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

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Investigation
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DATE: March 19, 2018

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 Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

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

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I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel wire rod (wire rod) from Turkey. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), mandatory respondents in this investigation. We also continue to find that critical circumstances do not exist for the two mandatory respondents, Habas and Icdas, and all-other exporters/producers of wire rod. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General

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

Habas

Comment 2: Whether Habas' U.S. Date of Sale is Contract Date or Invoice Date

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Comment 3: Whether Habas' Zero-Interest Loans Reflect Commercial Reality
Comment 4: Whether Habas' Home Market Credit Expenses Should be Recalculated to Reflect the Period from Shipment to Payment
Comment 5: Whether to Recalculate Habas' Billet Cost to Account for Yield Loss
Comment 6: Whether Habas' Broken Billets Should Be Valued at Scrap Prices

Icdas

Comment 7: Whether Icdas' U.S. Date of Sale is Contract Date or Invoice Date
Comment 8: Whether the Application of Partial Adverse Facts Available (AFA) is Warranted for Icdas' Reporting of U.S. Sales
Comment 9: Whether Commerce Should Calculate a Domestic Inland Freight Adjustment for Icdas' U.S. Sales
Comment 10: Whether Commerce Should Disregard Icdas' Reported Cost of Inland Freight Charged by Third Party Providers in its Home Market Sales Database
Comment 11: Whether Commerce Should Include an Offset for Rental Income from Icdas Electrik in Calculating Icdas' G&A Rate
Comment 12: Whether Commerce Should Accept a Correction of a Clerical Error in the By-Product Adjustment Rate
Comment 13: Whether Commerce Should Grant Icdas' Request to Correct Manufacturer Identification Codes

II. Background

On October 31, 2017, the Department of Commerce (Commerce) published the *Preliminary Determination* of sales of wire rod from Turkey at LTFV.[1] The period of investigation (POI) is January 1, 2016, through December 31, 2016.

In September 2017, we received scope case briefs and scope rebuttal briefs. On November 20, 2017, we issued a final memorandum in response to these scope comments in which we did not change the scope of this investigation.[2]

In November 2017 and January 2018, we conducted verification of the sales and cost of production (COP) data reported by Habas and Icdas, in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act). In February 2018, we requested that Habas and Icdas submit revised sales databases; we received the databases in the same month.[3]

[1] *See Carbon and Alloy Steel Wire Rod from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 50377 (October 31, 2017) *(Preliminary Determination)* and accompanying Preliminary Decision Memorandum (PDM), "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," dated October 31, 2017.
[2] *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: Final Scope Memorandum," dated November 20, 2017 (Final Scope Memorandum).
[3] *See* Memorandum, "Minor Correction Database Request," dated February 14, 2018 (Habas Minor Correction

We invited parties to comment on the *Preliminary Determination*. In November 2017, we received requests for hearings from the petitioners,[4] Habas, and Icdas.[5] In February 2018, the petitioners, Habas, and Icdas filed case and rebuttal briefs.[6] On March 7, 2018, Commerce held a public hearing with the petitioner, Habas, and Icdas.[7]

Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for Habas and Icdas from those calculated in the *Preliminary Determination*.

Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. As the new deadline fell on a non-business day, in accordance with Commerce's practice, the deadline became the next business day. The revised deadline for the final determination of this investigation is March 19, 2018.[8]

III. Critical Circumstances

In the *Preliminary Determination*, Commerce found that critical circumstances did not exist for Habas, Icdas, and for all other Turkish producers or exporters based on trade data submitted through June 2017.[9] No party raised the issue of critical circumstances for this final determination; however, because critical circumstances were alleged in this case and because we made a preliminary determination, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination on the issue of critical circumstances. In order to determine whether there is a history of dumping and material injury pursuant to section 735(a)(3)(A)(i) of the Act, Commerce generally considers current or previous

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Request); Memorandum, "Minor Correction Database Request," dated February 14, 2018 (Icdas Minor Correction Request).

[4] The petitioners in this investigation are Charter Steel, Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation.

[5] *See* Petitioners' Letter, "Request for Hearing," dated November 30, 2017; Habas' Letter, "Hearing Request," dated November 21, 2017; and Icdas' Letter, "Icdas Hearing Request," dated November 22, 2017.

[6] *See* Petitioners' Case Brief, "Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Case Brief of Nucor Corporation," dated February 21, 2018 (Petitioners' Case Brief); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. Case Brief, "Carbon and Alloy Steel Wire Rod from Turkey; Habas – case brief," dated February 21, 2018 (Habas Case Brief); Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. Case Brief, "Carbon and Alloy Steel Wire Rod from the Republic of Turkey; Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Case Brief," dated February 21, 2018 (Icdas Case Brief); Petitioners' Rebuttal Brief, "Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Rebuttal Brief of Nucor Corporation," dated February 26, 2018 (Petitioners' Rebuttal Brief); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. Rebuttal Brief (rejected), "Carbon and Alloy Steel Wire Rod from Turkey; Habas – rebuttal brief," dated February 26, 2018; Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Rebuttal Case Brief," dated February 21, 2018 (Icdas Rebuttal Brief). Commerce rejected and retained Habas' rebuttal case brief on February 28, 2018, *see* Commerce Letter re: Rejection of Habas' Rebuttal Brief, dated February 28, 2018.

[7] *See* Commerce Letter re: Hearing Schedule, dated March 1, 2018.

[8] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[9] *See Preliminary Determination*, 82 FR at 50377; *see also* PDM at 18-21.

antidumping (AD) orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise. 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 continue to find that there is not a history of injurious dumping of wire rod from Turkey and the criteria are not met pursuant to section 735(a)(3)(A)(i) of the Act. Because the criteria of a history of dumping has not been satisfied pursuant to section 735(a)(3)(A)(i) of the Act, Commerce examined the additional criteria enumerated under section 735(a)(3)(A)(ii) of the Act.

Commerce considered 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 imputed knowledge exists, Commerce 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.[10] For purposes of this investigation, Commerce determines that the knowledge standard is not met because margins are less than 25 percent for EP sales.[11] Similarly, for the companies subject to the "all others" rate, Commerce continues to find that the knowledge standard is not met because the all-others rate is less than 25 percent. Furthermore, for Habas, Icdas and companies subject to the all-others rate, because the statutory criteria of section 735(a)(3)(A) of the Act have not been satisfied, we did not examine whether imports from Habas, Icdas, and companies subject to the all-others rate were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act. Based on the above analysis, we determine that there are no critical circumstances for Habas, Icdas, or the companies subject to the "all others" rate.

IV. Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030,

[10] *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).
[11] *See* "Final Determination" section of the accompanying *Federal Register* notice.

7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

V. Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, Commerce did not modify the language of the scope. In September 2017, we received scope case and rebuttal briefs.[12] On November 20, 2017 we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.[13]

VI. Margin Calculations

Habas

We calculated export price (EP) and normal value (NV) for Habas using the same methodology as stated in the *Preliminary Determination*,[14] except as follows:[15]

1. We revised Habas' margin calculations to take into account minor corrections found at the cost and sales verifications.[16]
2. We revised Habas' margin calculations to use invoice date as the company's date of sale for U.S. sales. *See* Comment 2.

[12] *See* POSCO Case Brief, "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: Scope Issues Case Brief," dated September 6, 2017; British Steel Limited Case Brief, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: British Steel's Scope Case Brief," dated September 6, 2017; Petitioners' Rebuttal Brief, "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 – Rebuttal Brief in Response to the Scope Case Briefs of British Steel and POSCO," dated September 13, 2017.

[13] *See* Final Scope Memorandum.

[14] *See Preliminary Determination* PDM at 9-17.

[15] *See* Memorandum, "Final Determination Calculations for Habas Sinai Ve Tibbi Gazlar Istih Endustrisi A.S.," dated March 19, 2018 (Habas Final Sales Calculation Memorandum), and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated March 19, 2018 (Habas Final Cost Calculation Memorandum); *see also* Memorandum, "Antidumping Duty Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey: Verification of Habas Sinai Ve Tibbi Gazlar Istih," dated February 14, 2018 (Habas Sales Verification Report); Memorandum, "Verification of Habas Sinai Ve Tibbi Gazlar Istih, in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey," dated February 12, 2018 (Habas Cost Verification Report).

[16] *See* Habas Sales Verification Report at Exhibit 1 and Habas Letter, "Habas: sales verification – minor error," dated January 26, 2018; *see also* Habas Final Sales Calculation Memorandum; and Habas Final Cost Calculation Memorandum.

Icdas

We calculated export price (EP) and normal value (NV) for Icdas using the same methodology as stated in the *Preliminary Determination*,[17] except as follows:[18]

1. We revised Icdas' margin calculations to take into account minor corrections found at the cost and sales verifications. *See* Comment 13.
2. We corrected an error related to the by-product adjustment rate. *See* Comment 12.
3. We excluded rental income as an offset to the reported general and administrative expenses, as well as the related expenses, which were specifically identified. *See* Comment 11.

VII. Discussion of the Issues

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

Habas' Comments

- Commerce's use of the cost of manufacturing (COM) denominator rather than an export-sales denominator to calculate the adjustment to U.S. price is unlawful because the calculation does not adjust fully for the duties drawn back on U.S. exports.[19] The law requires Commerce to base the drawback adjustment to U.S. price on the ratio of the total duties forgone divided by total exports.[20] Specifically, the denominator must consist of export sales and not total COM. Applying a cost-side adjustment to U.S. price unlawfully dilutes the adjustment.[21]
- The statutory adjustment is required to adjust for the full amount of duties rebated from exporting to the U.S. to redress the imbalance that would exist in the absence of such an adjustment and to thereby ensure the accuracy of the margin calculations.[22] The statutory adjustment cannot be any smaller than the full sales-side adjustment amount.[23]

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[17] *See Preliminary Determination* PDM at 9-18.
[18] *See* Memorandum, "Final Determination Calculations for Icdas Celik Enerji Tersane ve Ulasim A.S.," dated March 19, 2018 (Icdas Final Sales Calculation Memorandum), and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Icdas Celik Enerji Tersane ve Ulasim A.S.," dated March 19, 2018 (Icdas Final Cost Calculation Memorandum); *see also* Memorandum, "Verification of Icdas Celik Enerji Tersane ve Ulasim A.S., in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey," dated February 14, 2018 (Icdas Sales Verification Report); Memorandum, "Verification of Icdas Celik Enerji Tersane ve Ulasim A.S., in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Wire Rod from Turkey," dated February 12, 2018 (Icdas Cost Verification Report).
[19] *See* Habas' Case Brief at 2-3 (citing *Saha Thai Steel Pipe (Public) Co. v United States*, 635 F.3d 1335, 1344 (Fed. Cir. 2011) (*Saha Thai*)).
[20] *Id.* at 2 (citing 19 U.S.C. § 16177a(c)(1)(B)).
[21] *Id.*
[22] *Id.* at 4 (citing *Saha Thai*, 635 F.3d at 1338).
[23] *Id.* at 7 (citing *Maverick Tube Corp. v. United States,* 861 F.3d 1269, 1273 (Fed. Circ 2017) *(Maverick)* and *Rebar Trade Action Coalition v. United States*, LEXIS 90, Slip Op. 18-88 (CIT 2016) (September 21, 2016) (*RTAC II)*).

- Commerce's use of the cost-side adjustment as the drawback adjustment to U.S. price has been rejected in the only line of cases in which it reached the Court of International Trade (CIT).[24] Admittedly, these cases were dismissed and thus have no precedential value.[25]
- Commerce's methodology of using cost-side duty drawback recognized from the onset that the sales-side adjustment is larger than the cost-side adjustment.[26] Specifically, the justification for cost-side duty drawback is that the per unit U.S. sales adjustment was larger than the per unit duty amount embedded in NV, and this created an imbalance in the comparison of the EP/CEP with NV.[27]
- Commerce's reliance on *Saha Thai* for the proposition that the amount of the drawback adjustment to U.S. price must equal the cost-side drawback adjustment impermissibly stretches the holdings of *Saha Thai.*[28] Specifically, *Saha Thai* does not support Commerce's reading that the adjustment to U.S. price should be capped at the amount of the cost-side ratio; rather, the cost-side ratio cannot exceed the amount of duties actually forgone in a period of review.[29]

Icdas' Comments

- Under 19 U.S.C § 1677a(c)(1)(B), Commerce is required to increase export price or constructed export price for any import duties rebated or not collected by the country of exportation on goods exported to the United States.[30] The duty drawback adjustment is designed to correct the imbalance between normal value and export price, and is by design an upward adjustment to U.S. price that results in a favorable reduction of the margin.[31]
- Commerce implements this requirement by applying a two-pronged test to demonstrate that the rebate and import duties are dependent upon each other or that the exemption is linked to the exportation of subject merchandise and that there are sufficient imports of the raw material to account for the duty drawback.[32]
- At the *Preliminary Determination*, Commerce determined that Icdas met the two-prong test, and thus should have granted a full duty drawback adjustment to U.S. price by dividing the amount of the duty uncollected by Icdas' total exports.[33] On the cost side, Icdas had fully accounted for the imputed exempt duty cost and thus no changes were necessary.[34]

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[24] *Id.* at 5 (citing *RTAC II* at 9).
[25] *Id*. at 7 (citing *Rebar Trade Action Coalition v. United States,* 2015 CIT Trade LEXIS 132, Slip Op. 15-130 (November 23, 2015) (CIT 2015) (*RTAC I)* and *Rebar Trade Action Coalition v. United States,* Court No. 14-00268, stipulation of dismissal, docket entry #135 (June 20, 2017)).
[26] *Id.* at 6.
[27] *Id.* (citing *Steel Concrete Reinforcing Bar from Turkey, Final Results Pursuant to Court Remand,* (April 7, 2016). (*RTAC Remand I*).
[28] *Id.* at 9.
[29] *Id.* (citing *Saha Thai,* 635 F.3d 1335 at 1344).
[30] *See* Icdas Case Brief at 2.
[31] *Id*. at 3.
[32] *Id*. at 4.
[33] *Id*. at 5.
[34] *Id*.

- Instead, Commerce set aside the actual duty exemptions earned by reason of export sales and replaced these amounts with an imputed duty cost derived by allocating the exempted import duties earned on exports over total production.[35] This denominator has nothing to do with the U.S. price adjustment in 19 U.S.C § 1677a(c)(1)(B). This methodology significantly reduces the duty drawback adjustment to U.S. price and allocates a part of the adjustment to home market sales which could never earn duty drawback under the statutory scheme.[36]
- Although *Saha Thai*, cited by Commerce, held that the statute requires deference to Commerce to impute an implied duty cost to account for domestic materials in the cost of production and constructed value, there is no ambiguity in 19 U.S.C § 1677a(c)(1)(B), which relates the drawback adjustment to exportation, not production.[37]
- Commerce's new methodology does not make the dumping calculations duty neutral, but instead obliterates the duty drawback adjustment intended by Congress.[38] This was recently rejected by the CIT in a separate remand involving Icdas, with the court ruling that allocating drawback overall production is not permitted under the statute.[39]

The Petitioners' Comments

- Commerce's current duty drawback methodology is consistent with the statute. Specifically, there is no statutory requirement that the duties only be allocated to U.S. sales of exports. Rather, the statute is silent on how the adjustment should be calculated, which allows Commerce to devise a reasonable method of calculating it.[40]
- The CIT's remand of *RTAC II* leaves open the possibility that Commerce could support its current methodology with adequate justification.[41] In this case, there is more than adequate justification to allocate import duties over total costs when there is a mix of domestic and imported inputs, as in the situation with Icdas and Habas.[42]
- Commerce's methodology achieves the purposes of the duty drawback adjustment by preventing margins from occurring by reason of Turkey's duty drawback scheme.[43] The respondents' suggested methodology would actually eliminate margins solely because the drawback adjustment would increase its U.S. price for rebated duties far more than NV had been increased by import duties.[44]
- The inputs used in the production of wire rod that the respondents sell to the U.S. market are subject to duty drawback *i.e.,* duty forgiveness through Turkey's Inward Processing Regime (IPR) program, but inputs used in wire rod sold in the home market are not susceptible to

[35] *Id*. at 6.
[36] *Id*.
[37] *Id*. at 7.
[38] *Id*. at 8.
[39] *Id* at 8-9.
[40] Petitioners' Case Brief at 2 (citing 19 U.S.C § 1677a(c)(1)(B)).
[41] *Id.* at 2-3 (citing *RTAC II* at 9).
[42] *Id.* at 3.
[43] *Id.* (citing *Allied Tube & Conduit Corp. v. United States*, 29 CIT 502, 506; 374 F. Supp. 2d 1257,1267 (CIT 2005) (*Allied Tube)*; *Saha Thai,* 635 F.3d 1335 at 1339; and *RTAC II* at 7).
[44] *Id.*

drawback.[45] Since there are no duties on home market sales, the full amount of the U.S. sales should be allocated over total production.[46]

- The Court recognized in enacting the sales-side adjustment of 19 U.S.C § 1677a(c)(1)(B) in *Saha Thai* that Congress implicitly assumed that NV was fully duty-inclusive while EP was not.[47] Allocating duties over total production does not nullify the sales-side adjustment, but rather it ensures that the sales-side adjustment functions as intended, by ensuring that both EP and NV are determined on a tax-neutral basis. Because neither Habas nor Icdas demonstrated that products sold domestically used dutied inputs, Commerce must neutralize the tax incidence arising from sourcing inputs both domestically and from abroad.[48]
- The courts have disagreed with Habas' claim that any imbalance in the AD calculations that might be occasioned by duty drawback programs is entirely resolved through 19 U.S.C § 1677a(c)(1)(B).[49] Specifically in *Saha Thai*, the Court found that adjusting NV to incorporate duties that would have been incurred on imported inputs in a duty drawback program was reasonable because the basis of the upward adjustment to export price was the statutory assumption that such duties were already included in NV.[50]

Commerce Position:

We disagree with the respondents that Commerce's duty drawback methodology is unlawful. In this final determination, we continue to grant adjustments for duty drawback to Habas and Icdas and, for the reasons explained below, apply the duty drawback methodology used in the *Preliminary Determination*.

A duty drawback adjustment to export price (EP) is based on the principle that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not."[51] In other words, home market sales prices and cost of production (COP) may be import duty "inclusive," while U.S. (and third-country) export sales prices are import duty "exclusive." Therefore, this inconsistency in whether prices or costs are import duty exclusive or inclusive will result in an imbalance in the comparison of EP with normal value (NV). Thus, it is incumbent on Commerce to ensure that the comparison of EP with NV is undertaken on a duty neutral basis.[52] Accordingly, when warranted, Commerce will make the duty drawback adjustment to EP in a manner that will render this comparison duty neutral. In the *Preliminary Determination*, as a result of the facts of this investigation, we made 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 allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.[53]

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[45] *Id.*
[46] *Id.* at 3-4.
[47] *Id.* at 4 (citing *Saha Thai* 635 F.3d at 1342-43).
[48] *Id.* at 5.
[49] *Id.*
[50] *Id.* at 6 (citing *Saha Thai* 635 F.3d at 1342-43; 19 U.S.C § 1677a(c)(1)(B)).
[51] *See Saha Thai* 635 F.3d at 1339.
[52] *Id.* at 1340-41.
[53] *See Preliminary Determination PDM* at 11.

In calculating the duty drawback adjustment for this final determination, we disagree with the respondents that the statute requires Commerce to accept the full adjustment claimed by the respondent. Applying a duty drawback adjustment based solely on respondent's claimed adjustment, without consideration of import duties included in respondent's cost of materials, may result in an imbalance in the comparison of EP with NV. For example, this inequity may be created because a producer sources a material input from both domestic and foreign suppliers, as do both Habas and Icdas.[54] In this situation, on the NV side of the comparison, the annual average cost for the input is the average cost of both the foreign sourced input, which incurs import duties, and the domestic sourced input on which no duties were imposed. As such, a full measure of the claimed duty drawback adjustment cannot be presumed to be present in COP or reflected in the NV of the foreign like product. On the EP side of the comparison, adjusting U.S. sales prices for the full measure of the import duty which has been refunded or not collected, as advocated by the respondents, assumes that the exported products were produced solely from foreign sourced, and thus import duty inclusive, inputs. This will result in a larger amount of refunded import duties, as well as a larger per-unit duty drawback adjustment to EP, than the per-unit duty cost, reflected in the product's COP, therefore creating an imbalance.

The amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration. That is, we assume for dumping purposes, that imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. The average import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost "reflected in NV,"[55] whether NV is based on home market prices or constructed value.

We believe this approach is reasonable, particularly when we consider other alternative scenarios. For example, one could consider that the imported raw material inputs were first consumed in the exported merchandise and the producer could seek to claim a duty drawback on the re-exportation of the finished products made from the imported inputs. Under this reasoning, the domestically purchased inputs that are not subject to duty would be consumed in the domestically sold merchandise. However, if the imported raw materials are assumed to be consumed in the exported merchandise and the domestically purchased raw materials were assumed to be consumed in the domestically sold merchandise, no duty drawback adjustment can be justified, as the NV would no longer reflect the import duty, as the U.S. Court of Appeals for the Federal Circuit's (CAFC) presumed in *Saha Thai*. The duty exclusive U.S. price would then be able to be matched directly with the duty-exclusive NV with no adjustment for duty drawback.

[54] *See* Habas' July 6, 2017 Section D Questionnaire Response at Exhibits D-12 and D-13; Icdas' July 6, 2017 Section D Questionnaire Response at Exhibit D-2.
[55] *See Saha Thai*, 635 F.3d at 1342.

On the other hand, if the imported inputs are assumed to be consumed first in the products sold domestically, creating an import duty-inclusive NV, there would still be no justification for a duty drawback claim because a precondition for duty drawback is the use of the input in producing, and subsequent re-exportation of the input as part of another good and the collection of the rebate. It would be inappropriate to claim a duty drawback for exporting a finished product made from the imported input while simultaneously claiming the same input was consumed in a domestically sold product.

The better analytical approach is premised on imported raw materials and domestically sourced raw materials consumed proportionally between the merchandise sold in the domestic market and exported. Under this approach, both the U.S. price and NV will be import duty inclusive on a proportional basis. Accordingly, in order to accurately determine an adjustment for "the amount of any import duties imposed…which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States,"[56] Commerce has made an upward adjustment to EP based on the per-unit amount of the import duty included in the COP for each CONNUM.

In *Saha Thai*, the CAFC stated:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.[57]

Thus, the CAFC recognized that the purpose of the duty drawback adjustment is to create a comparison of EP with NV that is duty-neutral such that the amount included in both sides of this comparison is equitable and the weighted-average dumping margin is not distorted because of the inclusion or exclusion of *import* duties. In accordance with *Saha Thai*, Commerce's approach in this investigation results in a duty-neutral comparison. The CAFC decision in *Saha Thai* affirmed Commerce's adjustment to costs to remedy a distortion caused by an increase to a duty-exclusive U.S. price compared to a duty-inclusive NV based on a COP that is duty-exclusive."[58] In *Saha Thai*, we made an adjustment for duty drawback to Saha Thai's reported U.S. sale prices, and also made a corresponding "imputed" adjustment to COP for exempted import duties which were never collected because Saha Thai's production and exportation of subject merchandise was located in a duty-free zone exempt from import duties.[59] The Court found that we reasonably made an imputed adjustment for import duties to COP, against Saha Thai's complaint that these costs were not recorded in its books and records, to

[56] *See* Section 772(c)(1)(B) of the Act.
[57] *See Saha Thai*, 635 F.3d at 1338.
[58] *Id*. at 1342.
[59] *Id*. at 1344.

preserve the equity of the comparison of NV with U.S. price.[60]

Moreover, we note that section 772(c)(1)(B) of the Act states that the EP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise." The statute does not specify a particular methodology for making a duty drawback adjustment. When the statute is silent, Commerce has the discretion to formulate a reasonable methodology to best ensure a duty neutral dumping margin.[61]

Furthermore, we disagree with the respondents' reliance on the *RTAC* line of cases. As Habas concedes, *RTAC I* was dismissed, and thus holds no precedential value.[62]

For these reasons, we continue to apply the duty drawback methodology used in the *Preliminary Determination.*

Comment 2: Whether Habas' U.S. Date of Sale is Contract Date or Invoice Date

Habas' Comments

- The date of sale is not defined in the statute.[63] However, the regulation governing date of sale provides that Commerce generally "will use date of invoice" as the date of sale, but may use a different date if Commerce "is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[64]
- In *Nakornthai*, the Court emphasized that the differences between a contract and its execution must be significant in order to eliminate the contract date as the date of sale.[65]
- The Court found in *Sahaviriya Steel* that a change in aggregate quantity shipped outside the contractual tolerance is considered significant enough to affect the date of sale, whereas changes in one-line item of a contract outside of the contractual tolerance is not considered significant.[66] Furthermore, changes in aggregate tonnage are significant when it involves more than one contract in a given period of investigation, and its significance is heightened when they involve multiple customers.[67]

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[60] *Id*.
[61] *See, e.g., Union Steel v. United States*, 823 F.Supp. 2d 1346, 1358 (CIT 2012) (holding that "because the statute is silent, it is within Commerce's discretion to adopt a new reasonable methodology…".
[62] *See* Habas Case Brief at 7 (citing *Rebar Trade Action Coalition v. United States,* 2015 CIT Trade LEXIS 132, Slip Op. 15-130 (November 23, 2015) (CIT 2015) (*RTAC I)* and *Rebar Trade Action Coalition v. United States,* Court No. 14-00268, stipulation of dismissal, docket entry #135 (June 20, 2017)).
[63] *See* Habas Case Brief at 13 (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103-316, (1994) at 819, reprinted in 1994 U.S.C.C.A.N 4040, 4153
[64] *Id.* (citing 19 CFR 351.401(i)).
[65] *Id.* at 14 (citing *Nakornthai Strip Mill Public Co. Ltd. v. United States,* 33 CIT 326, 336-38, 614 F. Supp. 2d 1312, 1333-34 (CIT 2009) (*Nakornthai*).
[66] *Id.* (citing *Sahaviriya Steel Indus. Public Co. Ltd. v. United States,* 34 CIT 709,725-29, 714 F. Supp. 2d 1263, 1278-81 (CIT 2010).
[67] *Id.*

- Since Habas shipped aggregate tonnages outside the total contractual tolerance, and/or added new items not ordered in the contract in 12% of its U.S. sales, such changes are significant and affect a significant number of sales to a significant share of U.S. customers.[68] Therefore, shipments are not governed by contracts in terms of quantity or product mix, and the date of sale must be the invoice date.[69]
- Applying contract date as the date of sale is inconsistent with Commerce's own practice. In *Turkey Welded Line Pipe,* minor variations from contractual terms required Commerce to use invoice date.[70] Therefore, larger variations of aggregate quantities and product mix in this case must require Commerce to use invoice date.[71]

The Petitioners' Comments

- Habas provided no explanation or justification for changing its reported U.S. date of sale from contract date in its Section A Response to invoice date in its Section C Response other than stating that "a detailed analysis establishes that is not always successful" in its efforts "to ship in strict accordance with contracts."[72] Habas provided documentation which it claims shows a change in the material terms of sale, but failed to demonstrate the linking elements in its submission. Since no new documentation was collected at verification on this issue, the lack of linking elements between the contracts and the invoices is still unresolved from the *Preliminary Determination*.[73]
- Habas ignores the lack of linking elements and asserts that the invoices show that its contracts have been revised. The existence of occasionally revised contracts, if true, does not give rise to a situation where Commerce deems the date of sale to be invoice or shipment date.[74] Commerce has found in *Thai Circular Welded Pipe & Tubes* that the date of sale should remain the date of the final contract, notwithstanding the fact that there were occasional revisions to the original contract price and/or quantity terms.[75]
- Even assuming evidence of a link between the documents, Habas provided only a few instances where it claims the material terms changed after the contract. The evidence provided, however, does not establish that the material terms were actually changed. [76]

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[68] *Id.*
[69] *Id.*
[70] *Id.* at 16 (citing *Welded Line Pipe from Turkey: Final Determination of Sales at LTFV,* 80 FR 61362 (October 13, 2015) (*Turkey Welded Line Pipe)* and accompanying Issues and Decision Memorandum (IDM) at 24.
[71] *Id.* at 16.
[72] *See* Petitioners' Case Brief at 7; *see also* Habas' July 6, 2017 Section C Questionnaire Response (SCQR) at 20-21 and Habas' August 10, 2017 Section C Supplemental Questionnaire Response (Supp C) at 10.
[73] *Id.* at 8.
[74] *Id.*
[75] *Id.* (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 72 FR 65272 (October 21, 2013) (*Thai Circular Welded Pipe & Tubes)* and accompanying IDM at comment 6.)
[76] *Id.* at 10.

Commerce Position:

We agree with Habas and used invoice date as the date of sale for the company's U.S. sales.

In its Section C response to the initial questionnaire and its U.S. database, Habas reported invoice date as the U.S. date of sale, explaining that "while Habas generally endeavors to ship in strict accordance with contracts, a detailed analysis establishes that it is not always successful in doing so…there are reported contracts for which the shipments may have been outside the contractual leeway."[77] Commerce next asked Habas that for any U.S. sales where the material terms of sale changed after the original contract, provide all documentation related to the original agreement and the change, including the original contract, any revised contract, and any correspondence related to the change.[78] Habas provided documentation for several transactions that it stated showed a change in the material terms of sale after contract date.[79]

Commerce preliminarily determined that the documentation did not support the claim that the material terms of sale changed after the date of the initial contract, because there was no linking element between the contracts and the invoices.[80] During verification, however, Commerce further examined documentation demonstrating the company's date of sale. Company officials stated that "Habas may occasionally ship a quantity more than the agreed upon tolerance" and "that the customer will not reject this shipment despite it being outside of the agreed upon tolerance.[81] Commerce officials observed multiple sales which showed changes to the quantity outside the tolerances established in the contract.[82] Moreover, Habas was able to demonstrate that the sales contracts and commercial invoices were linked by the order number, which was previously reported in the company's sales database.[83] Habas states that since it shipped aggregate tonnages outside the total contractual tolerance, and/or added new items not ordered in the contract in 12% of its U.S. sales, such changes are significant and affect a significant number of sales to a significant share of U.S. customers, and therefore shipments are not governed by contracts and the date of sale must be invoice date.[84]

Under 19 CFR 351.401(i), Commerce "normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business" to determine the date of sale. While the regulation continues that Commerce "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 terms of sale," Commerce has made clear that this provision is not intended to supplant the use of the invoice date as the "default" date of sale. In adopting the regulation, Commerce explained that:

[77] *See* SCQR at 21 and Exhibit C-2.
[78] *See* Supp C at 10 and Exhibit SC-7.
[79] *Id*.; 2nd Supp BC at 5.
[80] *Preliminary Determination* PDM at 8.
[81] *See* Habas Sales Verification Report at 6.
[82] *Id*. at 6-7.
[83] *Id*. at 7.
[84] *See* Habas Case Brief at 15.

> {A}s 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. In {Commerce's} experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced...{Commerce} also has found that in many industries, even though a buyer and seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoiced. Thus, the date on which the buyer and seller appear to agree on the terms of a sale is not necessarily the date on which the terms of sale actually are established...
>
> If {Commerce} is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, {Commerce} will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, {Commerce} usually will use a date other than the date of invoice. However, {Commerce} emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. 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. This holds even if, for a particular sale, the terms were not renegotiated.[85]

The courts have recognized that pursuant to our regulation, Commerce normally will use invoice date as the date of sale.[86] Accordingly, Commerce has continued to rely on the invoice date as the date of sale in the absence of satisfactory evidence that the material terms of sale are firmly established on a different date,[87] or if earlier than invoice date, the shipment date.[88]

The presumption of invoice date as the date of sale does not obligate a respondent to provide a comprehensive analysis to demonstrate changes in the terms of sale between purchase order and invoice; rather, the burden is on the party seeking to establish a date of sale other than invoice date to "satisfy" Commerce that an alternate date is more appropriate.[89] In this proceeding, although the petitioners argue that the date of sale should be based on the contract date, they have not presented satisfactory evidence that the material terms of sale are established on a date other than the date of invoice. On the contrary, Habas has provided documentation supporting

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[85] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348-27349 (May 19, 1997).
[86] *See, e.g., Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001).
[87] *See, e.g., 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value*, 74 FR 10543 (March 11, 2009) and accompanying Issues and Decision Memorandum at Comment 1; *Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 11; *Stainless Steel Bar from Germany: Final Results of New Shipper Review*, 72 FR 39059 (July 17, 2007) and accompanying Issues and Decision Memorandum at Comment 5.
[88] *See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007) and accompanying Issues and Decision Memorandum at Comment 4; *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 71357 (December 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[89] *See Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

its contention that the material terms of sale are subject to change after the contract date, and that the invoice date is thus the appropriate date for the company's U.S. date of sale. Therefore, for Habas' U.S. sales, we are using the invoice date as the date of sale.

Comment 3: Whether Habas' Zero-Interest Loans Reflect Commercial Reality

Habas' Comments

- Habas provided extensive evidence on the record supporting its receipt of loans at zero interest from affiliated and unaffiliated commercial lenders in the POI.[90] Nothing in either the cost verification report or the sales verification report suggests that the loans were not commercial in nature.[91]
- The cost verification report stated that "Habas also obtained commercial loans denominated in Turkish Lira and U.S. dollars from an affiliated company, Anadolubank, during the POI."[92] Since only the loans denominated in Turkish Lira from Anadolubank were the zero-interest loans, the cost verifiers are stating explicitly that these loans are commercial.[93]
- Commerce's use of the petitioners' interest rate for the home market credit expense calculation is unlawful.[94] The source of the petitioners' interest rate, upon which Commerce relied to compute home market credit expense, is unreliable and has no probative value in this preceding.[95]
- Commerce's citation of 19 CFR 351.411 as support for its replacement of Habas' experiential rate with the rate proposed by the petitioners relates to physical characteristics and not to the short-term interest rate used in the home market credit expense calculation.[96]
- The governing regulation is 19 CFR 351.410(f), which requires the adjustment to reflect the cost of any difference to the circumstances of sale to the exporter.[97] In this case, the verified cost actually borne by Habas is the actual interest expense borne by the company, which is zero.[98]
- In *Turkey Welded Pipe & Tube,* Commerce accepted zero-interest loans as commercial when it increases margins.[99] In this case however, Commerce is rejecting zero-interest loans as commercial when it decreases margins.[100]

[90] *See* Habas' Case Brief at 16.
[91] *Id.*
[92] *Id.* (citing Habas Cost Verification Report at 5).
[93] *Id.*
[94] *Id.*
[95] *Id.* at 17.
[96] *Id.* at 18-19 (citing 19 CFR 351.411(b)).
[97] *Id.* (citing 19 CFR 351.410 (f)).
[98] *Id.*
[99] *Id.* (citing *Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011) (*Turkey Welded Pipe & Tube*) and accompanying IDM at Comment 10).
[100] *Id.* at 19-20.

The Petitioners' Comments

- Habas' claim that its zero-interest loans are commercial is devoid of merit. Commerce, in its *Turkey Rebar Final Determination,* determined that the imputation of credit cost is a reflection of the time value of money, and must correspond to a figure reasonably calculated to account for such value during the gap period between delivery and payment to show commercial reality.[101]
- Habas reporting a zero percent short-term interest rate does not reflect commercial reality in Turkey, but rather demonstrates that Habas is a company that reports no short-term commercial borrowings. Thus, in the absence of a reliable short-term borrowing rate, Commerce is justified in using publicly available information to find an appropriate surrogate short-term interest rate.[102]
- A reference in the cost verification report to Habas' short-term loans being "commercial" does not mean that they reflect commercial reality for purposes of calculating a legitimate short-term interest rate to be used for credit expense calculations, but rather the reference simply means that the loan was between a bank and a company.[103]

Commerce Position:

We have continued to use the interest rate provided by the petitioners to calculate home market credit expenses. While we agree that the cost verification report referenced commercial loans between Habas and Anadolubank, we disagree that those loans represented usual commercial behavior. During the cost verification, we confirmed that Habas received both affiliated and unaffiliated zero-interest loans denominated in Turkish Lira.[104] The cost verification report did not, however, state that the loans reflect usual commercial behavior for the purposes of calculating a short-term interest rate to be used for credit expense calculations.

Notwithstanding Habas' arguments, Commerce's Policy Bulletin 98.2, states that, although Commerce has a practice of using a respondent's home market borrowing rate to impute home market credit expenses, this rate should also conform with usual commercial behavior:

> 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

[101] *See* Petitioner's Case Brief at 11 (citing *Turkey Rebar* and accompanying IDM at Comment 5).
[102] *Id.* at 12.
[103] *Id*.
[104] *See* Habas Cost Verification Report at 5.

> no short-term borrowings in the currency of its foreign market transactions are very rare. [105]

Habas' zero-interest rate loans put it in the same position as a company that reports having no short-term commercial borrowings, and for which Commerce would use an appropriate surrogate short-term interest rate. 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 differ significantly from that of Habas.[106] Furthermore, these rates are consistent with other information on the record.[107] We note that this finding is consistent with recent practice, as Commerce has previously found that Habas' short-term interest rates do not represent usual commercial behavior.[108]

We agree with Habas' comment that 19 CFR 351.411 refers to physical characteristics, and does not support replacing Habas' experiential rate with the petitioners' rate. However, the issue is that the Habas zero-interest rate does not reflect usual commercial behavior in connection with short-term or overnight loans. Although Habas appears to compare the overnight loans received by Habas to the daily loans from the U.S. Federal Reserve, Habas fails to recognize in its comparison that the U.S. Federal Reserve's daily loans have non-zero interest rates.[109] Therefore, we find Habas' loans at issue are not reflective of usual commercial behavior.

With regard to Habas' argument that the interest rate provided by the petitioners is unreasonable, we disagree. The interest rate is publicly available and is comparable to rates used by Commerce in prior cases.[110] Therefore, Commerce finds it reasonable to use a publicly available interest rate to impute the credit expense that properly reflects the time value of money in this situation.

Finally, we disagree with Habas with regard to the relevance of prior cases where Commerce has used zero-interest rate loans. The pertinent facts of the *Turkey Welded Pipe & Tube* review and this investigation are dissimilar. In *Turkey Welded Pipe & Tube*, the question was whether Commerce should recalculate the company's credit expenses using consolidated financial statements, or, in the alternative, whether Commerce should exclude the days related to zero-interest transactions. This differs from the present investigation, in which the issue is whether to accept the zero-interest rates supplied by Habas or to use the publicly available interest rates supplied by the petitioners. Moreover, Commerce finds that *Rebar from Turkey* is more factually similar to this investigation, because that case involved the same respondent receiving zero-interest loans from the same affiliated bank.[111]

For this final determination, we have determined to continue to use the published rates available on the record.

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[105] *See* Policy Bulletin 98.2 (Imputed Credit Expenses and Interest Rates) (February 23, 1998).
[106] *See* Petitioners' Letter, "Deficiency Comments on Habas' Sections B-D Questionnaire Response," dated July 24, 2017 at Exhibit 1.
[107] *Id*.
[108] *See Rebar from Turkey* and accompanying IDM at Comment 5.
[109] *See* Habas Case Brief at 18 (citing Habas' July 31, 2017 Section B Supplemental Questionnaire Response at 15).
[110] *See, e.g., Rebar from Turkey* at Comment 4.
[111] *See Rebar from Turkey* and accompanying IDM at Comment 1.

Comment 4: Whether Habas' Home Market Credit Expenses Should be Recalculated to Reflect the Period from Shipment to Payment

Habas' Comments

- If the interest rate is a non-zero number, Commerce's home market credit expense calculation using payment terms in its *Preliminary Determination* introduces an inaccuracy because home market payment terms are reported as the POI-average account-receivable (A/R) age factor for each customer.[112] Instead, Commerce should calculate the expenses based on the differences between payment date and shipment date, should Commerce use a non-zero interest rate.[113]
- This revised credit calculation reflects Habas' invoicing method, which is issued every Monday. Transactions with several different shipment dates may be on a single invoice – all of which will be prior to the invoice date issued on the following Monday.[114] The methodology Commerce used in Habas' Preliminary Analysis Memorandum treats all shipments against a given invoice as having been made on the invoice date.[115]
- Commerce's standard methodology calculates imputed credit for the period from shipment to payment.[116] Since Habas employs a monthly customer-specific aging accounts receivable (A/R) analysis to calculate home market payment date, the revised equation accurately reflects the period from payment date to shipment date for each sale.
- Habas reporting its payment dates using a monthly customer-specific A/R aging analysis does not impugn the accuracy of the date of payment reported in home market payment date field.[117]

The Petitioners' Comments

- Habas did not demonstrate that its average A/R age for each customer that it calculated for the home market credit expense calculations was tied to the invoice date.[118] Thus, there is no basis to conclude that average A/R age is based on the invoice date, which would be necessary to justify adding the days between shipment and invoicing to the average accounts receivable age.[119]
- Furthermore, Habas did not provide the payment terms for any of its home market sales, which could have shown when the customer is required to pay.[120]

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[112] Habas' Case Brief at 20 (citing 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 October 24, 2017 (Habas Preliminary Analysis Memorandum) at 3.
[113] *Id.* at 20.
[114] *Id.*
[115] *Id.* (citing Habas Preliminary Analysis Memorandum at 3).
[116] *Id.* at 21 (citing *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review,* 73 FR 52294 (September 9, 2008) and accompanying IDM at Comment 8).
[117] *Id.* (citing *Turkey Welded Pipe & Tube* IDM at Comment 10).
[118] *See* Petitioners' Case Brief at 13 (citing Habas SBQR at 24 and Exhibit B-5).
[119] *Id.*
[120] *Id.* (citing Habas SBQR at 25).

- Commerce is correct in using the average A/R age for each customer, because Habas has not provided a sufficient basis to recalculate the number of outstanding days that it reported in its database.

Commerce Position:

Commerce disagrees with Habas in using the difference of payment date and shipment date to calculate the credit expense in the home market. Evidence on the record and Commerce's findings at verification does not impugn Habas' values and calculations reported in payment terms. We agree with the petitioners that there is not enough evidence on the record to tie each customer's average accounts receivable age to a specific invoice date. Because we cannot conclude that average accounts receivable age is based on the invoice date, we cannot justify adding the days between shipment and invoicing to the average accounts receivable age. Since we found no discrepancies with Habas' payment terms and evidence on the record does not support recalculating the number of outstanding days, Commerce will continue to use the payment terms to calculate home market credit expenses.

Comment 5: Whether to Recalculate Habas' Billet Costs to Account for Yield Loss

The Petitioners' Comments

- While the petitioners agree with Commerce's recalculation of the billet costs, the billet cost calculated by Commerce in the *Preliminary Determination* was not the cost of billet required to make one metric ton of wire rod but the cost of one metric ton of finished billet.
- The figure used in the *Preliminary Determination* did not account for the yield loss associated with converting the billet to wire rod.
- Commerce should use the average yield rate for the wire rod mill to adjust the billet cost for yield for the *Final Determination*.

Habas' Comments

- Habas did not comment on this issue.

Commerce Position:

We stated in the *Preliminary Determination* that Habas' reported billet costs varied significantly among CONNUMs even though cost differences for grade were reported separately in the alloy field of the cost database. We noted that the record showed that these cost differences were due to reasons not related to differences in the physical characteristics of the products such as the source of the billet or timing of production. For the *Preliminary Determination*, we calculated one POI average billet cost for all CONNUMs, regardless of the source (purchased versus self-produced) or claimed use.

In the *Preliminary Determination* and for this *Final Determination* we determined that Habas' reported CONNUM-specific material costs do not reasonably reflect the costs associated with the

production and sale of the merchandise under consideration. Pursuant to section 773(f)(1)(A) of the Act, "costs 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 generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of merchandise." Accordingly, we are instructed by the Act to normally rely on the company's normal books and records for calculating costs if two conditions are met: (1) the books and records are kept in accordance with the home country's Generally Accepted Accounting Principles (GAAP); and (2) the books and records reasonably reflect the cost to produce and sell the merchandise. In this case, Habas' reported costs were based on its normal books and records that are kept in accordance with Turkish GAAP. Thus, the question facing Commerce is whether the per-unit costs from Habas' normal books and records reasonably reflect the cost to produce and sell the merchandise under consideration.

Habas reported POI weighted-average wire rod costs that were the result of weight-averaging production costs from each quarter within the POI.[121] Habas both purchased billets and self-produced billets that were used to produce both rebar and wire rod. Since the chemical composition and mechanical properties of the self-produced billets were similar to and overlapped with those of the purchased billets, either could be used in the production of wire rod.[122] As such, material cost differences resulted from whether Habas assigned the cost of purchased or self-produced billets to a given CONNUM. In addition, due to raw material cost fluctuations throughout the POI, cost differences between CONNUMs were impacted by the timing of production. As a result, the reported CONNUM-specific material costs reflected significant cost differences that had nothing to do with differences in the physical characteristics of each CONNUM.

At the outset of this case, Commerce identified the CONNUM physical characteristics that are most significant in differentiating the costs between products. These are the physical characteristics that define unique products, *i.e.,* the CONNUMs, for sales comparison purposes and the level of detail within each physical characteristic (*e.g.,* different grades, sizes of a product, *etc.*) reflects the importance Commerce places on comparing the most similar products in a price-to-price comparison. Thus, under section 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs Commerce uses for the sales-below-cost test, constructed value (CV) and difference-in-merchandise (DIFMER) adjustment accurately reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculation. Commerce normally does not rely on a respondent's reported costs where cost differentials between CONNUMs are driven by factors other than the CONNUM physical characteristics.[123] Additionally, the Court of International Trade (CIT) has

[121] *See* Habas' August 17, 2017 Second Section A-B Supplemental Questionnaire Response at Exhibit S2AB-1.
[122] See Habas' October 3, 2017 Second Section D Supplemental Questionnaire Response at page 3-4.
[123] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013) and accompanying IDM at Comment 1; *Certain Oil Country Tubular Good from the Republic of Korea: Final Results of Antidumping Duty Administrative Review;*

upheld Commerce's reallocation of costs for the sales-below-cost test, the CV calculations, and the DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than Commerce's CONNUM physical characteristics.[124] Therefore, we are not relying on the reported costs of the billets, but rather are relying on a POI-weighted average billet cost.

We agree with the petitioners that in recalculating the billet costs consumed in the production of wire rod we used as the denominator the quantity of billets consumed. The resulting figure represents the cost of billets entering wire rod production. It does not account for yield loss resulting from processing the billets into wire rod at the rolling mill. Therefore, we are recalculating the cost of billet to make an adjustment for yield loss. Additionally, in recalculating the weighted average billet cost, it is necessary to subtract the alloy costs already included in the billet cost from Habas' normal books and records in order to not double count such costs for purposes of Commerce's cost calculation where Habas has separately reported alloy costs in a separate field of the cost database.

For the final determination, we have adjusted the consumed billet cost to include the yield loss experienced at the rolling mill. In addition, we have continued to calculate a weighted-average billet cost as was done in the *Preliminary Determination* to address the fact that Habas' reported billet costs vary significantly due to reasons that are not related to the physical characteristics of the products.

Comment 6: Whether Habas' Broken Billets Should Be Valued at Scrap Prices

The Petitioners' Comments

- The petitioners argue that broken billets are scrap and should be valued as scrap.

Habas' Comments

- Habas did not comment on this issue.

Commerce Position:

Habas calculated an offset to its reported cost of manufacturing for broken billets (*i.e.,* defective billets) that enter the wire rod production process and are deemed defective. Habas reintroduced the broken billets into the melt-shop production of billets.

2014-2015, 82 FR 18105 (April 17, 2017) and accompanying IDM at Comment 23; and *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2016,* 83 FR 4028 (January 29, 2018) and accompanying IDM at Comment 3.

[124] *See Thai Plastic Bag Indus. Co. Ltd. v. United States*, 752 F. Supp.2d 1316, 1324-25 (CIT 2010).

In Habas' normal books and records, broken billets that enter broken billet inventory are valued at a business proprietary percentage of the cost of billets that enter regular billet inventory.[125] When these broken billets are removed from inventory and consumed in the melt shop to make new billets, they are consumed at the same business proprietary percentage of prime billet value in its normal books and records.[126] As the broken billets are consumed at the same value assigned to them when generated, and since the value used is not unreasonable, we consider Habas' normal books and records reasonable. Thus, we are not valuing the broken billets as another type of scrap but as broken billets, and we have used the company's reported raw material offset for the *Final Determination*.

Comment 7: Whether Icdas' U.S. Date of Sale is Contract Date or Invoice Date

The Petitioners' Comments

- Although Icdas claims that the contract/purchase order date should be the U.S. date of sale, the company has failed to state whether the material terms ever changed after the contract/purchase order date.[127] Thus, Icdas has not justified its date of sale methodology in either its initial or supplemental questionnaire responses.[128]
- Commerce instructed Icdas to report all U.S. sales with an invoice date or entry date within the POI so that it could analyze the proper U.S. date of sale.[129] Icdas failed to report this information even though it was in its possession, and thus it was impossible for Commerce to fully examine those sales for its date of sale analysis.[130] Because Icdas withheld this information, Commerce should find that the company has failed to support its claim that all material terms are set by the date of the contract.[131]
- In the recent *Rebar from Turkey* investigation, Commerce found that the material terms of sales of rebar can change after the initial agreement.[132] Thus, Icdas' claim that the material terms did not change for the for the contracts reported in the U.S. sales database for the POI is immaterial.[133] Thus, as Commerce has already verified in *Rebar from Turkey* that the quantity, value, and other terms of Icdas' contracts can change until invoicing, Commerce should find that invoice date is the correct U.S. date of sale for this investigation.[134]

[125] *See* Habas' October 3, 2017 Second Supplemental Section D Questionnaire Response at page 2.
[126] *Id*.
[127] *See* Petitioners' Case Brief at 7.
[128] *Id*.
[129] *Id*.
[130] *Id*. at 8.
[131] *Id*.
[132] *Id*. (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 12791 and accompanying PDM at 8.
[133] *Id*. at 9.
[134] *Id*.

Icdas' Comments

- Icdas has justified and explained its date of sale methodology in both its initial and supplemental questionnaire responses, and its reporting has been consistent through the investigation.[135] Icdas explained that it uses contract date as the date of sale for U.S. sales in its normal course of business because the material terms of sale are determined at that date.[136] The company provided all relevant contracts and invoices applying to reported U.S. sales, as well as a worksheet comparing those contracts and invoices.[137]
- In addition, Icdas submitted a revised U.S. sales listing that included the purchase order date, purchase order signature date, invoice date, and entry date (where available) for all U.S. sales.[138]
- At verification, Commerce examined every U.S. contract during the POI and concluded that the company's use of the contract date as the U.S. date of sale was supported by the record because the material terms of sale did not change after that date.[139]
- The petitioners' reliance on *Rebar from Turkey* is misplaced, as that data is from a different investigation, involving a different product with a separate POI.[140] Commerce has long found that each segment of proceeding is independent, with separate records leading to independent determinations, and the same logic applies to entirely separate and distinct proceeding such as *Rebar from Turkey*.[141]
- The facts on the record support the contract/purchase order date as the date of sale in this investigation, and Commerce should continue the finding in the final determination.[142]

Commerce Position:

Commerce continues to find that the contract/purchase order date represents the correct date of sale for Icdas' U.S. sales. In its initial and supplemental questionnaire responses, Icdas consistently reported that the material terms of sale could change up to the date of contract/purchase order.[143] In support of this, Icdas provided the relevant contracts and invoices for all the reported U.S. sales.[144] At verification, we examined original source documentation for the contracts and invoices at issue, and found that they supported Icdas' contention that the material terms of sale did not change after the date of contract/purchase order.[145]

With regard to the petitioners' assertion that Icdas failed to report certain sales requested by Commerce, and as discussed in detail in Comment 8 below, we find that these sales had neither

[135] *See* Icdas Rebuttal Brief at 1.
[136] *Id*. at 2.
[137] *Id*.
[138] *Id*. at 3.
[139] *Id*.
[140] *Id*. at 4.
[141] *Id*.
[142] *Id*.
[143] *See, e.g.*, Icdas' July 6, 2017 Section C Questionnaire Response at C-5.
[144] *Id*.; Icdas Sales Verification Report at 5.
[145] *Id*.

contract dates nor invoice dates inside the POI and thus would not be considered within the universe of sales under the dates of sale proposed by either the petitioners or Icdas. Thus, these sales are not relevant to our date of sale analysis.

Although the petitioners argue that Commerce should consider the date of sale determined for Icdas' U.S. sales in *Turkey from Rebar*, Commerce is not bound by the decision of that separate proceeding, albeit involving the same company. Commerce has long found that a separate case record leads to an independent determination.[146] As this proceeding involves a different product, a different POI, and a different case record than that of *Rebar from Turkey*, Commerce must reach an independent decision based solely on the case record in this proceeding.

Section 351.401(i) of Commerce's regulations state that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, Commerce 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 terms of sale.[147] Although Commerce acknowledges that the date of invoice is frequently the appropriate date, in this case, Commerce reviewed the sales contracts and commercial invoices for all relevant sales. Thus, based on record information, Commerce finds that the purchase order/contract date better reflects when the material terms of sale were set. As Icdas has demonstrated that the material terms of sale did not change after the date of purchase order/contract, Commerce continues to use this as the date of sale for Icdas' U.S. sales.

Comment 8: Whether the Application of Partial AFA is Warranted for Icdas' Reporting of U.S. Sales

The Petitioners' Comments

- Commerce requested that Icdas report all U.S. sales with a purchase order date, purchase order signature date, invoice date, or entry date within the POI in a revised sales database.[148] Although Icdas submitted a revised U.S. sales database with the additional fields, it did not contain all the U.S. sales with invoice or entry dates within the POI.[149] Icdas did not report any sales which were shipped, invoiced, or entered for a portion of the POI which had purchase order dates that occurred prior to the POI.[150]
- During verification, Commerce reviewed sales invoiced one month prior to the POI, and found that Icdas had at least three sales which entered during the POI that Icdas failed to report.[151] Icdas' failure to provide requested information concerning the date of sale justifies the application of partial AFA. Commerce should assign the Petition rate to

[146] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) and accompanying IDM at Comment 1.
[147] *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*)
[148] *See* Petitioners' Case Brief at 9.
[149] *Id*. at 10.
[150] *Id*. at 11.
[151] *Id*.

Icdas' unreported sales or to the average daily sales quantity that Icdas did not report, multiplied by the missing number of days.

Icdas' Comments

- In it Supplemental Section C response, Icdas reported all entry dates for sales invoiced or contracted during the POI for which it was the importer of record in its U.S. sales database.[152]
- As part of a completeness test conducted during verification, Commerce observed three sales of subject merchandise with entry dates within the POI that were not included in the U.S. sales database.[153] Each of these sales, however, occurred in 2015 and were therefore neither invoiced nor contracted during the POI.[154]
- Commerce specifically requested that Icdas "report all U.S. sales with a{n} entry date within the POI in a revised sales database."[155] "U.S. sales" include sales that were invoiced and contracted during the POI, which Icdas reported, not sales that were contracted and invoiced in the months prior.[156]
- Because the date of contract/purchase order is the relevant date of sale in this investigation, the date of entry is irrelevant.[157] Icdas properly reported all sales invoiced and contracted during the POI in its U.S. sales database.[158]
- AFA is an extraordinary measure that should only be applied in cases of particularly egregious failures to comply.[159] Icdas made every effort to report the purchase order date, purchase order signature date, invoice date, and entry date for all U.S. sales within the POI.[160]
- The date of entry has no relevance in this investigation, and Icdas has therefore properly reported all sales invoiced and contracted during the POI.[161] Because Icdas has fully cooperated to the best of its ability, the invocation of partial AFA is not warranted.[162]

Commerce Position:

We agree with Icdas that application of partial AFA is unwarranted. Although Commerce identified three entries of subject merchandise during the POI for which Icdas did not report the associated sales, the record evidence indicates that all three entries had contract and invoice dates prior to the POI.[163] While the petitioners are correct that certain sales which entered but were not sold during the POI were not reported, Commerce is basing the reporting universe on sales

[152] *See* Icdas' Case Brief at 12.
[153] *Id*.
[154] *Id*.
[155] *Id*.
[156] *Id*. at 13; Icdas Rebuttal Brief at 6.
[157] *See* Icdas Case Brief at 13.
[158] *Id*.
[159] *See* Icdas Rebuttal Brief at 4.
[160] *Id*.
[161] *Id*. at 6.
[162] *Id*.
[163] *See* Icdas Sales Verification Report at 9.

during the POI, rather than entries during the POI, as Icdas does not have entry date information for the vast majority of sales. Therefore, because all three entries had contract and invoice dates prior to the POI, the three "missing" entries represent sales outside the POI are, therefore, not subject to Commerce's reporting requirements for a universe based on sale date.

As noted above, the sales discovered at verification are not subject to Commerce's reporting requirements. Thus, sales corresponding to the three entries in question do not constitute information missing from the record, within the meaning of section 776(a). Furthermore, Icdas has been fully cooperative, and there is no evidence on the record indicating that it did not report all of its sales during the POI. Accordingly, application of facts available with an adverse inference under 776(b) is not warranted.

Comment 9: Whether Commerce Should Calculate a Domestic Inland Freight Adjustment for Icdas' U.S. Sales

The Petitioners' Comments

- Although Icdas admitted that it uses its own trucks to transport subject merchandise destined to the United States to the port, it reported this U.S. freight expense in its indirect selling expenses.[164] This methodology violates acceptable reporting requirements and should be corrected.[165]
- Icdas should not be permitted to report a direct movement expense as an indirect selling expense just because the company claims to not keep track of the internal transportation expenses on a transaction basis.[166]
- Icdas' responses clearly identify these costs and the adjustment can be calculated easily.[167] These expenses should be removed from indirect selling expenses and added to inland freight from the port/warehouse to port of exit.[168]

Icdas' Comments

- The petitioners' contention that Commerce should calculate an adjustment for internal freight incurred for transport of subject merchandise to the port ignores evidence on the record demonstrating that Icdas does not incur domestic inland freight charges on its shipments to the United States.[169] In its initial questionnaire response, Icdas indicated that all shipments to the United States were from the port immediately adjacent to its

[164] *See* Petitioners' Case Brief at 11.
[165] *Id*.
[166] *Id*. at 12.
[167] *Id*.
[168] *Id*.
[169] *See* Icdas Rebuttal Brief at 6.

plant, and thus no inland freight charges were incurred.[170] Icdas also provided a map and satellite imagery showing the plant's proximity to the port.[171]

- Icdas uses its own trucks to transport finished products to the port for export, home market sales, and for other purposes.[172] It does not record these internal transportation expenses on a transaction basis, but rather allocates the costs to cost centers based on the nature of the product.[173]
- The distance is trivial, and the utility trucks are used to move finished goods around the factory: *e.g.*, both subject and non-subject merchandise to inventory and to the port.[174] Icdas thus reported transportation costs related to both home market and export sales separately as indirect selling expenses.[175]
- The inland freight adjustment methodology suggested by the petitioners is over-inclusive and improperly allocates expenses related to the transport of non-subject merchandise and home market sales to Icdas' U.S. sales.[176] They have been properly reported by Icdas as indirect selling expenses.[177]
- If, however, Commerce chooses to reallocate these expenses, then both U.S. sales and domestic sales expenses should be adjusted as well as home market and export market indirect selling expenses.[178] This would result in a reduction home market and U.S. indirect selling expenses and a corresponding adjustment to freight for both markets.[179] Such an adjustment would actually be beneficial to Icdas if calculated in line with the petitioners' recommendation.[180]

Commerce Position:

We agree with Icdas and will not calculate a domestic inland freight adjustment, consistent with the *Preliminary Determination*. The uncontested evidence on the record indicates that the port from which Icdas ships all U.S. sales is immediately adjacent to the company's production plant.[181] While Icdas' trucks are involved in some limited transportation of merchandise, Commerce finds this to be *de minimis* due to the proximity of the facilities. Moreover, the evidence on the record indicates that the trucks in question transport both finished and unfinished goods (subject and non-subject merchandise, as well as merchandise destined for both the home and export markets) to a variety of locations in and around the plant.[182] Therefore, Commerce

[170] *Id*. at 7.
[171] *Id*.
[172] *Id*.
[173] *Id*.
[174] *Id*.
[175] *Id*.
[176] *Id*. at 8.
[177] *Id*.
[178] *Id*.
[179] *Id.*
[180] *Id*.
[181] *See, e.g.*, Icdas' August 7, 2017 Section C Supplemental Questionnaire Response at C-8.
[182] *Id*.

continues to find that these expenses were properly accounted for by Icdas, and thus will not calculate an inland freight adjustment.

Comment 10: Whether Commerce Should Disregard Icdas' Reported Cost of Inland Freight Charged by Third Party Providers in its Home Market Sales Database

The Petitioners' Comments:

- Icdas reported several types of inland freight, including one that related exclusively to freight charged by third party providers.[183] At verification, Icdas mentioned for the first time that, for third-party freight, it reported the cost charged by the trucking company to the intermediate agency, rather than the costs charged by the intermediate agency to Icdas.[184]
- By not revealing this information in its questionnaire responses, Icdas did not allow Commerce to request additional information about the agent or why it was necessary to report the amount the trucking company charged the intermediate agency instead of what Icdas paid.[185] In addition, Icdas did not report the amount that it actually paid for the expense.[186]
- As Icdas has failed to justify the adjustment, Commerce should not allow it for the final determination.[187]

Icdas' Comments

- The petitioners incorrectly claim that Icdas revealed the details of its reporting of inland freight for the first time at verification.[188] Icdas discussed its calculation of inland freight in both its initial and supplemental questionnaire responses, and specifically stated that it reported unaffiliated third-party prices.[189]
- The cost for the use of third party trucks, as reported by the trucking company to the intermediate agency, is lower than the cost charged by the intermediate agency to Icdas because the intermediate agency charges a fee.[190]
- Icdas reported the actual expenses for leases of trucks from third parties, which could be matched to specific transactions related to the subject merchandise, because it would be easier for Commerce to trace.[191] The per-unit invoice amounts for the third-party truck leases are directly related to a specific shipment and/or waybill.[192]

[183] *See* Petitioners' Case Brief at 13.
[184] *Id*. at 14.
[185] *Id*.
[186] *Id*.
[187] *Id*
[188] *See* Icdas Rebuttal Brief at 10.
[189] *Id*.
[190] *Id*. at 11.
[191] *Id*.
[192] *Id*.

- As Icdas reported a slightly lower cost than it actually paid for third-party trucks, the company took less of an adjustment than it was entitled to, and Commerce should continue to allow the adjustment for the final determination.[193]

Commerce Position:

Commerce agrees with Icdas and will continue to allow the company's inland freight adjustment. Although the petitioners indicate that Icdas did not reveal the details of its reporting until verification, Icdas had previously explained that it reported unaffiliated third-party prices in its Section A Supplemental Response.[194] During verification, Commerce confirmed Icdas' inland freight reporting and noted no discrepancies with the information previously reported.[195] Therefore, we will continue to allow this adjustment for the final determination.

Comment 11: Whether Commerce Should Include an Offset for Rental Income from Icdas Electrik in Calculating Icdas' G&A Rate

Icdas Comments:

- Commerce should include an offset for rental income from Icdas Electrik because the rental income is related to the company's general operations.
- Commerce should allow the offset for rental income from Icdas Electrik to Icdas' G&A because Commerce verified the related expenses were reported as G&A.

The Petitioners' Comments

- Commerce should not include an offset for rental income from Icdas Electrik because this income does not relate to the general operations of the company.
- Icdas has not proven that all expenses of the facility have been reported.
- The income relates to an entirely separate industry; large scale power production.

Commerce Position:

We agree with the petitioners and have not allowed the rental income as an offset to G&A expenses. Section 773(f)(1)(A) of the Act states the cost of production (COP) "shall normally be based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country…and reasonably reflect the costs associated with the production and sale of merchandise." Because there is no definition in the Act of what G&A expense is or how the G&A expense ratio should be calculated, Commerce has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent, and predictable method is

[193] *Id*.
[194] *See* Icdas' July 21, 2017 Section A Supplemental Response at A-7.
[195] *See* Icdas Sales Verification Report at 12.

to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of goods sold (COGS).[196] The rationale for this approach is that, by definition, G&A expenses relate to the general operations of the company as a whole and not to specific products and processes. Accordingly, Commerce's well-established practice is to include in the G&A expense ratio calculation for certain expenses and revenues that relate to the general operations of the company as a whole. In this investigation, consistent with Commerce practice, we disallowed the rental income and related expenses that are associated with a separate line of business (*i.e.,* rental of a large facility to generate electric power).[197] Icdas Electrik rents a facility from Icdas to operate a large power plant that has an installed capacity of 1200 megawatts meeting about four percent of the energy needs of Turkey. It is Commerce's practice to include income offsets to G&A, if they relate to the general operations of the company as a whole and not to a separate line of business.[198] Icdas is in the business of producing and selling steel products, not the rental of large facilities. While it is not unusual for Commerce to include in the G&A rate calculation income from minor rental activities (*e.g.,* the rental of a spare warehouse or excess space in an office building), we do not consider the rental income from a large facility, like the one in question, to be minor, and accordingly it is not related to the general operations of the company. This facility is used by an electricity producer to generate an enormous volume of electricity (*i.e.,* it generates approximately four percent of the energy needs of Turkey). Furthermore, the rental income generated from this facility is significant. As such, we consider this rental activity to relate to a separate line of business, and not the general operations of Icdas as a whole, and have therefore disallowed the rental income as an offset to G&A expenses. In addition, we have excluded the corresponding identified related expenses from G&A for the final determination.

Comment 12: Whether Commerce Should Accept a Correction of a Clerical Error in the By-Product Adjustment Rate

Icdas' Comments:

- Icdas contends that although all other figures and rates used by Commerce in the *Preliminary Determination* were calculated to four decimal places, Commerce's revised by-product adjustment was calculated to only three decimal places.

The Petitioners' Comments

- The petitioners did not comment on this issue.

[196] *See Prestressed Concrete Steel Rail Tie Wire from Mexico; Final Determination of Sales at Less Than Fair Value*, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 6.
[197] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 82 FR 16372 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 15.
[198] *See Magnesium Metal from the Russian Federation: Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying IDM at Comment 10.

Commerce Position:

In the *Preliminary Determination*, Commerce excluded short-length rebar sales from the by-product offset to the cost of manufacturing because these sales did not relate to the production of wire rod. Icdas submitted a ministerial error allegation after the *Preliminary Determination* where Commerce declined to amend the *Preliminary Determination* because the error was not significant. We agreed in our Analysis of the Ministerial Error Allegation that, because Commerce did not calculate the exclusion to four decimal places, this represented a ministerial error, and we will correct the by-product adjustment for the error for the *Final Determination*.[199]

Comment 13: Whether Commerce Should Grant Icdas' Request to Correct Manufacturer Identification Codes

Icdas' Comments

- In its questionnaire response, Icdas indicated that all subject merchandise was produced by Icdas and stated that "ICD" had been entered in the manufacturer field in both the home market and U.S. sales databases.[200]
- However, due to a coding error, the manufacturer was reported as "ICDAS" in the home market and "ICD" in the U.S. market.[201]
- Commerce should grant Icdas' request to correct this inadvertent use of different manufacturer identification codes in each database.[202] Commerce has a long policy of correcting a respondent's clerical errors submitted prior to the final determination, and failure to do so is inconsistent with the statutory mandate to determine margins as accurately as possible.[203]
- Commerce should calculate the margin based on Icdas' intended reporting of manufacturer identification codes in the final determination.[204]

The Petitioners' Comments

- The petitioners did not comment on this issue.

[199] *See* Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Turkey: Analysis of Ministerial Error Allegation," (Analysis of the Ministerial Error Allegation) dated November 29, 2017 and 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 *Final Determination*.
[200] *See* Icdas Case Brief at 9.
[201] *Id*. at 10.
[202] *Id*.
[203] *Id*.
[204] *Id*. at 11.

Commerce Position:

Commerce agrees with Icdas that for this final determination it should calculate the company's margin using the corrected manufacturer codes as per the company's minor correction.[205] Commerce accepted this error as a minor correction during verification and verified the issue. Thus, we will thus use the corrected information to calculate the margin in the final determination.

VIII. Adjustment to Cash Deposit Rate for Export Subsidies

For this final determination, Commerce 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.

IX. Recommendation

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

☒ ☐

Agree Disagree

3/19/2018

X

Signed by: GARY TAVERMAN

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

[205] *See* Icdas Letter, "Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Submission of Revised Home Market Sales Database," dated February 16, 2018.