not use quarterly costs because neither respondent's quarterly change in TOTCOM met this threshold.[54]
- With respect to Icdas, the products that are most important to this proceeding, *i.e.*, the five highest volume CONNUMs in the U.S. market, all fail the 25 percent test. The situation is similar for Habas.
- Focusing on TOTCOM rather than DIRMAT makes sense because even where raw materials experience significant cost fluctuations over a period, the effect on a company's cost of manufacturing may be ameliorated by counter trends in other costs.
- Habas' cite to *Habas II* actually supports the Department's TOTCOM based approach. Specifically, the language in *Habas II* demonstrates that the Department's cost change analysis must consider the relative importance of the input for a particular product.[55]
- Habas would have the Department apply the quarterly cost methodology even in cases where the specific input represents a small fraction of the overall manufacturing costs.
- To account for the significance of the fluctuations in cost and the share of inputs in cost, as well as potential opposite movements in other costs, the Department must analyze changes in TOTCOM, and not DIRMAT.

Department's Position:

Consistent with the *Preliminary Determination*, the Department continues to use its normal methodology of calculating an annual weight-average cost for both of the respondents because the change in each company's COM does not meet the Department's well-established 25 percent threshold.

[52] *See* Icdas February 9, 2017 Supplemental Questionnaire Response at exhibit SD-21.
[53] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) and accompanying Issues and Decision Memorandum at Comment 1
[54] *See* PDM at 14.
[55] *See* Habas' Case Brief at 17.

In the *Preliminary Determination*, we explained that the Department has established a predictable and consistent practice for determining whether we should deviate from the normal methodology of calculating an annual weight-average cost and resort to an alternative cost reporting methodology.[56] 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 criterion, significance of cost changes, must first be 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. In a decision upheld by the CIT,[57] the Department described this analysis in *Plate from Belgium:*[58]

> 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."

While both respondents assert that the Department's quarterly cost test does not account for the significant fluctuations in the cost of material inputs during the POI, we disagree, and find that the fluctuations were just not significant enough to impact the reported COM. We note that our consistent and predictable methodology as enumerated in numerous cases accounts for both the significant changes in the cost of inputs and their impact on the cost of manufacturing.[59]

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[56] *See* PDM at 14.

[57] *See Seah Steel Corporation v. United States*, Court No. 09-00248, Slip Op. 10-60 (May 19, 2010) (*Seah Steel*) at 21-24 (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)).

[58] *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*Plate from Belgium*), and accompanying Issues and Decision Memorandum at Comment 4; *see also Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016) (*Hot-Rolled Steel from Turkey*) and accompanying Issues and Decision Memorandum at Comment 6.

[59] *See, e.g., Plate from Belgium* at Comment 4; *Hot-Rolled Steel from Turkey* at Comment 6; *Certain Welded*

We agree with Icdas that the purpose of using cost periods other than the normal annual average is to avoid distortions that arise when there are significant cost and price changes during the POI. However, the use of the change in costs as a percentage of total COM is superior to the use of the change in costs as a percentage of only material costs as it accounts for all production costs, the total of which impact pricing. Since material costs as a percentage of total COM may vary significantly from product to product, using total COM as the denominator in our significant cost change test results in a more consistent test. Further, using total COM is more meaningful as it is the total cost of manufacturing that prices must be set to recover, not just material costs. We disagree with Habas that a bias here creates mismatches between sales and costs when price follows cost closely. To the contrary, by keeping the test linked to COM we prevent mismatches.

From the outset of this case, Icdas and Habas submitted both annual weighted-average and quarterly cost databases on the record. As such, for each respondent, we are able to analyze the precise change in costs over the POI for the five largest volume home and U.S. market CONNUMs. For Icdas, our analysis shows that for eight out of the ten highest volume CONNUMs tested, the change in quarterly COM did not meet our 25 percent threshold.[60] For Habas, our analysis also shows that, based on the ten highest volume CONNUMs tested, none of the changes in quarterly COM met our 25 percent threshold.[61] Thus, because the changes in costs for both companies have not resulted in significant changes in COM that meet our established threshold, we have continued to rely on each company's annual weighted-average costs at the *Final Determination*.

Comment 3: Whether the U.S. Date of Sale is the Contract Date

Habas' Case Brief

- The *Preliminary Determination* ignored abundant contrary evidence in the record showing that there was never any amendment of any U.S. order during the POI, and every order investigated was shipped in accordance with the terms of the original order.
- Habas explained in its supplemental response that there was not a single U.S. sale in the POI for which there was any change in material terms between purchase order (contract) and shipment, which plainly overrides the erroneous statement in the initial questionnaire response.
- The Department's four selected sales inspected at verification demonstrate that Habas has shipped within the quantity tolerances of each order, and the material terms never changed from order to shipment.

Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76939 (December 9, 2011) and accompanying Issues and Decision Memorandum at Comment 1.

[60] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated February 28, 2017 (Icdas Preliminary Cost Memo)

[61] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated February 28, 2017 (Habas Preliminary Cost Memo)

- In the *Rebar 2013* investigation, Habas initially reported the invoice date as the date of sale, and based on evidence gathered, the Department found the appropriate date of sale to be the purchase order date. Further, in the 2003-2004 administrative review when Habas appealed, the Court affirmed the Department's redetermination that Habas' date of sale was the contract date.[62]
- In the instant investigation, Habas and its customers agreed on price, quantity, and all material terms of sale in the purchase order and shipped in accordance therewith.
- The test is whether parties agreed to material terms and acted in accordance therewith, and, in this case, as in prior proceedings regarding Habas, the date of sale has been the purchase order date.

Petitioner's Rebuttal Brief

- The regulations specify the Department will normally use invoice date as the date of sale. This regulatory preference is because, "as a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established."[63]
- While the Department has the discretion to use a date other than invoice date, it will only do so where it is satisfied that the material terms of sale are uniformly finally set as of that date.
- The Department has made clear that "a preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly 'established' in the minds of the buyer and seller."[64]
- For the first time in this investigation, Habas argues that the Department should use contract date as the U.S. date of sale, as it has done so in the prior investigations.
- Further, Habas itself reported invoice date and made no efforts to argue another date was more appropriate. Indeed, Habas itself stated that changes could take place after the order. The Department has verified this information.
- With regard to prior proceedings involving Habas, in the *Rebar 2013* investigation the Department verified the terms of sale were "solidified" on the contract date during that POI. With regard to litigation in a prior administrative review, Habas argued from the outset of that review that contract date should be used as its date of sale. Habas has made no such argument here until its case brief.
- Habas claims the few U.S. sales traces establish that there were no changes to price or delivery, and any quantity changes were within contract tolerance. But these sales traces represent a small number of all its U.S. sales.
- The facts in this investigation are in contrast to the prior proceedings. Moreover, Habas failed to provide documentation necessary to support its request for use of contract date.

[62] *See* Habas Case Brief at 23 (citing *Habas II* and *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 31 CIT 1793 (November 15, 2007) (*Habas I*)).
[63] *See* Petitioner's Rebuttal Brief at 35 (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348-49 (May 19, 1997) (*Preamble*)).
[64] *Preamble*, 62 FR at 27349.

Department's Position:

We have continued to use invoice date as Habas' date of sale in the U.S. and home markets for this *Final Determination*.

In its Section C initial questionnaire response and U.S. sales database Habas reported the invoice date as the date of sale for its U.S. sales.[65] In the Section A initial questionnaire, the Department noted that the date of sale is important to its analysis, requesting that Habas report its date of sale. In response Habas stated that "the date of sale for the home market and the U.S. market is the invoice date."[66]

The Department next asked Habas to describe the types of changes that occur after the initial agreement that affect the terms of the sale other than delivery dates. Habas responded: "For U.S. sales, the parties may amend orders and letters of credit to change price, quantity, product mix, or delivery shipment date; there may be multiple such amendments for a given order."[67] In a supplemental questionnaire, the Department requested that Habas include in its sales database all sales where sales agreements were reached during the POI, in addition to all sales invoiced during the POI that were already reported in the database.[68] The Department made this request because Habas' response in describing its sales process was unclear, and due to the short timeframe within which the *Preliminary Determination* was due, the Department sought all information that could be relevant to its analysis. Within this same supplemental questionnaire, the Department also asked Habas: "At page 18 you state that parties may amend orders and letters of credit to change price, quantity, product mix, or delivery date. Provide examples and demonstrate with supporting documentation where such changes have occurred on sales between purchase order or contract date and invoice date."[69] Habas replied: "Upon review, Habas is unable to find a situation where the shipment was not within the terms and tolerances of the contract."[70]

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[71] In this case, based on record information, the

[65] *See* Habas' Section C Questionnaire Response at 15.
[66] *See* Habas' Section A Questionnaire Response, question 4 at 15-16.
[67] *Id.* at 17-18.
[68] *See* Habas' January 25, 2017 Supplemental Questionnaire Response (Habas' January 25, 2017 SQR), question 4 at 2.
[69] *See* Habas' January 25, 2017 SQR at question 5.
[70] *Id.*
[71] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (*Allied Tube & Conduit Corp*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date").

Department did not find another date that better reflects when the material terms of sale were set. Further, the record shows that when Habas and its customers negotiate the sales they do so knowing that the material terms of the sale can change up to the issuance of the invoice. Thus, while the documentation on the record does not include an example or situation where changes in material terms of sale have occurred after the contract date during the POI, this absence does not establish or translate into a presumption that the invoice date is not the appropriate date of sale. Indeed, Habas itself provided invoice date as its date of sale and explained that "parties may amend orders and letters of credit to change price, quantity, product mix, or delivery (shipment) date; there may be multiple such amendments for a given order."[72] Further, Habas did not attempt to clarify in the supplemental response any of its prior statements on its date of sale (*i.e.*, invoice date is its date of sale, and parties may amend orders and letters of credit, and there could be multiple such amendments.) Thus, we disagree with Habas, and find that based on the record evidence that the Department properly determined the invoice date to be the date of sale in the *Preliminary Determination*.

We also disagree with Habas that, in prior investigations and litigation involving Habas, the Department has used contract date and, therefore, must do so here. The Department must examine the facts on the record of this proceeding, which are the relevant facts in this case. Further, some of the sales examined at verification did include several amendments, albeit as Habas points out within allowed tolerances. However, these are only few out of the numerous U.S. sales, and given the totality of the facts in this investigation, an insufficient basis on which to make a change to the date of sale determination. We, therefore, find that, based on record evidence and the Department's practice to normally use the date of invoice, we continue to use the date of invoice as the date of sale for Habas' U.S. sales.

Comment 4: Whether the Department Should Impute Interest Expense on Zero-Interest Financing Provided by Anadolubank

Petitioner's Case Brief

- Section 773(f)(2) of the Act instructs the Department to ensure the arm's-length nature of affiliated transactions (*i.e.*, "transaction-disregarded rule"). During the POI, Habas obtained zero-interest financing from an affiliated bank, Anadolubank. Because Anadolubank necessarily incurred costs associated with providing the zero-interest financing to Habas (*i.e.*, opportunity costs for foregoing interest that could have been earned from other customers), Habas' reported financial expense should be adjusted to include costs incurred by Anadolubank.[73]
- The fact that Habas obtained zero-interest financing from unaffiliated banks during the POI does not undermine the argument above. While the Department verified that unaffiliated banks also provided the zero-interest financing to Habas, this does not mean that unaffiliated banks were not compensated in some other way.

[72] *See* Habas Section A Questionnaire Response at 18.

[73] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying Issues and Decision Memorandum at Comment 31.

- As such, the Department should use the POI average monthly overnight interest rate published by Central Bank of the Republic Turkey (CBRT) to impute interest expense for the affiliated loans and include them in the reported financial expense calculation.

Habas' Case Brief

- The "transaction-disregarded" rule, on which the petitioner bases its argument, applies only to the COP and CV calculation and does not provide authority for the Department to adjust an interest rate used in the calculation of imputed credit expense for home market sales under Section 773(f)(2) of Act.[74]
- Even if the "transaction-disregarded" provision is applicable to the interest rate used in the calculation of imputed credit expense, the Department's methodology is to include all transactions in the calculation. Also, this provision gives the Department the discretion to disregard a transaction only if the element to be disregarded "does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration."[75]
- The zero-interest short-term loans have been a widespread practice in the Turkish banking sector for many years and the Department has consistently held such loans to be commercial in nature. The Department should refrain from testing such loans for application of the "transaction-disregarded" rule.[76] Further, the same zero-interest short-term loans are given to Habas by Anadolubank as well as unaffiliated banks. As such, there is no reason to question the arm's-length nature of the zero-interest rate used in the calculation of imputed credit expense.
- The purported interest rate of the CBRT provided by the petitioner is unreliable because the rate is not obtained directly from the Turkish Central Bank's website. Even assuming the reliability of the rate, the CBRT rate is not a commercial interest rate.
- Thus, the Department should not apply the "transaction disregarded" rule to the interest rate used in the calculation of imputed credit expense for home market sales.

Department's Position:

We disagree with the petitioner that the Department should impute an interest expense for the affiliated loans and include such interest expense in the reported COP. Section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule) addresses how the Department will treat affiliated party transactions in its calculation of COP and CV. Specifically, a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration.

[74] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) (*HR Steel Flat Products from Japan*), and accompanying Issues and Decision Memorandum at Comment 23.
[75] *Id*.
[76] *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011) (*Carbon Steel Pipe and Tube from Turkey*), and accompanying Issues and Decision Memorandum at Comment 10; *see also Line Pipe LTFV* IDM at Comment 13.

As noted above, the issue presented to the Department is whether the zero-interest rate charged by Habas' affiliated bank (*i.e.*, Anadolubank) is based on the arm's-length transaction under section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule) for calculating the COP and CV of the merchandise under consideration during the POI.[77] Specifically, the petitioner argues that the Department should calculate an interest expense amount associated with the zero-interest loans obtained from Anadolubank and include it in the reported financial expense rate calculation for COP and CV. It appears that Habas has misinterpreted the petitioner's arguments as being related to the zero-interest rate used in the calculation of imputed credit expense for home market sales. As they are off point, we have not addressed Habas' rebuttal arguments on that point. For the zero-interest rate used in the calculation of imputed credit expense for home market sales, see comment 5.

During the POI, Habas obtained short-term Turkish lira denominated loans from its affiliate Anadolubank, and from other unaffiliated banks. The same interest expense rate was charged by both the affiliated and unaffiliated lenders, which supports Habas' point that zero interest was the prevailing market rate for this specific type of loan during the POI. Habas explained that it is a common practice that the Turkish banking industry offers zero-interest short term loans to its customers and such type of loans are provided to Habas by unaffiliated banks as well as by its affiliate, Anadolubank.[78] Also, during the cost verification, we verified that the maturities of these affiliated and unaffiliated short-term loans were generally less than 4 days and the interest rate charged for these loans was zero percent.[79]

When analyzing affiliated party transactions in accordance with the transactions disregarded rule, the Department normally compares the transfer prices paid to the affiliate to prices paid for the same input to unaffiliated suppliers. During the cost verification, the Department verified that the interest rate charged by Anadolubank was same as the interest rate charged by its unaffiliated banks during the POI. Further, there is no evidence showing that Habas compensated either Anadolubank or its unaffiliated banks in any way in exchange for obtaining the zero-interest financing during the POI. As such, we have determined that the loans from Anadolubank appear to be based on market terms and that the unaffiliated rates are sufficient for establishing the arm's-length nature of the transactions between Habas and Anadolubank.

Lastly, we disagree with the petitioner that *OCTG from Korea* is on point. In *OCTG from Korea*, a wholly-owned subsidiary company of the Korean respondent incurred on behalf of the respondent actual quenching and tempering processing costs associated with producing the merchandise under consideration. However, the affiliated subsidiary was never reimbursed by the Korean respondent.[80] In this case, the rate charged by Anadolubank were at market rates. Therefore, we did not make any adjustments to Habas' reported financial expense for the *Final Determination*.

[77] In its argument, the petitioner does not address the zero-interest rate used in the calculation of imputed credit expense for home market sales.
[78] *See* Habas February 9, 2017 Supplemental Questionnaire Response (Habas February 9, 2017 SQR) at 2.
[79] *See* Habas Cost Verification Report at 3-4 and CVE 1; *see also* Habas February 9, 2017 SQR at exhibit SD-1.
[80] *See OCTG from Korea* IDM at 94.

Comment 5: Whether Zero Interest Rate Loans Should Be Included in the Interest Rate for Home Market Credit Calculation

Habas' Case Brief

- Habas' short-term loans in the POI were for a very short term and the interest rate on each loan was zero percent. Habas reported 255 such loans, of which 199 were from unaffiliated banks and 56 from an affiliated bank.
- There is no reason to believe the accuracy of the rates in the petitioner's pre-preliminary comments. The website of their downloaded rates is not the CBRT website and not commercial rates, but appear to be overnight lending rates.
- Even if the CBRT rates are as shown, there is no reason that banks would not give zero-interest overnight rates to their best customers, as a commercial incentive to retain such customers' business.
- The Department has encountered precisely this type of loans in other Turkish antidumping cases and has consistently treated such loans as commercial loans.[81] It is commercial practice for banks to give, and borrowers like Habas, to receive such loans.
- Further, the zero-interest loans are fully supported in the verification report, and petitioner's submitted CBRT overnight rates are irrelevant to commercial bank lending practices and Habas' actual practice.

Petitioner's Rebuttal Brief

- The Department has acknowledged that: 1) the imputation of credit cost…is a reflection of the time value of money; 2) it must correspond to a figure reasonably calculated to account for such value during the gap period between delivery and payment; and 3) it should conform to commercial reality.[82]
- Habas' reported zero short-term interest rate does not reflect commercial reality in Turkey; rather, Habas' zero-rate loans put it in the same position as a company that reports no short-term commercial borrowings, in which case the Department may use an appropriate short-term interest rate.
- In the absence of reliable short-term rates from Habas, the Department is justified in using publicly available CBRT rates.
- Further, the publicly available rates are corroborated by the other mandatory respondent's rates in this proceeding, which closely reflect the prevalent short-term rates published by CBRT.

Department's Position:

We have continued to use the rate published by the CBRT to calculate home market credit expenses. Notwithstanding Habas' arguments, the Department's Policy Bulletin 98.2, states that, although the Department has a practice of using a respondent's home market borrowing rate to impute home market credit expenses, this rate should also conform with commercial reality:

[81] *See* Habas Case Brief at 26-27 (citing *Line Pipe LTFV, supra*, and IDM at comment 13; *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011) and IDM at comment 10).

[82] *See* Petitioner's Case Brief at 39 (citing Policy Bulletin 98.2 (Imputed Credit Expenses and Interest Rates) (February 23, 1998)).

> In the case of foreign market sales, it is not possible to develop a single consistent policy for selecting a surrogate interest rate when a respondent has no short-term borrowings in the currency of the transaction. The nature of the available information will vary from market to market. However, any short-term interest rate used should meet the three criteria discussed above -- it should be reasonable, readily obtainable, and representative of "usual commercial behavior." In any case, we note that cases where a respondent has no short-term borrowings in the currency of its foreign market transactions are very rare.[83]

In the instant investigation, we find that Habas' short-term interest rate does not meet the criteria of being reasonable or representative of usual commercial behavior, as Turkish short-term publicly available rates and mandatory respondent Icdas' rates differ significantly from that of Habas. Furthermore, these rates are consistent with other information on the record.[84]

Finally, we e disagree with Habas with regard to the relevance of prior cases where the Department has used zero-interest rate loans. The pertinent facts of the *Certain Welded Carbon Steel Pipe and Tube from Turkey* review and the instant investigation are dissimilar. In contrast to the case cited by Habas, we note that, based on the average age of Habas' receivables reported in the field PAYTERMH in its Section B response, the Department calculated an "opportunity cost"[85] rather than a "credit expense."

Therefore, the Department finds it reasonable to use a publicly available interest rate to impute the credit cost that properly reflects the time value of money in this situation.[86] We have determined to continue to use the CBRT's published rates available on the record.

Comment 6: Whether the Department Should Revise Icdas' Costs Consistent with Turkish GAAP

Petitioner's Case Brief

- The Department should revise Icdas' costs to be consistent with IFRS.
- Beginning in 2013, Turkey adopted IFRS as its home country generally accepted accounting principles (GAAP).[87] In accordance with the Department's well-established practice of basing its calculations on the respondent's records prepared in accordance with home country GAAP, Icdas' IFRS based financial statements should form the basis of their reported costs.
- Icdas disputed that IFRS now constitutes Turkish GAAP and claimed that Turkish GAAP is based on the Turkish tax code. The thrust of this claim appears to be that a country's GAAP is defined not by the accounting standards that are mandatory for most of its companies, but

[83] *See* Policy Bulletin 98.2: Imputed credit expenses and interest rates, (Policy Bulletin 98.2), available at http://enforcement.trade.gov/policy/bull98-2.htm.
[84] *See* Habas Section A Questionnaire Response, Exhibit 11, Audited Financial Statements 2015 at page 32.
[85] *See* Habas Final Calculation Memorandum.
[86] *Id*.
[87] *See* Letter from the petitioner, "Steel Concrete Reinforcing Bars from the Republic of Turkey: Comments on Icdas' Sections B-D Questionnaire Responses," dated January 30, 2017 at 40-41.

rather by the accounting practices on an individual company. Such a claim flies in the face of logic.

- The fact that Icdas itself is not a public company and is not required to prepare IFRS financial statements is not relevant to determining the basis of Turkish GAAP. What matters is that Icdas is not precluded from preparing IFRS financial statements, and in fact does prepare them in the normal course of business.
- Section 773(f)(1)(A) of the Act directs the Department to calculate the cost of production based on a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the cost of producing the merchandise. Icdas' IFRS financial statements are its normal books and records prepared in accordance with Turkish GAAP and there is no evidence that those financial statements do not reasonably reflect the costs.
- The Department should increase Icdas' reported costs by the percentage difference between the cost of sales under IFRS and under Turkish tax accounting. This change would satisfy the statutory preference for home country GAAP and ensure uniformity across the cost calculations given that the financial expense ratio has been calculated based on Icdas' consolidated IFRS financial statements.

Icdas' Rebuttal Brief

- The petitioner's claim that Icdas' reported costs are not in conformance with Turkish GAAP is without merit. Icdas' audited statutory financial statements that form the basis of the reported costs are Turkish GAAP, and IFRS is not.
- Icdas does not fall into any of the categories of enterprises that are required to issue IFRS financial statements. Icdas is a privately held company that is not publicly traded.
- It should be noted that while some Turkish companies are required to issue IFRS financial statements, all Turkish companies must still prepare statutory financial statements.
- Icdas' IFRS financial statements are for the purpose of satisfying lender requirements. As required by law, Icdas' official record keeping and reporting continues to be on a statutory tax code basis.
- The petitioner's argument begs the question of what purpose, other than boosting Icdas' costs, would be served by substituting standards that it is not required to follow for those that it is legally required to apply in the normal course of business.
- The Department should continue to use Icdas' reported and verified cost data in its calculations for the final determinations.

Department's Position:

We agree with Icdas and have continued to rely on Icdas' audited financial statements. As the Department verified in this proceeding, Icdas' financial statements are the only financial statements that the company is required to prepare in the normal course of business.[88] As a non-public company, Icdas is not required to prepare IFRS financial statements, nor to follow the principles of IFRS in its normal books and records. Rather, in accordance with its requirements under Turkish law, Icdas follows Turkish GAAP in its financial accounts and trial balances, and only voluntarily prepares IFRS financial statements to comply with terms set by certain creditors.

[88] *See* Icdas Cost Verification Report at 3.

Thus, we agree with Icdas that its normal books and records are kept in accordance with home country GAAP.

Section 773(f)(1)(A) of the Act states that the COP and CV shall normally be calculated based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. Other than the fact that Icdas cost of sales is higher under IFRS, the petitioner has pointed to no record evidence that shows that Turkish statutory GAAP is unreasonable. Accordingly, because we find that Icdas' reported costs are calculated based on its normal books and records prepared in accordance with statutory Turkish GAAP and we find no record evidence that those costs are unreasonable, we have continued to rely on those costs for the *Final Determination*.

Comment 7: Whether the Department Should Revise Icdas' Short-Length Rebar Cost

Petitioner's Case Brief

- The Department should revise Icdas' short-length rebar costs to conform with prior practice.
- The Department's verifiers found that Icdas' methodology of reducing the cost of prime products and reallocating costs to short-length rebar resulted in an understatement in the cost of prime products.[89]
- Specifically, the Department found that the cost assigned to short-length rebar is higher than either its market value or the lowest TOTCOM of any CONNUM. In an earlier investigation into sales of Icdas' rebar, the Department addressed this issue by assigning the costs of the lowest cost CONNUM to short-length rebar.[90]
- The Department should again ensure that Icdas' reported costs are not distorted by an unjustified reallocation of costs to short-length rebar. For the final determination, the Department should adjust the reported costs by reallocating the excess cost assigned to short-length rebar to prime products.

Icdas did not comment on this issue.

Department's Position:

We agree with the petitioner that the Department should revise Icdas' valuation of short-length rebar for the final determination.

The issue here is whether the downgraded rebar (*i.e.*, short-length rebar) can still be used in the same applications as the subject merchandise (*i.e.*, whether it is still rebar).[91] The downgrading of a product from one grade to another will vary from case to case. Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used for

[89] *See* Icdas Cost Verification Report at 6.
[90] *See* Letter from the petitioner, "Steel Concrete Reinforcing Bars from the Republic of Turkey: Pre-Preliminary Comments Regarding Habas," dated February 17, 2017 at 19.
[91] *See Rebar 2013* and accompanying Issues and Decision Memorandum (IDM) at Comment 15.

the same applications. In the latter case, the product's market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between grades, the Department adopted the reasonable practice of examining whether the downgraded product can still be used in the same applications as its prime counterparts.[92]

As noted in the previous investigation involving Icdas' sales of the merchandise under consideration, downgraded rebar is rebar of random lengths that is remaining after the standard-length rebar is cut to the desired length.[93] Downgraded rebar is sold in bundles of mixed sizes and unidentified grades, without mill test certificates. They are sold at prices close to that of "prime" rebar because the short-length rebar can be used in many of the same rebar applications.[94] However, while these short-lengths can apparently be used in some applications of rebar, they clearly cannot be sold as the same grade as originally intended. This is evidenced by their treatment in the normal records where short-length rebar is not assigned a cost.[95] For reporting purposes, Icdas increased the production quantities of all rebar products to include the production of downgraded rebar in the calculation of the reported costs.[96] We note that this methodology effectively assigns the POI average cost of all prime rebar production to the downgraded short-length products.

Accordingly, while we find that Icdas sells the downgraded rebar for use as rebar,[97] because the short-length rebar is sold in bundles of mixed sizes with unidentified grades and without mill test certificates, we find it reasonable to assign to these products a cost equal to that of the lowest cost CONNUM in Icdas' COP/CV file, rather than the average cost of all prime rebar products assigned by Icdas. Assigning the lowest cost, rather than the average, insures that these products sold without mill tests are not assigned a cost that is higher than the cost of the products actually produced, while still assigning to them the cost of a prime product. Thus, for the final determination, we have re-allocated the excess cost assigned to short-length products to all prime production.

Comment 8: Whether the Department Should Disallow Offsets to Icdas' G&A Expenses for Reimbursements Related to Port Services Provided to Third Parties

Petitioner's Case Brief

- The Department should disallow offsets to Icdas' reported general and administrative (G&A) expenses for reimbursements related to port services provided to third parties.
- Contrary to the verifiers' claim, the expenses related to port services were not included in the G&A expense accounts, but rather were deducted from Icdas' cost of sales in arriving at the reported cost of manufacturing.[98] Accordingly, the offsets are not appropriate because the

[92] *See Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from the India*, 79 FR 41981 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 8; *see* also *Rebar 2013* IDM at Comment 15.
[93] *See* Icdas January 17, 2017 Section D Questionnaire Response at D-6.
[94] *See Rebar 2013* IDM at Comment 15.
[95] *See* Icdas Cost Verification Report at 6.
[96] *Id.*
[97] *See Rebar 2013* IDM at Comment 15.
[98] *See* Icdas Cost Verification Report at 9 and 19.

costs corresponding with the provision of the services were not included in the reported costs.

Icdas' Rebuttal Brief

- The Department should continue to allow the offsets to Icdas' G&A expenses for reimbursements of costs incurred on behalf of third parties.
- The Department verified that these expenses were included in Icdas' reported G&A expenses.

Department's Position:

We agree with Icdas and have continued to allow the total offsets to its reported G&A expenses inclusive of the reimbursement of maintenance costs related to port facilities owned by Icdas and used by other parties for this final determination. It is the Department's practice to allow income offsets to G&A expenses, as long as they relate to the general operations of the company as a whole, and not to a separate line of business. The offsets do not have to be related directly to the production of subject merchandise.[99] Based on the record evidence in this proceeding, we find that the revenue offsets claimed by Icdas are a part of the company's normal business operations, and that none of the underlying activities constitutes a major line of business. Further, contrary to the petitioner's assertion, as noted in the Department's cost verification report, the costs associated with these offsets are fully included in Icdas' reported G&A expenses.[100] Additionally, we find the petitioner's reference to the line item deducted in the cost of sales reconciliation to be off point, as the referenced deduction from cost of sales is for services that are completely unrelated to this matter. Thus, we find no reason not to allow the offsets to Icdas' G&A expenses at the final determination.

Comment 9: Whether the Department Should Revise the Manufacturer Code Assignments in the Home Market Resellers' Sales File in the Comparison Market Program

Petitioner's Case Brief

- Icdas' lack of consistency in its reported manufacturer codes across the home market sales databases "has resulted in many Icdas-produced reseller transactions being excluded from the normal value calculation."[101]
- The inadvertent exclusion has a meaningful effect on the accuracy of the Department's margin calculation.
- The Department should revise Icdas' comparison market program so that Icdas-produced sales are identified consistently.

[99] *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 13; *Certain Cold-Rolled Carbon Steel Flat Products from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value*, 67 FR 62104 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 6; *see* also *CWP from Korea* at Comment 2.
[100] *See* Icdas Cost Verification Report at 19.
[101] *See* Petitioner's Case Brief at 10-11.

Icdas did not submit rebuttal comments on this issue.

Department's Position:

The Department has modified Icdas' comparison market program to identify uniformly all Icdas-produced sales for the *Final Determination*.[102]

Comment 10: Whether the Department Should Apply Partial AFA to Icdas with Respect to Missing Manufacturer Codes for Certain Sales in the Home Market Resellers Sales File

Petitioner's Case Brief

- In its home market resellers' database, Icdas reported a "blank" in the field MFRH for some of the transactions.
- Icdas reported, in its supplemental sections B-C response, that home market resales purchased from other manufacturers constitute an insignificant amount of the overall home market resales.[103]
- "Icdas suggested that for any transaction for which a manufacturer is not identified, the Department should assume that the goods were manufactured by Icdas and assign the code 'ICD' in field MFRH."[104]
- The Department should use partial adverse inferences to fill the gap left by Icdas' failure to report the MFRH code.
- The identification of the manufacturer is critical to ensuring proper comparisons.[105]
- The Department has determined that the failure to identify the manufacturer of resold goods is grounds for the application of AFA in prior cases.[106]
- In *Cut-to-Length Plate from Germany*, "the Department applied AFA after the respondent failed to identify the manufacturer of its affiliate's downstream sales…the agency reasoned that the identity of the manufacturer is critical information to the Department's dumping calculation because products are matched by manufacturer. The {Department} also noted that this is the type of information that 'a respondent should have reasonably anticipated being required.'"[107]
- The gap in the record is caused by Icdas' refusal to remedy the situation by identifying the manufacturers for these transactions.
- "The Department should apply partial adverse inferences with respect to these transactions, by including them in the normal value calculation by assigning the manufacturer code 'ICD' and by applying the highest home market price to all

[102] *See* Icdas' Final Calculation Memorandum.
[103] *See* Petitioner's Case Brief at 12; *see also* Icdas' February 13, 2017 SQR at 13.
[104] *See* Petitioner's Case Brief at 12; *see also* Icdas' February 13, 2017 SQR at Exhibit SB 26.
[105] *See* Petitioner's Case Brief at 13.
[106] *Id*. at 13; *see also Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710 (June 8, 1999) (*SSSS from Germany*).
[107] *See* Petitioner's Case Brief at 14 (citing *Cut-to-Length Plate from Germany*, 82 FR 16360, April 4, 2017 (*CTL Plate from Germany*) and accompanying Issues and Decision Memorandum at Comment 2).

transactions in the home market resellers' sales file that have a missing manufacturer code."[108]

Icdas' Rebuttal Brief

- The application of "AFA is an extraordinary measure that should be applied sparingly in cases of particularly egregious refusal or failure to comply."[109]
- "The cooperation standard 'does not require perfection and recognizes that mistakes sometimes occur,' but it 'does not condone inattentiveness, carelessness, or inadequate recordkeeping.'"[110]
- Icdas made every effort to determine the manufacturer of the merchandise in the sales at issue.
- "Icdas did not report a manufacturer code for certain resale transactions where it could not be absolutely sure it was the manufacturer of the merchandise."[111]
- Icdas did not fail to cooperate, it reported everything it knew about the manufacturer of subject merchandise, "and explained why in a limited number of instances it could not be certain as to the manufacturer."[112]
- The petitioner's "suggestion for how to apply AFA goes halfway to meeting Icdas' suggestion that these sales could have been included in the preliminary margin calculation simply by assuming, as was most likely, that Icdas was the manufacturer. Petitioners then invoke AFA in order to justify deviating from the actual price and substituting the highest price possible."[113]
- AFA is not intended to be used by the petitioner as a tactic for gaining higher margins. AFA is used to defend the integrity of the process.
- The application of AFA in this instance, "would be completely at odds with the intent and purpose of AFA. There are no grounds for applying AFA against Icdas in this case."[114]

Department's Position:

We have applied partial AFA to Icdas' downstream home market sales of rebar for which Icdas reported no manufacturer. (*See* "Application of Facts Available and Use of Adverse Inferences" section, above.)

[108] *See* Petitioner's Case Brief at 15.
[109] *See* Icdas' Rebuttal Brief at 5.
[110] *Id*. at 5-6 (citing *Nippon Steel*, 337 F.3d at 1382).
[111] *Id*. at 6.
[112] *Id*.
[113] *Id*. at 7.
[114] *Id*.

While the petitioner has relied on *CTL Plate from Germany* [115] and *SSSS from Germany*[116] to support its arguments on this issue, we find that the facts in *CTL Plate from France*[117] are more similar to those of the instant investigation. In *CTL Plate from France* the Department applied partial AFA to a respondent for not providing the manufacturer code for a number of affiliated downstream sales.[118] As Icdas has done in this investigation, that respondent informed the Department that it could not determine the manufacturer of the subject merchandise.

In determining whether Icdas has cooperated to the best of its ability and whether AFA is warranted, the Department follows the guidance set forth in *Nippon Steel*:

> Before making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.[119]

The information in question (*i.e.*, the identity of the manufacturers of the rebar at issue that was resold by Icdas' affiliate) is the type of information that a large steel manufacturer such as Icdas should reasonably be able to provide and is critical to the Department's dumping analysis. As noted above, the Department verified that Icdas creates "mill test certificates" which identify the manufacturer of the rebar as well as its chemical content on a heat by heat basis.[120] We note that the waybills in Icdas' home market sales traces identify the Icdas rolling mill where the rebar at issue was manufactured. Icdas' supplemental

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[115] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from Germany*, 67 FR 62116 (October 3, 2002), and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (the respondent did not report the downstream sales information because it was too burdensome).

[116] *See SSSS from Germany* Issues and Decision Memorandum at Comment 20.

[117] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

[118] "Dillinger France responded that, while it attempted to identify the manufacturers identified as 'unknown,' there was insufficient information in the automated material records to determine the manufacturers' identities for these sales and the total quantity of these transactions was small." *See CTL Plate from France* IDM at 46.

[119] *See Nippon Steel*, 337 F.3d at 1382.

[120] *See* Icdas' Cost Verification Report at 14 and CVE 12.

questionnaire responses demonstrate that it was familiar with all of the records that its affiliates maintained, yet reported the producers of only some of the rebar, but not all.[121] Thus, we find that Icdas would have been able to provide this information if it had made the appropriate effort when it received the Department's antidumping duty questionnaire and was notified that it was required to report its affiliates'' downstream sales.[122]

Therefore, we find that Icdas' failure to report the requested manufacturer information, accurately and in the manner requested, using the records over which it maintained control, indicates that Icdas did not act to the best of its ability to comply with our requests for information. Consequently, in accordance with sections 776(a)(2) (A)- (C) and 776(b) of the Act, we find that because Icdas withheld information requested from the Department in a timely fashion, which in turn impeded the Department's proceeding, Icdas did not act to the best of its ability, and it is appropriate to apply partial AFA to those downstream sales where Icdas did not identify the manufacturer of the subject merchandise. As partial AFA, we have assigned the highest non-aberrational net price from Icdas' downstream home market sales to those home market sales where Icdas failed to report the manufacturer.[123]

Comment 11: Whether the Department Should Adjust Icdas' Normal Value for Certain Reported Movement Expenses Incurred in the Home Market.

Icdas' Case Brief

- The Department failed to deduct certain reported movement expenses incurred on home market sales when calculating normal value. (Specifically, the Department did not deduct INLFTW1H, INLFTW2H, WAREHSH, INLFTC1H, and ICDMEXH).[124]
- Those expenses are legitimate, normal movement expenses incurred in selling products to customers, and they represent an appropriate deduction from normal value.[125]

The petitioner did not comment on this issue.

Department's Position:

The Department inadvertently excluded the deductions of the above-mentioned movement expense variables from our calculation of Icdas' normal value in the *Preliminary Determination*. We have included those deductions in the calculations for this *Final Determination*.[126]

[121] *See* Icdas' February 13, 2017 SQR at 1 and 13.
[122] *See* the Department's antidumping duty Section B questionnaire issued to Icdas, dated November 30, 2016, at page B-5 ("If you had sales to an affiliated party that consumed all or some of the merchandise …, then report all of your sales to that affiliate, whether the merchandise was consumed or resold by the affiliate…. If you cannot demonstrate that your sales to the affiliate were at arm's-length prices, then you must also report the affiliate's sales to unaffiliated customers; however, in any case you must report your sales to the affiliate").
[123] *See* Icdas' Final Calculation Memorandum.
[124] *See* Icdas' Case Brief at 10-11.
[125] *Id*. at 11.
[126] *See* Icdas' Final Calculation Memorandum.

Comment 12: Whether the Department Should Use CREDIT2H in its Calculation of Normal Value

Icdas' Case Brief

- "The credit amounts in field CREDIT2H have been viewed and verified and should, therefore, be used by the Department in its calculation of normal value for the final determination."[127]

The petitioner did not comment on this issue.

Department's Position:

The Department inadvertently excluded CREDIT2H in its calculations for the *Preliminary Determination*. We have included CREDIT2H in our calculations for the *Final Determination*.[128]

Comment 13a: Whether the Department Should Adjust Home Market Sales Database Values for Sales by Icdas' Affiliate Art Enerji ve Celik A.S. ("Arten") to Exclude VAT.

Icdas' Case Brief

- The home market sales data base contains an error relating to sales by Icdas' affiliate. The prices of those sales were mistakenly reported inclusive of 18 percent VAT, rather than exclusive of VAT.
- As demonstrated in Icdas' Sales Verification Report,[129] the difference is exactly 18 percent, the same as the VAT rate.
- This difference can also be seen in Icdas' supplemental section B questionnaire response.[130]
- Icdas requests that the Department reduce Icdas' reported values for its affected affiliate in GRSUPRH, GRSUPR1H, TOTVALH, and INDIRS1H by 18%.

Comment 13b: Whether the Department Should Adjust Icdas' Home Market Freight Expense for Certain Sales

Icdas' Case Brief

- Icdas received services, "include{ing} the hiring of third party freight companies," from its affiliate, Eras Tisamilicik Taahhut Ins. Tic., A.S. Eras passed the fees for the services, along with a markup to Icdas.[131]

[127] *See* Icdas' Case Brief at 15.
[128] *See* Icdas' Final Calculation Memorandum.
[129] *See* Icdas' Sales Verification Report at SVE-5.
[130] *See* Icdas' February 13, 2017 SQR at Exhibits SB-5 and SB-6.
[131] *See* Icdas' Case Brief at 12.

- Icdas did not include the markup when reporting those freight costs to the Department. However, Icdas did deduct the 18 percent VAT applicable to those transactions twice, "thereby substantially understating the actual freight expense."[132]
- In Icdas' Sales Verification Report, the 18 percent VAT difference is clearly visible.[133]
- Icdas requests that the Department adds the 18 percent VAT back in to eliminate the erroneous double deduction of VAT.

Petitioner's Rebuttal Brief

- Icdas argues that its reported figures are erroneous, and claims that the Department should correct Icdas' flawed reporting.[134]
- "While Icdas characterizes the Department as having verified its erroneous reporting, in actuality, the agency simply noted that Icdas presented what it characterized as 'reporting errors' at the outset of verification. Further, the agency explicitly rejected the corrections."[135]
- Icdas did not argue that it could not have caught these errors previously, or alerted the Department to the errors in a timely-filed questionnaire response. Icdas also did not argue that the proposed corrections would be the type of minor corrections that the Department would normally accept at verification.[136]
- "Icdas' failure to make any arguments along these lines should be considered a concession that the errors here are not related to isolated, clerical mistakes but instead represent systematic failures to provide accurate information."[137]

Department's Position:

The Department has adjusted GRSUPRH, GRSUPR1H, TOTVALH, and INDIRS1H for one of Icdas' affiliated downstream resellers by the 18 percent VAT rate for the *Final Determination*.[138] However, the Department has not made a VAT adjustment to Icdas' home market movement expenses for the *Final Determination*.

The Department did not accept the change in home market prices reported for one of Icdas' affiliated downstream resellers for the 18 percent VAT rate to be a minor correction at verification.[139] That said, information on the record indicates that Icdas made an error when it reported the GRSUPRH, GRSUPR1H, TOTVALH, and INDIRS1H for the home market sales at issue. We note that in the quantity and value reconciliation of Icdas' affiliate, the Department verified that the value reported for the reseller at issue was inclusive of VAT.[140] Therefore, the

[132] *Id*.
[133] *See* Icdas' Sales Verification Report at Exhibit SVE-20.
[134] *See* Petitioner's Rebuttal Brief at 40.
[135] *Id*. at 41.
[136] *Id*.
[137] *Id*.
[138] *See* Icdas' Final Calculation Memorandum.
[139] *See* Icdas Sales Verification Report at SVE-1.
[140] *Id*. at SVE-5 p. 7.

Department has reduced the relevant variables for this affiliate downstream reseller by 18 percent.

As for the double deduction of VAT from a freight expense variable, an exhibit in the verification report indicates that Icdas misreported its INLFTC1H expense for one home market sale.[141] Contrary to Icdas' claim, the Department did not verify that this type of error persisted throughout all of Icdas' home market sales. Thus, there is no basis on the record to find that Icdas misreported its INLFTC1H expense for all its home market sales. The Department will correct the INLFTC1H expense for the sale at issue.[142]

As noted above, Icdas submitted the above corrections as "minor corrections" during verification.[143] The Department rejected Icdas' request to treat these corrections as the type of minor corrections that the Department usually accepts at the outset of verification. As the due date for these responses had already passed, allowing Icdas 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.[144] 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.[145]

Comment 14: Whether the Department Should Use the Correct Home Market Gross Unit Price Data in its Margin Calculation

Icdas' Case Brief

- The Department applied the incorrect gross unit price variable in its preliminary determination.
- The Department should use the variable GRSUPRH in the final margin calculation.

The petitioner did not comment on this issue.

Department's Position:

The Department inadvertently utilized the incorrect gross unit price variable in its calculations for the *Preliminary Determination*. We have used GRSUPRH in the calculations for this *Final Determination*.[146]

[141] *Id. at* SVE-20 p. 15.
[142] *See* Icdas' Final Calculation Memorandum.
[143] *See* Icdas Sales Verification Report at SVE-1.
[144] *See* 19 CFR 351.301(c)(1)(ii).
[145] While the Department accepts minor corrections before verification begins, the quantity and nature of the information that Icdas attempted to submit at verification did not constitute minor corrections.
[146] *See* Icdas' Final Calculation Memorandum.

Comment 15: Whether the Department Should Continue to Differentiate Between Air and Water Cooled Rebar

Icdas' Case Brief

- The petitioner "has proposed that the Department consider martensitic crystallization resulting from water cooling as a surface quality characteristic that is significantly different from that which is achieved through air cooling."[147]
- The Department declined to grant this distinction in the previous AD investigation of rebar from Turkey.[148]
- "Physical differences between air and water cooled rebar, if any, are not significant or meaningful enough to establish different product types."[149]
- The petitioner's argument ignores the fact that martensitic crystallization is neither a surface quality nor a finish characteristic, it is a "micro/inner structure form that imparts characteristics like grade and yield strength. The essential physical characteristic that relates to martensitic crystallization is yield strength…Martensitic crystallization has no effect on the surface of the product."[150]
- The ASTM standards submitted on November 16, 2016, do not differentiate between the air and water cooling processes, as long as the mechanical requirements are satisfied.[151]

Petitioner's Rebuttal Brief

- This issues was already briefed and resolved at the model match stage, and should not be readdressed here.
- The petitioner argued during the model match stage that "…rebar with a martensitic surface will have a 'harder' outer shell imparting additional strength, while the cross sectional strength of a non-martensitic-finished rebar is more uniform. As a result, the non-martensitic rebar will have to include higher alloy levels to achieve the desired strength, adding to its cost."[152]
- On remand, the Department correctly accounted for the alloy cost differences in the first investigation of rebar from Turkey.
- In this proceeding, the Department appropriately developed a CONNUM rubric that included a field for surface quality (martensitic versus non-martensitic).
- "Icdas' arguments, which simply repackage its prior model match comments, provide the agency with no reason to revisit this fundamental issue so late in the proceeding."[153]
- The Department should continue to use the model match criteria decided upon at the outset of the investigation.

[147] *See* Icdas' Case Brief at 13.
[148] *See Rebar 2013* and accompanying IDM at 21.
[149] *See* Icdas' Case Brief at 13.
[150] *Id*. at 14.
[151] *Id*. at 14 (referencing Icdas' November 16, 2016 Rebuttal Comments on Product Characteristics Letter at Exhibit 2).
[152] *See* Petitioner's Rebuttal Brief at 42 (citing Petitioner's November 21, 2016 Product Characteristics Letter at 4).
[153] *Id*. at 43.

Department's Position:

For the *Final Determination*, we have continued to utilize the model match criteria set forth at the outset of this investigation.

As an initial matter, we note that Icdas' comments concerning the Department's model matching criteria were made after the period set aside for model match and product characteristic comments and rebuttal comments. Icdas' proposals, if adopted, would amount to allowing that company to utilize a methodology different from that used for the respondents in the other concurrent AD rebar investigations (which would be contrary to the Department's normal practice).

In making its fair value comparisons for margin calculation purposes, the Department compares U.S. sales to sales of a "foreign like product." Section 771(16) of the Act defines "foreign like product" in descending order of preference as follows:

> (A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.
>
> (B) Merchandise (i) produced in the same country and by the same person as the subject merchandise, (ii) like that merchandise in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the subject merchandise.
>
> (C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation, ii) like that merchandise in the purposes for which used, and (iii) which the administering authority determines may reasonably be compared with that merchandise.62

Pursuant to the statutory language, the Department must first look for identical merchandise with which to match the United States model to the comparable home-market or third country market model.[154] The courts have recognized that the statute is silent with respect to the methodology that the Department must use to match a U.S. product with a suitable home-market product, and that this silence is an indication Congress afforded the Department considerable discretion in this regard.[155] The courts have held that it is the Department's responsibility to establish the model matching methodology, given reasonable minds may differ over what might be a complex task, and that interested parties might be expected to support an alternative advantageous to itself.[156]

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[154] *See Fagersta Stainless AB v. United States*, 577 F. Supp 2d. 1270, 1276 (CIT 2008) (citing *Viraj Forgings, Ltd. v. United States*, 283 F. Supp. 2d. 1335, 1340 (CIT 2003) (citing *Torrington v. U.S.*, 146 F. Supp. 2d 845, 847 (CIT 2001)).

[155] *See JTEKT Corp. v. United States*, 717 F. Supp. 2d. 1322, 1329 (CIT 2010) (citing *SKF USA, Inc. v. United States*, 537 F.3d 1372, 1379 (Fed. Cir. 2008) (quoting *Koyo Seiko Co. v. United States*, 66 F.3d 1204, 1209 (CIT 2001))).

[156] *See United Engineering & Forging v. United States*, 779 F. Supp 1375, 1381 (CIT 1991) (quoting *Timken Company v. United* States, 630 F. Supp. 1327, 1338 (CIT 1986)).

The courts also have acknowledged that the Department constructs a methodology for identifying the "foreign like product" by devising a hierarchy of commercially significant characteristics suitable to each class or kind of merchandise, and then utilizes these characteristics to compare United States sales to sales in the comparison market.[157] The Department has a long-standing practice of developing product characteristics and a model match methodology in the early stages of each proceeding, and in consultation with the interested parties.[158] The courts have upheld the Department's discretion to reject model matching proposals from interested parties after the Department has requested that respondents submit data conforming to model match criteria the Department has established.[159] Icdas has provided no legal or Department precedent for allowing a single respondent to alter the physical model matching characteristics for itself after those characteristics were established for all respondents at the outset of current investigations, nor is the Department aware of any such precedents.

The petitioner claims differences in costs due to higher alloy levels, but costs may vary due to other differences in the production processes (*e.g.*, different methods of cooling, etc.). More importantly, differences in costs, in and of themselves, are not a basis for identifying product characteristics to distinguish products for the Department's analyses.[160] However, the record indicates that differences in physical characteristics exist between products with the martensitic and lower alloy content, versus those without martensitic and with higher alloy content. Water quenching may achieve the higher strength without the use of much alloys, and those lower levels of alloys in turn can contribute to higher weldability, ductility, and bendability.[161] Furthermore, Habas is not objecting to the Department's preliminary model match criteria.

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[157] *See e.g. Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1275-76 (CIT 2008); *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1379 (Fed. Cir. 2008).

[158] *See e.g. Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying Issues and Decision Memorandum at Issue 1; *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 1; *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 66 FR 14889 (March 14, 2001) and accompanying Issues and Decision Memorandum at Comment 9; *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy*, 65 FR 81830 (December 27, 2000) and accompanying Issues and Decision Memorandum at Comment 9A; and *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 65 FR 13943 (March 15, 2000) and accompanying Issues and Decision Memorandum at Comment 12.

[159] *See Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1330 (CIT 2005) (citing *JTEKT Corp. V. United States*, 37 F. Supp. 3d 1326, 1336 (CIT 2014) ("The court has upheld Commerce's decision not to revise model matching criteria when the request was made 'at a time that did not allow Commerce to distribute to the various respondents initial questionnaires that would solicit the necessary information to adopt' the model-matching criteria changes," and concluding the "arguments were thus untimely and Commerce's decision not to revise the model matching method was reasonable.")).

[160] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16366 (April, 4, 2017) and accompanying Issues and Decision Memorandum at Comment 1.

[161] *See* ITC Report, "Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey," USITC Investigation Nos. 701-TA-564 and 731-TA-1338-1340 (Preliminary, November 2016), at I-12 footnote 46, and I-14.

Therefore, the Department has not made any changes to the model match criteria for this *Final Determination*. Interested parties submitted comments on model match characteristics after initiation. The Department included a model match field for martensitic crystallization in the original questionnaire.

Comment 16: Whether the Department Should Reconsider its Decision to Refuse to Accept Icdas' Timely and Properly Submitted Minor Corrections to Previously Submitted Questionnaire Responses

Icdas' Case Brief

- The Department refused to accept minor corrections to Icdas' response to the supplemental sections B-C and the second supplemental section D questionnaire, "on the grounds that the corrections constituted new information that was submitted after the deadline set by the Department for submission of new factual information had passed."[162]
- Icdas' concerns relate to the implications for the integrity of the process.
- "The rejected information was not new data; it constituted merely of corrections to data that was timely submitted and already accepted into the record."[163]
- "The Department's refusal to accept the corrections falls into a pattern of practice established in this case of making extraordinary demands on Respondents to provide massive amounts of complex data, in some cases data not retained in the ordinary course of business, and then not allowing them a reasonable amount of time to comply with those demands."[164]
- Icdas informed the Department on multiple occasions that it could not guarantee the complete accuracy of the information it was submitting on such short notice.[165]
- "…the Department's refusal, thirteen days after they were submitted, to accept the minor corrections presented within 48 hours after the original submissions to be corrected were filed is not only ironic, it is neither reasonable nor fair."[166]
- "The Department is also required to determine margins as accurately as possible, in a manner that is fair and equitable to the parties."[167]
- The CAFC has explained that "'the antidumping laws are remedial, not punitive, and the affected domestic industry is not entitled to a remedy that exceeds the difference between the foreign market value and the domestic price.'[168] 'Accordingly Commerce is obliged

[162] *See* Icdas' Case Brief at 15; *see also* Department Letter re: Errata in Icdas' February 13, 2017 SQR, dated February 28, 2017 (Department's Rejection of February 28, 2017).
[163] *See* Icdas' Case Brief at 16.
[164] *Id*.
[165] *See e.g.*, Cover Letters for Icdas' February 13, 2017 SQR; Icdas' January 17, 2017 Extension Request; Icdas' January 19, 2017 letter; Cover Letter of Icdas' February 9, 2017 1st Supplemental Questionnaire Response.
[166] *See* Icdas' Case Brief at 16.
[167] *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) (*Yangzhou Bestpak*); *see also Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc*); *see also Baoding Mantong Fine Chemistry Co. v. United States*, 113 F.3d 1332, 1338 (CIT 2015) (*Baoding Mantong*).
[168] *See* Icdas' Case Brief at 16 (citing *Fischer S.A. Comercio, Industria & Agricultura v. United States*, 471 F.App'x 892, 895 (Fed. Cir. 2012) (*Fischer S.A.*) (further citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208

to correct any errors in its calculation during the preliminary results stage to avoid the imposition of unjustified duties.'"[169]

Petitioner's Rebuttal Brief

- The Department correctly rejected Icdas' February 15, 2017, untimely filed new factual information.
- "There is no merit to Icdas' argument that the information submitted on February 15, 2017, was not new factual information. Icdas admits that it did not submit this information in its…response to the Department's supplemental sections B-C and second supplemental section D questionnaire."[170]
- Therefore, it is clear that the information at issue should be considered new factual information.
- "Icdas never requested that the Department treat this information as a minor correction at verification, despite being given an explicit opportunity to do so."[171]
- Icdas' argument that it was not given sufficient time to comply with the Department's request for information is also not persuasive. Icdas is "an experienced respondent that has participated in many previous antidumping proceedings and, consequently, has extensive experience preparing and submitting questionnaire responses."[172]
- Icdas is aware that this type of information is the type that could be necessary to respond to the Department.
- "Notwithstanding the narrow statutory timeline in an investigation (including the fact that the preliminary determination was only days away), the Department generously granted Icdas an extension to submit its section B-D supplemental questionnaire."[173]
- The CAFC has recognized that the Department "'has broad discretion to establish its own rules governing administrative procedures, including the establishment and enforcement of time limits.'"[174]

Department's Position:

The Department will not reconsider its rejection of Icdas' February 15, 2017, submission concerning its supplemental sections B-D questionnaire response.

The Department agrees with Icdas' argument that the Department is "obliged to correct any errors in its calculation during the preliminary results stage."[175] However, it was Icdas, rather than the Department, which made the errors at issue. Section 351.301(c)(1) of the Department's

(Fed. Cir. 1995) (*NTN Bearing*))).
[169] *Id*. (referencing *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1353-1354 (Fed. Cir. 2006) (*Timken*)).
[170] *See* Petitioner's Rebuttal Brief at 45; *see also* Icdas' Case Brief at 15-16.
[171] *See* Petitioner's Rebuttal Brief at 45.
[172] *Id*. at 45.
[173] *Id*. at 46.
[174] *Id*. at 46 (citing *Timken*, 434 F.3d at 1755); *see also Hyosung Corp. v. United States*, CIT 10-00114, Slip Op. 11-34 (CIT 2011) (*Hyosung Corp*).
[175] *See* Icdas' Case Brief at 16 (citing *Timken*, 434 F.3d at 1353-1354).

regulations states that "the Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses…or untimely filed questionnaire responses."[176] The supplemental questionnaire was issued on February 1, 2017, with an original due date of February 8, 2017.[177] Icdas requested a one-week extension of that deadline.[178] The Department granted Icdas an extension until February 13, 2017.[179] That length of the extension granted was only two days less than what Icdas requested, and established the supplemental questionnaire deadline as fifteen days prior to the preliminary determination signature date. Allowing Icdas to modify its questionnaire response would have effectively allowed Icdas to grant itself an extension of the deadline to submit the response. It would have also precluded the Department from analyzing the information thoroughly and denied other parties to the proceeding the opportunity to comment meaningfully before the preliminary determination was announced.

In addition, Icdas 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 factual information deadlines does not render a determination punitive. The Department's regulations establish on what basis information will be considered timely.[180] 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.'"[181] 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.[182] In this case, Icdas 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.[183] For all these reasons, there is no basis on which the Department should have accepted Icdas' untimely and unsolicited response.

[176] *See* 19 CFR 351.301(c)(1).
[177] *See* Department Letter, Supplemental Questionnaire for Icdas' Sections B, C, and D, dated February 1, 2017 (Icdas B-D SQ).
[178] *See* Icdas' February 2, 2017 Extension Request for Icdas B-D SQ.
[179] *See* Department Letter re: "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Time to Submit Response to Supplemental Sections B-D Questionnaire," dated February 7, 2017.
[180] *See* 19 U.S.C. 351.102(a)(21) & 351.301.
[181] *See Dongtai Peak Honey Industry Co. Ltd. v. United States*, 777 F.3d 1332, 1352 (CIT 2015) (*quoting PSC VSMPO-Avisma Corp. v. United States*, 668 F.3d 751, 760-61 (Fed. Cir. 2012)).
[182] *See* 19 CFR 351.302(c).
[183] *See* 19 CFR 351.302(c)(2) (defining extraordinary circumstances for purposes of an untimely filed extension request).

Comment 17: Whether the Department Should Change Icdas' Ending Period Date for U.S. Sales in the Margin Calculation

Petitioner's Case Brief

- "In defining the last day of the last month of U.S. sales in the preliminary margin calculation program, the Department inadvertently accounted for U.S. sales which" should not have been included.[184]
- This error can be corrected by modifying the last day of the end of the POI, which is June 30, 2016.

Icdas' did not submit rebuttal comments on this issue.

Department's Position:

The Department has modified the window period used in its margin calculations for the *Final Determination* to correctly capture only sales made within the POI.[185]

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

5/15/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[184] *See* Petitioner's Case Brief at 9.
[185] *See* Icdas' Final Calculation Memorandum.