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Investigation
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October 24, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination and
Negative Determination of Critical Circumstances in the Less
Than Fair Value Investigation of Carbon and Alloy Steel Wire
Rod from Turkey

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain carbon and alloy steel wire rod (wire rod) 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 733 of the Tariff Act of 1930, as amended (the Act). The Department also preliminarily determines that critical circumstances do not exist for the two mandatory respondents, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), or all-other exporters/producers of wire rod. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 28, 2017, the Department received an antidumping duty (AD) petition covering imports of wire rod from Turkey,¹ which was filed in proper form on behalf of Charter Steel,

¹ See the Petitions for the Imposition of Antidumping Duties on Imports of Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom; and Countervailing Duties on Imports from Turkey and Italy, dated March 28, 2017 (the Petition).

GerdaU Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (Nucor) (collectively, the petitioners). The Department initiated this investigation on April 17, 2017.²

In the *Initiation Notice*, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on April 20, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On May 1, 2017, we received comments from Duferco Steel Inc. (Duferco), Icdas, and Nucor.⁵ The Department determined there were a large number of exporters/producers and it would not be practicable to individually examine each known exporter/producer and, thus, on May 23, 2017, limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume, Habas and Icdas.⁶ The Department issued its AD questionnaire to Habas and Icdas on May 23, 2017.⁷ Between June and October 2017, Habas and Icdas timely responded to the Department's original and supplemental questionnaires.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of wire rod to be reported in response to the Department's AD questionnaire.⁸ The Department received a number of timely scope comments on the record of this investigation, as well as on the records of the companion wire rod investigations involving Belarus, Italy, Korea, Spain, South Africa, Turkey, Ukraine, and the United Arab Emirates.⁹ On May 10, 2017, the petitioners and various other interested parties in this and/or the companion AD investigations submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On May 15, 2017, the petitioners and various other interested parties filed rebuttal comments. Based on the comments received, the Department issued a letter

² See *Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair Value Investigations*, 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

³ See *Initiation Notice*, 82 FR at 19211, 19212.

⁴ See Memorandum, "U.S. Customs Data for Respondent Selection," dated April 20, 2017.

⁵ See Letter to the Secretary from Duferco, re: Duferco Steel Inc. Comments on CBP Data, dated May 1, 2017; Letter to the Secretary from Icdas, re: Icdas Comments on CBP Import Transaction Data, dated May 1, 2017; Letter to the Secretary from Nucor, re: Respondent Selection Comments, dated May 1, 2017; see also Letter to the Secretary from Duferco, re: Duferco Steel Inc.'s Entry of Appearance and Application for Administrative Protective Order, dated April 27, 2017.

⁶ See Memorandum, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey: Respondent Selection," dated May 23, 2017.

⁷ See Department Letter re: Antidumping Questionnaire, dated May 23, 2017 (Initial AD Questionnaire).

⁸ See *Initiation Notice*, 82 FR at 19208; see also Memorandum, "Request for Comments – Physical Characteristics," dated April 27, 2017.

⁹ For further discussion of these comments, see Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determination," dated August 7, 2017 (Preliminary Scope Memorandum).

to interested parties which contained the product characteristics for this and the companion AD investigations.¹⁰

On May 12, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from Turkey.¹¹

On July 6, 2017, one of the petitioners (*i.e.* Nucor) filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.¹² In this same month, the Department requested shipment data from Icdas and Habas with respect to the critical circumstances allegation.¹³ Icdas and Habas responded to the Department's request for shipment data from July through September 2017.¹⁴

On August 21, 2017, and pursuant to section 733(c)(1)(B) of the Act, and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination until no later than October 24, 2017.¹⁵ On September 14 and 28, 2017, respectively, pursuant to 19 CFR 351.210(e), Icdas and Habas requested that the Department postpone the final determination and that provisional measures be extended from four months to a period not to exceed six months.¹⁶

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

¹⁰ See Department Letter re: Product Characteristics for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the United Kingdom, dated May 18, 2017.

¹¹ See *Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom: Determinations*, 82 FR 22846 (May 18, 2017) (ITC Preliminary Affirmative Injury Determination).

¹² See Letter to the Secretary of Commerce from Nucor, entitled, "Critical Circumstances Allegations," dated July 6, 2017 (Critical Circumstances Allegation).

¹³ See Department Letter re: Less-Than-Fair-Value Investigation on Carbon and Alloy Steel Wire Rod from Turkey: Request for Monthly Quantity and Value Shipment, dated July 17, 2017.

¹⁴ See Letter to the Secretary from Icdas, re: Response of Icdas to the Department's Request for Quantity & Value Shipment Data, dated July 19, 2017; Letter to the Secretary from Habas, re: Habas Shipment Data, dated July 22, 2017; Letter to the Secretary from Habas, re: Habas Shipment Data, Dated July 31, 2017; Letter to the Secretary from Icdas, re: Response of Icdas to the Department's Request for Quantity & Value Shipment Data, dated July 31, 2017; Letter to the Secretary from Icdas, re: Response of Icdas to the Department's Request for Quantity & Value Shipment Data, dated August 11, 2017; Letter to the Secretary from Habas, re: Habas Shipment Data, dated August 14, 2017; Letter to the Secretary from Icdas, re: Response of Icdas to the Department's Request for Quantity & Value Shipment Data, dated September 15, 2017; Letter to the Secretary from Icdas, re: Response of Icdas to the Department's Request for Quantity & Value Shipment Data, dated October 11, 2017; Letter to the Secretary from Habas, re: Habas Shipment Data, dated October 15, 2017.

¹⁵ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 39564 (August 21, 2017); See also Letter to the Secretary from Nucor Corporation (Nucor), re: Request to Postpone Preliminary Determination, dated August 11, 2017.

¹⁶ See Letter to the Secretary from Icdas, re: Extend Final Determination, dated September 14, 2017; Letter to the Secretary from Habas, re: Request for Extension of Final Determination, dated September 28, 2017.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March, 2017.¹⁷

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,¹⁸ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.¹⁹ Certain interested parties from the companion wire rod investigations commented on the scope of the wire rod investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.²⁰ We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.²¹ In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties, and since the issuance of the Preliminary Scope Decision Memorandum, certain parties submitted scope case briefs or scope rebuttal briefs.²² We will issue a final scope decision on the records of the wire rod investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

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

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁹ See *Initiation Notice*, 82 FR at 19207-08.

²⁰ For further discussion of these comments, *see* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 7, 2017 (Preliminary Scope Decision Memorandum).

²¹ *Id.*

²² See Letter from POSCO dated September 6, 2017, entitled "Scope Issues Case Brief," Letter from British Steel Limited dated September 6, 2017, entitled "British Steel's Scope Case Brief," and Letter from petitioners dated September 13, 2017, entitled "Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO."

price (CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²³ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices

²³ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.²⁴

²⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently affirmed much of the Department's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

B) *Results of the Differential Pricing Analysis*

Habas

For Habas, based on the results of the differential pricing analysis, the Department preliminarily finds that 84.58 percent of the value of U.S. sales pass the Cohen's *d* test,²⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method versus when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Habas.

Icdas

For Icdas, based on the results of the differential pricing analysis, the Department preliminarily finds that 83.99 percent of the value of U.S. sales pass the Cohen's *d* test,²⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Icdas.

VI. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Department 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 Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material

²⁵ See Memorandum, "Analysis for Habas in the Preliminary Determination of the Less Than Fair Value Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey," dated concurrently with this memorandum (Habas Preliminary Analysis Memorandum) at 2-3.

²⁶ See Memorandum, "Analysis for Icdas in the Preliminary Determination of the Less Than Fair Value Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey," dated concurrently with this memorandum (Icdas Preliminary Analysis Memorandum) at 2-3.

terms of sale.²⁷ Finally, the Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.²⁸

Habas

Habas reported the earlier of the date of shipment or the date of invoice as the date of sale for all home market sales.²⁹ Habas reported the date of invoice as the date of sale for all U.S. sales.³⁰ For its U.S. sales, Habas reported that material terms of sale can change up to the point of invoice date.³¹ However, the documentation provided by Habas does not support the claim that the material terms of sale changed after the date of the initial contract.³² Accordingly, for purposes of this preliminary determination, we used the earlier of the shipment or invoice date for home market sales and the contract date as the date of sale for all U.S. sales.³³

Icdas

Icdas reported the date of invoice as the date of sale for all home market sales.³⁴ Icdas reported the contract/purchase order date as the date of sale for all U.S. sales.³⁵ For its U.S. sales, Icdas reported that material terms of sale can change up to the contract/purchase order date.³⁶ Accordingly, for purposes of this preliminary determination, we used the invoice date as the date of sale for all home market sales and the contract/purchase order date as the date of sale for all U.S. sales.

VII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Turkey during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical

²⁷ 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.”).

²⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²⁹ See Habas’ July 6, 2017 Section B Questionnaire Response (Habas SBQR) at 22; see also Habas’ June 20, 2017 Section A Questionnaire Response (Habas SAQR) at 16.

³⁰ See Habas’ July 6, 2017 Section C Questionnaire Response (Habas SCQR) at 20-21.

³¹ *Id.*; see also Habas’ August 10, 2017 Section C Supplemental Questionnaire Response (Habas SuppC) at 10.

³² See Habas SCQR at 20-21.

³³ See Habas Preliminary Analysis Memorandum at 2.

³⁴ See Icdas’ June 20, 2017 Section A Questionnaire Response (Icdas SAQR) at A-20.

³⁵ See Icdas’ SAQR at 19-20.

³⁶ See Icdas’ July 8, 2017 Section C Supplemental Questionnaire Response (Icdas SuppC) at C-5.

merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristic reported by respondents in the following order of importance: carbon content, type of metallic coating, chromium content, nickel content, vanadium content, combined maximum phosphorus and sulfur content, depth of decarburization, manganese content, molybdenum content, silicon content, sulfur content, nitrogen content, diameter range, and heat treatment. For Habas' and Icdas' sales of wire rod in the United States, the reported control number (CONNUM) identifies the characteristics of wire rod, as exported by Habas and Icdas.

VIII. EXPORT PRICE

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

For all sales made by Habas and Icdas, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

For Habas' EP sales, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department made adjustments for duty drawback, credit expenses, bank charges, indirect selling expenses incurred in the country of manufacture, and packing costs, as appropriate.³⁷ The Department also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight from plant/warehouse to port of exportation, foreign brokerage and handling, loading charges, independent survey, exporters association fee, and international freight.³⁸

For Icdas' EP sales, the Department calculated EP based on a packed price to the first unaffiliated purchaser in the United States. The Department made adjustments for duty drawback, credit expenses, indirect selling expenses incurred in the country of manufacture, and packing costs, as appropriate.³⁹ The Department also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign brokerage and handling, exportation fee, independent survey, international freight, and U.S. brokerage and handling.⁴⁰

³⁷ Habas Preliminary Analysis Memorandum at 5-7.

³⁸ See Habas SCQR at 25-52; Habas Supp C at 1-25.

³⁹ See Icdas SCQR at 27-55; Icdas SuppC at 1-15.

⁴⁰ *Id.*; Icdas SCQR at 27-55.

Duty Drawback

Section 772(c)(1)(B) of the Act states that EP shall be increased by “the amount of any import duties imposed by the country of exportation...which have not been collected, by reasons of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, the Department traditionally uses (and the United States Court of International Trade (CIT) sustained)⁴¹ the following two-prong test:⁴² first, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.⁴³

In prior investigations the Department has found that Turkish companies that meet the requirements under Turkey’s Inward Processing Regime (IPR), which issues Inward Processing Certificates (IPCs), have satisfied the statute and two-prong test for duty drawback adjustments.⁴⁴ In their questionnaire responses, Habas and Icdas each reported that, when they opened the IPCs with the Government of Turkey (GOT), they documented: 1) projected quantities of imports; and 2) projected quantities of exports of wire rod based on an approved production yield/loss ratios also documented on the IPC.⁴⁵ The provided yield/loss ratios that have been approved by the GOT confirm that the quantity of imported raw materials account for the duty drawback or exemption granted. Moreover, consistent with practice, the Department is considering only IPCs that the GOT has closed for purposes of calculating a duty drawback adjustment.⁴⁶

Since the respondents have satisfied the criteria described above, we have granted a duty drawback adjustment to both companies consistent with our practice.⁴⁷ Under this methodology,

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

⁴² See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006), citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d. 1271, 1287 (CIT 2006); *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d. 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d. 1087, 1093 (CIT 2001); *Far East Machinery Co. Ltd. v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Corp. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

⁴³ See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 7; and *Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

⁴⁴ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁵ See Icdas SCQR at 39-41 and Exhibits 13-18; Icdas SuppC at 11-16 and Exhibits 9-13; Habas SCQR at 36-39 and Exhibits 13-19; Habas SuppC at 20-22.

⁴⁶ See Habas Preliminary Analysis Memorandum; Icdas Preliminary Analysis Memorandum; see also *Light-Walled Rectangular Pipe and Tube: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 47477 (October 12, 2017) (LWRPT) and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

⁴⁷ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than*

the Department will make an upward adjustment to EP 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.⁴⁸ This ensures that the amount added to both sides of the comparison of EP with NV is equal, *i.e.*, duty neutral meeting the purpose of the adjustment as affirmed in *Saha Thai*.⁴⁹ 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.

IX. NORMAL VALUE

A) *Home Market Viability*

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

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

B) *Affiliated-Party Transactions and Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer (*i.e.*, sales were made at arm's-length prices).⁵⁰ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considers them to be outside the ordinary

Fair Value, 82 FR 23192 (May 22, 2017), and accompanying Issues and Decision Memorandum at Comment 1; LWRPT IDM at Comment 5.

⁴⁸ See Habas Preliminary Analysis Memorandum; Icdas Preliminary Analysis Memorandum.

⁴⁹ 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 exemption 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.

⁵⁰ See 19 CFR 351.403(c).

course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, “the Department may calculate normal value based on sales to affiliates if...satisfied that the transactions were made at arm’s length.”⁵¹

Icdas reported sales of wire rod in the home market to affiliated parties, as defined in section 771(33) of the Act.⁵² Icdas explained that these sales in the home market were made through affiliated resellers.⁵³

Consequently, we tested Icdas’ sales to affiliates to ensure that they were made at arm’s-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While the Department’s questionnaire specifically requests information pertaining to certain adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sale at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm’s-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department’s practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm’s length. Sales to affiliated customers in the home market that were not made at arm’s-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁵⁴

C) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁶ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

⁵¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff’d*, 306 F. Supp. 2d 1291 (CIT 2004).

⁵² See Habas SAQR at 6.

⁵³ See Icdas SBQR at 6-7.

⁵⁴ See section 771(15) of the Act and 19 CFR 351.102(b).

⁵⁵ See 19 CFR 351.412(c)(2).

⁵⁶ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁵⁷ we consider the starting prices before any adjustments.

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁵⁸

In this investigation, we obtained information from Habas and Icdas regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for their channel of distribution.⁵⁹ Our LOT findings are summarized below.

Habas

In the home market, Habas reported that it sells subject merchandise through a single channel of distribution to customers on an ex works basis.⁶⁰ Home market selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Habas performed inventory maintenance and warehousing for its home market sales, but did not perform sales and marketing, freight and delivery, or warranty and technical support services.⁶¹ Since we find that there were no significant differences in selling activities performed by Habas to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Habas.⁶²

With respect to the U.S. market, Habas sold merchandise through one channel of distribution, sales directly to unaffiliated U.S. distributors and end-users.⁶³ Habas reported that it performed the following selling functions: packing, freight and delivery, independent surveying, load port handling and brokerage, and deferred payment options. Accordingly, we determine that all sales in the U.S. market are at the same LOT.

⁵⁷ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

⁵⁸ *See, e.g., OJ from Brazil*, and accompanying IDM at Comment 7.

⁵⁹ *See* Habas SAQR at 10, 11 and Exhibit A-6; Icdas SAQR at A-13-A-14 and Exhibit A-7.

⁶⁰ *See* Habas SAQR at 12.

⁶¹ *Id.* at 13.

⁶² *Id.* at Exhibit A-6.

⁶³ *Id.* at 13.

We compared the U.S. LOT to the home market LOT, and found that the selling functions Habas performed for its U.S. and home market customers are similar for both markets except for some additional functions for its U.S. sales.⁶⁴ However, these differences are not significant enough to be considered at a different level of trade. Further, Habas reported no sales activities or services in all of the following categories for both home and U.S. market: sales forecasting, strategic/economic planning, personnel trainings/exchange, engineering services, advertising, sales promotions, distributor/dealer training, procurement/sourcing services, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, rebates, cash discounts, commission payments, warranty services, guarantees, after-sales services, repacking, marine insurance, post-sale warehousing, U.S. custom clearance, and U.S. custom duties and charges.⁶⁵ Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result no LOT adjustment under 19 CFR 351.412(e) is warranted.

Icdas

In the home market, Icdas reported that all of its sales were through two channels of distribution (*i.e.*, affiliated and unaffiliated).⁶⁶ Subject merchandise is directly shipped to customers from the manufacturing location or from steel centers (warehouses) of Icdas.⁶⁷ After examining the information on the record, there was no difference in either the sales process or its selling functions for sales made through either channel.⁶⁸

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Icdas performed inventory maintenance and warehousing, and freight and delivery services for its home market sales, but did not perform marketing, warranty, and technical support services. Because we find that there were no significant differences in selling activities performed by Icdas to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Icdas.⁶⁹

With respect to the U.S. market, Icdas made EP sales through one channel of distribution, sales directly to unaffiliated U.S. trading or distribution companies.⁷⁰ For its U.S. sales, Icdas reported that it performed the following selling functions: packing, freight and delivery, independent surveying, deferred payment options, U.S. customs clearance, and paying for U.S. customs duties and charges.⁷¹ Accordingly, we determine that all sales in the U.S. market are at the same LOT.

⁶⁴ *Id.* at Exhibit A-6.

⁶⁵ *Id.*

⁶⁶ *See* Icdas SAQR at 14-15.

⁶⁷ *Id.*

⁶⁸ *Id.* at Exhibit A-7.

⁶⁹ *Id.* at 15-16 and Exhibit A-7.

⁷⁰ *Id.* at A-14.

⁷¹ *Id.* at Exhibit A-7.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Icdas performed for its U.S. and home market customers are sufficiently comparable, with only minor differences. Icdas reported no sales activities or services in all of the following categories for both home and U.S. market: sales forecasting, strategic/economic planning, personnel trainings/exchange, engineering services, advertising, sales promotions, distributor/dealer training, procurement/sourcing services, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, rebates, cash discounts, commission payments, warranty services, guarantees, after-sales services, repacking, marine insurance, and post-sale warehousing.⁷² Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no adjustment under 19 CFR 351.412(e) is warranted.

D) Cost of Production (COP) Analysis

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) was signed, which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁷³ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁷⁴ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production (COP) information from respondent companies in all AD proceedings.⁷⁵ Accordingly, the Department requested this information from Habas and Icdas in this investigation. We examined their cost data and determined that our quarterly cost methodology is not warranted, and therefore, we applied our standard methodology of using annual costs based on the reported data. We preliminarily determined that the Habas and Icdas made sales in the home market during the POI that were below their respective cost of production (COP).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.⁷⁶

We relied on the COP data submitted by the respondents except as follows:

⁷² *Id.*

⁷³ See *Trade Preferences Extension Act of 2015*, Pub. L. No 114-27, 129 Stat. 362 (2015).

⁷⁴ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁷⁵ See *Applicability Notice*.

⁷⁶ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

Habas

1. We adjusted Habas' submitted total cost of manufacturing to exclude offsets claimed for profits earned on port services.
2. We revised Habas' duty drawback adjustment to include only closed IPCs.
3. We calculated one POI average billet cost regardless of the source (purchased versus self-produced) or claimed use.⁷⁷

Icdas

1. We revised Icdas' by-product offset to exclude by-products not related to the subject merchandise.
2. We revised Icdas' duty drawback adjustment to include only closed IPCs.⁷⁸

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

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

⁷⁷ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated concurrently with this memorandum. (Habas Prelim Cost Calc Memo).

⁷⁸ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated concurrently with this memorandum. (Icdas Prelim Cost Calc Memo).

We found that, for certain products, more than 20 percent of Habas' and Icdas' home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E) Calculation of NV Based on Comparison-Market Prices

Habas

We calculated NV based on ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight where appropriate under section 773 (a)(6)(B)(ii) of the Act.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses and other direct selling expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses and bank charges). We also recalculated Habas' home market credit expenses using an interest rate that conforms with commercial reality.⁷⁹

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, the Department also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and subject merchandise.⁸⁰

Icdas

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight where appropriate under section 773 (a)(6)(B)(ii) of the Act.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses and other direct selling expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses and bank charges).⁸¹

⁷⁹ See Habas Preliminary Analysis Memorandum; See also 19 CFR 351.411(b).

⁸⁰ See 19 CFR 351.411(b).

⁸¹ See Icdas Preliminary Analysis Memorandum.

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, the Department also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and subject merchandise.⁸²

F) Calculation of NV Based on Constructed Value

For Icdas, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign currency.

For comparisons to Icdas' EP sales, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

X. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On July 6, 2017, the petitioners, Nucor, alleged that critical circumstances exist with respect to imports of the subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).⁸³ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was

⁸² See 19 CFR 351.411(b).

⁸³ See Letter to the Secretary from Nucor, entitled, "Critical Circumstances Allegations," dated July 6, 2017 (Critical Circumstances Allegation).

imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports ‘massive.’” Under 19 CFR 351.206(i), the Department defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.⁸⁴ This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.⁸⁵

B) *Critical Circumstances Allegation*

The petitioners allege that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which could be as high as 37.67 percent on a “price-to-price” basis.⁸⁶ Thus, the petitioners assert that certain dumping margins alleged in the Petition, which were up to 37.67 percent, exceed the 25 percent threshold used by the Department to impute knowledge of dumping in EP transactions.⁸⁷ The petitioners further argue that importers of Turkish wire rod have been on notice that dumped imports are likely to cause injury since the ITC’s May 12, 2017, preliminary affirmative injury finding.⁸⁸

The petitioners argue that, regarding section 733(e)(1)(B), which examines whether there have been “massive imports of the subject merchandise over a relatively short period,” the Department should use the minimum three-month base and comparison periods for shipment data of a base period from January through March 2017 and a comparison period from April through June 2017, as provided under 19 CFR 351.206(i) when considering the date on which the petition was filed, March 28, 2017.⁸⁹ The petitioners allege that import statistics released by the ITC indicate that shipments of merchandise under consideration increased significantly in terms of volume (51.28 percent) between the base period and the comparison period, and as a result, exceeded the threshold for “massive” imports from Turkey of wire rod, as provided under 19 CFR 351.206(h) and (i).⁹⁰

⁸⁴ See 19 CFR 351.206(i).

⁸⁵ See 19 CFR 351.206(i).

⁸⁶ See Critical Circumstances Allegation at 6.

⁸⁷ *Id.* at 5.

⁸⁸ *Id.* citing ITC Preliminary Affirmative Injury Determination.

⁸⁹ *Id.* at 12.

⁹⁰ *Id.* at 13.

We received comments from Icdas rebutting the critical circumstances allegations of the petitioners.⁹¹ In its comments, Icdas argues that there is no evidence of the respondents' knowledge of material injury and sales of wire rod at less than fair value.⁹² Icdas further argues that there was not a massive increase in imports according to the shipment data required by the Department's regulations.⁹³ We did not receive rebuttal comments from Habas.

C) Analysis

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners' critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to the Department by the respondents selected for individual examination.⁹⁴

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.⁹⁵ The petitioners identify no such proceeding with respect to Turkish-origin wire rod, nor are we aware of an AD order in any country on wire rod from Turkey. Thus, we preliminarily find that there is not a history of injurious dumping of wire rod from Turkey and the criteria are not met.

We must next determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV, and that there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, the Department normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.⁹⁶ For purposes of this investigation, the Department preliminarily determines that the knowledge standard is not met because preliminary margins are less than 25 percent for EP sales.⁹⁷ Accordingly, for Habas and Icdas, because the statutory criteria of section 733(e)(1)(A) of the Act has not been satisfied, we did not examine whether imports from Habas and Icdas were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act. Similarly, for the companies subject to the "all others" rate, the

⁹¹ See Letter to the Secretary from Icdas, entitled, "Response of Icdas to Petitioners' Allegations of Critical Circumstances Allegations," dated July 17, 2017.

⁹² *Id.* at 4.

⁹³ *Id.* at 5.

⁹⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).

⁹⁵ *Id.*

⁹⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

⁹⁷ See "Preliminary Determination" section of the accompanying *Federal Register* notice.

Department preliminarily determines that the knowledge standard is not met because the preliminary all-others rate is less than 25 percent. Thus, we are also preliminarily determining that there are no critical circumstances for the companies subject to the “all others” rate.

We will make a final determination concerning critical circumstances for wire rod from Turkey when we issue our final determination of sales at LTFV for this investigation.

XI. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

For this preliminary determination, the Department has made adjustments for countervailable export subsidies for the AD cash deposit rates of Habas, Icdas, and the all-other, pursuant to section 772(c)(1)(C) of the Act. We have offset the AD cash deposit rates for the determined export subsidy rates, which is reflected in the accompanying Federal Register notice.

XII. CURRENCY CONVERSION

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

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

10/24/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
Performing the non-exclusive functions and duties of
Assistant Secretary for Enforcement and Compliance