A-489-826
Administrative Review
POR: 3/22/2016 - 9/30/2017
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June 21, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey; 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments of interested parties in the 2016-2017 administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey). As result of our analysis, we have made changes to the *Preliminary Results*,[1] as discussed below. We continue to find that Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (Colakoglu) did not sell hot-rolled steel in the United States below normal value during the period of review (POR), March 22, 2016 through September 30, 2017.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments from interested parties.

List of the Issues

Comment 1: Home Market Sales with Incomplete Matching Control Numbers
Comment 2: Home Market Gross Unit Price Currency
Comment 3: Home Market Credit Expense Adjustment
Comment 4: Quarterly Cost
Comment 5: Costs Recovery Test
Comment 6: Duty Drawback
Comment 7: U.S. Date of Sale

[1] *See Certain Hot-Rolled Steel Flat Products from Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 56805 (November 14, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 8: Constructed Export Price (CEP) Offset
Comment 9: SAS Programing Errors

II. BACKGROUND

On November 14, 2018, Commerce published the *Preliminary Results* of the administrative review of the AD order on hot-rolled steel from Turkey for the POR. In the *Preliminary Results*, we provided interested parties with an opportunity to comment on the *Preliminary Results*.[2] Between December 14 and 21, 2018, the petitioners[3] and Colakoglu each filed case and rebuttal briefs.[4]

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[5] Furthermore, on April 9, 2019, Commerce extended the time period for issuing the final results of this review by 30 days.[6] On May 22, 2019, Commerce further extended the time period for issuing the final results of this review until June 21, 2019.[7]

III. SCOPE OF THE ORDER

The products covered by the order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is

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[2] *Id*.
[3] The petitioners are ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, California Steel Industries, Steel Dynamics, Inc., Thomas Steel Strip Corporation, and United States Steel Corporation (collectively, the petitioners).
[4] *See* Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from Turkey – Petitioners' Case Brief Regarding Colakoglu," dated December 14, 2018 (Petitioners Case Brief); *see also* Colakoglu's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Colakoglu's Case Brief," dated December 14, 2018 (Colakoglu Case Brief); Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from Turkey – Petitioners' Rebuttal Brief Regarding Colakoglu," dated December 21, 2018 (Petitioners Rebuttal Brief); and Colakoglu's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Colakoglu's Rebuttal Brief," dated December 21, 2018 (Colakoglu Rebuttal Brief).
[5] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[6] *See* Memorandum, "Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2016-2017," dated April 9, 2019.
[7] *See* Memorandum, "Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2016-2017," dated May 22, 2019.

achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[8] or countervailing duty[9] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High

[8] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

[9] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of the order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;[10]
- Ball bearing steels;[11]
- Tool steels;[12] and
- Silico-manganese steels;[13]

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000,

[10] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[11] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[12] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[13] Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs and Border Protection purposes only. The written description of the scope of the order is dispositive.

IV. FINAL DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, we found that Gazi Metal Mamulleri Sanayi Ve Ticaret A.S. (Gazi), Toscelik Profile and Sheet Ind. Co. (a.k.a. Toscelik Profil ve Sac endustrisi A.S.) and Tosyali Holding A.S. (collectively, Toscelik), and Eregli Demir ve Celik Fabrikalari T.A.S. and Iskenderun Iron and Steel Works Ltd. (a.k.a. Iskenderun Demir ve Celik A.S.) (collectively, Erdemir) had no shipments of the subject merchandise to the United States during the POR. We received no comments from parties with respect to these companies. Therefore, for the final results we continue to find that Gazi, Toscelik, and Erdemir had no shipments of subject merchandise to the United States during the POR.

V. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on our analysis of the comments received from parties, we made certain changes to Colakoglu's calculations.[14]

VI. DISCUSSION OF THE ISSUES

Comment 1: Home Market Sales with Incomplete Matching Control Numbers

Petitioners' Case Brief:

- Commerce should not exclude home market (HM) sales with incomplete home market control numbers (CONNUMH) from its analysis in these final results, nor should Commerce accept Colakoglu's claims that these HM sales with incomplete CONNUMHs were sales of non-prime merchandise.[15]

[14] *See* Memorandum, "Final Margin Calculation for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively, Colakoglu)," dated concurrently with this memorandum (Final Calculation Memorandum).
[15] *See* Petitioners Case Brief at 2.

- Colakoglu reported that the product specifications for these sales were available.[16] Thus, the record indicates that Colakoglu selectively refused to provide the requested information in order to manipulate the margin calculation.[17]
- The HM sales at issue could be an identical match to a U.S. sale.[18] Commerce should apply partial adverse facts available (AFA) to the U.S. sales of the five U.S. control numbers (CONNUMUs) that could be matched to those HM sales based on the product characteristics in the reported fields.[19] As AFA, Commerce should assign a margin of 197.10 percent to each U.S. sale of these five CONNUMUs.[20]

Colakoglu's Rebuttal Brief:

- Commerce may simply exclude HM sales of non-prime merchandise from its calculations when U.S. sales are limited to prime merchandise. Commerce's practice is to separate prime and non-prime merchandise, then to match non-prime U.S. sales prices to non-prime HM sales prices or to constructed value.[21] By quantity, the HM sales of non-prime merchandise account for less than one percent of total HM sales.
- Colakoglu assigned an "X" as the grade characteristic in the CONNUMH field for HM sales of products that did not meet the grade specification. Colakoglu often does not retain the mill test certificates, as the documents are not required for such sales.
- Commerce verified this reporting method during the investigation. In past cases, Commerce has recognized that product characteristic information for HM sales of non-prime and overrun products is not always retained by respondents and has refused to apply AFA in these situations.[22]

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[16] *Id*. at 4.

[17] *Id*. at 5 (citing *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (2009); *see also Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) and accompanying Issues and Decision Memorandum (IDM) at Comment 1D).

[18] *See* Petitioners Case Brief at 3 (citing section 771(16) of the Act; *see also Cemex. S.A. v. United States*, 133 F.3d 897, 900 (Fed. Cir. 1998)).

[19] *See* Petitioners Case Brief at 6-7 (citing section 776(b) of the Act; 19 CFR 351.308(c); *see also* Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1 (SAA) at 829-832; *F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); *PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (2007); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003); and *Xanthan Gum from Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) and accompanying IDM at Comment 1)).

[20] *See* Petitioners Case Brief at 7 (citing *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261 (September 9, 2015)).

[21] *See* Colakoglu Rebuttal Brief at 3 (citing *Mittal Steel Point Lisas Ltd. v. United States*, 491 F. Supp. 2d 1222, 1227 (2007); *see also Corus Staal BV v. United States*, 259 F. Supp. 2d 1253, 1268 (2003); and *Certain Crystalline Silicon Photovoltaic Products from Taiwan*, 83 FR 30401 (June 28, 2018) and accompanying IDM at Comment 4).

[22] *See* Colakoglu Rebuttal Brief at 4 and 6 (citing *AK Steel Corp. v United States*, 346 F. Supp. 2d 1348, 1355-56 (2004); *Cold Rolled Steel Products from Korea*, 81 FR 49953 (July 29, 2016) and accompanying IDM at Comment 12).

Commerce's Position: We have included HM sales with incomplete CONNUMHs in our dumping analysis for these final results. Moreover, the record of this review supports Colakoglu's claim that the HM sales at issue were sales of non-prime merchandise.[23]

In the *Preliminary Results*, we excluded the HM sales at issue because we had insufficient time to analyze fully Colakoglu's supplemental questionnaire responses regarding how it categorized non-prime products and why it was unable to report grade specification for the sales of these products.[24]

In its supplemental questionnaire response, Colakoglu described and demonstrated how it categorized HM sales of non-prime products[25] and that it does not retain mill test certificates for these sales, as they do not meet the requirements of any technical specifications.[26] Further, Colakoglu reported that once a product is classified as non-prime, it is disassociated from any orders and no information is maintained with respect to the grade, except in rare instances when the grade is included in the product description.[27]

Thus, the record does not support a finding that Colakoglu withheld the grade characteristic for the HM sales at issue. Accordingly, we find that there is no basis to determine that Colakoglu failed to act to the best of its ability when responding to our questionnaires on this issue. Therefore, we have not applied AFA to Colakoglu and have included these sales in our dumping analysis.

Comment 2: Home Market Gross Unit Price Currency

Petitioners' Case and Rebuttal Briefs:

- Commerce's policy, reflected in the questionnaire instructions, is that prices, adjustments, revenues and expenses, must be reported "in the currencies in which they were earned or incurred." Colakoglu correctly reported its HM gross unit price "in the original unit of currency" which is U.S. dollars (USD). Commerce should revise its preliminary calculation to use Colakoglu's USD price for its HM sales, because the Turkish lira (TL) depreciated during the POR.[28]
- The HM customer's obligation to Colakoglu is set on the invoice date, and is denominated in USD, even if the ultimate payment is made in TL. Thus, the TL amount actually paid to Colakoglu by its HM customers represents the transaction value only if the payment in TL was based on the exchange rate at the time when the price was negotiated. The transaction is

[23] *See* Colakoglu's July 31, 2018 Supplemental Sections ABC Response (Colakoglu's July 31, 2018 SABCQR) at Supp-22 to Supp-23.
[24] *See* Memorandum, "Antidumping Duty Administrative Review of Hot-Rolled Steel Flat Products from the Republic of Turkey: Preliminary Results Margin Calculation for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively, Colakoglu)," dated November 1, 2018 (Preliminary Calculation Memorandum).
[25] Colakoglu indicated in its questionnaire responses that the HM sales at issue were sales of non-prime products. *See, e.g.*, Colakoglu's July 31, 2018 SABCQR at Exhibit S1-31.
[26] *See* Colakoglu's July 31, 2018 SABCQR at Supp-22 to Supp-23.
[27] *Id*. at Supp-23.
[28] *See* Petitioners Case Brief at 9-10.

no different than if Colakoglu had received payment in USD then converted it to TL for its own purposes. Ignoring the actual USD pricing materially distorts the dumping analysis.[29]

- Commerce recognized that USD-denominated HM sale prices should not be converted into the HM currency and then back to dollars in the *Welded Pipe and Tube Turkey AR 15-16 Final* and the *Flanges India Inv. Final*.[30] It is never correct to convert the USD-denominated sales, rather than converting such sales to TL on the date of the HM sale, and then converting them back to USD on the date of the U.S. sale.[31]

Colakoglu's Rebuttal and Case Briefs:

- Colakoglu agrees with the petitioners that HM sale prices reported in USD should not be converted into TL, because the currency conversion is unnecessary and could result in distortions due to exchange rate changes over time.[32]
- Commerce's practice is to use the currency of a respondent's sale prices based on the currency which controls the ultimate amount a purchaser pays for the sale.[33] Commerce's reliance on *OJ Brazil Inv. Final* is misplaced because the issue in that case was which currency Commerce should use for HM credit expenses.[34]
- USD is recognized in Turkey, and there are no restrictions on quoting prices in a foreign currency for a domestic transaction. During its normal course of business, Colakoglu and its customers agree on USD-denominated prices, and then it converts those prices to TL amounts on the invoice date and payment date using the exchange rates announced by the Turkish Central Bank for those dates. Further, Colakoglu makes billing adjustments when the Turkish Central Bank's USD selling rates change between the invoice date and payment date.[35]
- Colakoglu shows both USD and TL sales prices on its HM sale invoice. However, Colakoglu records its HM sale values in TL in its books and records because Turkish law requires companies to report financial statements in TL and to pay value-added tax in TL. Instead of simply using the original USD amount, Commerce's preliminary decision to use TL as the currency for HM sale prices creates a distortion as a result of the double currency conversion.[36]

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[29] *Id*. at 10-11.
[30] *Id*. at 11 (citing *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Welded Pipe and Tube Turkey AR 15-16 Final*) and accompanying IDM at Comment 7; *see also Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017) (*Flanges India Inv. Final*) and accompanying IDM at Comment 4).
[31] *See* Petitioners Rebuttal Brief at 20.
[32] *See* Colakoglu Rebuttal Brief at 7.
[33] *See* Colakoglu Case Brief at 11 (citing *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) and accompanying PDM at 29).
[34] *See* Colakoglu Case Brief at 12 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) (*OJ Brazil Inv. Final*) and accompanying IDM at Comment 16).
[35] *See* Colakoglu Case Brief at 12-13.
[36] *Id*. at 13-14.

Commerce's Position: We have used Colakoglu's USD-denominated HM sale prices, as reported, for these final results, because its USD price controls the ultimate TL amount paid by its HM customers.[37]

As an initial matter, both parties agree that Commerce should not convert Colakoglu's USD-denominated HM sale prices to TL. Commerce's normal policy, as reflected in the questionnaire instructions to Colakoglu, is that "the *sale price*, discounts, rebates and all other revenues and expenses" must be reported "in the currencies in which they were earned or incurred. . ." Additionally, in recent cases, Commerce has determined that USD-denominated HM sale prices should not be converted into the HM currency at the date of the HM sale and then back to USD at the date of the U.S. sale.[38]

The record of this review shows that Colakoglu and its customers negotiated the prices for the HM sales in question in USD, and these prices did not change once an agreement was reached. Rather, the buyer paid the TL equivalent amount of the USD price at the time of payment. While a TL price set on the date of sale would be the appropriate price to use, for the sales at issue, Colakoglu did not set prices in TL. Instead, Colakoglu set prices in USD. To convert this USD amount to TL at the payment date of the Turkish sale (*i.e.*, what is paid by the HM customer) and then to convert this TL amount back to USD at the date of the U.S. sale would necessarily distort the HM sale prices denominated in USD, as they are included in normal value.

Although the method of determining the amount of TL ultimately paid was known at the time of sale, the actual amount of TL to be paid was not known because it is based on the USD price set on the date of sale and the exchange rate in effect at the time of payment. Thus, the TL amount shown on the invoice represents an estimate of what the final TL amount will be at the time of payment. Specifically, when the exchange rate on the date of payment differs from the rate in effect at the time the HM invoice is issued, Colakoglu is not paid the TL amount reflected on the invoice. It is paid the TL amount based on the USD price set on the date of sale and the exchange rate in effect at the time of payment. Notably, in *Rebar from Turkey* and *Large Diameter Pipe from Mexico*, we used the USD price because the USD amount controlled the ultimate amount paid by the HM customers.

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[37] *See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review*, 66 FR 56274 (November 7, 2001) (*Rebar from Turkey*) and accompanying IDM at Issue 4; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 39358 (June 26, 2000) (*Large Diameter Pipe from Mexico*) and accompanying IDM at Comment 8.

[38] *See, e.g.*, *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015*-2016, 82 FR 49179 (October 24, 2017) and accompanying IDM at Comment 7; *see also Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483, (June 29, 2017) and accompanying IDM at Comment 4; and *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279, 45280 (August 28, 2001).

Therefore, because: (1) the price for these transactions is fixed in USD at the time of invoicing (*i.e.*, at the date of sale); and (2) this USD price controls the ultimate amount that the purchaser pays for the sale, we have used the USD dollar price in our analysis.

Comment 3: Home Market Credit Expense Adjustment

Petitioners' Case and Rebuttal Briefs:

- If Commerce continues to analyze HM sales as denominated in only TL, then the credit expenses (CREDITH) should be based on Colakoglu's actual TL borrowing rates that appeared in its consolidated financial statements for 2016 and 2017.[39]

Colakoglu's Case and Rebuttal Briefs:

- If Commerce continues to use the TL unit price for all HM sales, then it should continue to use TL borrowing rates from Colakoglu's 2016 consolidated annual report. Commerce's long-standing policy is to apply short-term interest rates tied to the currency of sales.[40]

Commerce's Position: As discussed above, for these final results, we have used Colakoglu's USD price for its USD-denominated HM sales. Therefore, we have used the weighted-average rate of short-term borrowings in USD reported by Colakoglu to calculate the adjustment for HM credit expenses for USD-denominated HM sales for the final results.[41]

Comment 4: Quarterly Cost

Petitioners' Case Brief:

- Commerce should revise its preliminary calculations, which relied on quarterly costs, because Colakoglu did not report costs for the window periods.[42] If Commerce continues to use quarterly costs, then it should apply costs from the closest quarter for control numbers (CONNUMs) that are identical or most similar to each CONNUM in the window period.[43]

Colakoglu's Rebuttal Brief:

- Commerce's long-standing practice is to use the quarterly cost-averaging method when costs change significantly during the POR. Commerce has also established thresholds for using its quarterly cost methodology,[44] which has been upheld by the Court of International Trade

[39] *See* Petitioners Case Brief at 14.
[40] *See* Colakoglu Rebuttal Brief at 12 (citing *CC Metals and Alloys v. United States*, 145 F. Supp. 3d 1299, 1308-1309 (CIT 2016); *see also Light-Walled Rectangular Pipe and Tube: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015 - 2016*, 82 FR 47477 (October 12, 2017) and accompanying IDM at Comment 10).
[41] *See* BQR at B-38 and Exhibit B-18.
[42] The window period is the three months preceding the earliest month of U.S. sales and the two months after the latest month of U.S. sales.
[43] *See* Petitioners Case Brief at 12.
[44] *See* Colakoglu Rebuttal Brief at 7-8 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*CORE Carbon Steel Korea AR 07-08 Final*) and accompanying IDM at Comment 3; *see also Notice of Final Results of Antidumping Duty Administrative Review*: *Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69071 (December 31, 1996); *Certain Porcelain-on-Steel Cookware from Mexico: Final Results of*

(CIT) in numerous cases.[45] Record evidence shows that Colakoglu met the thresholds for using the quarterly cost methodology.[46]

- Further, Commerce does not use cost during the window period in its analysis. Colakoglu has no statutory or precedential obligation to report costs for the window periods. Even if they are reported, the costs for the window period would not be used in Commerce's HM sales analysis. [47]

Commerce's Position: We have continued to use quarterly cost for the final results, because the record of this review shows that the two criteria for using the quarterly cost methodology have been met. Specifically, the record shows that there were significant cost changes during the POR.[48] Additionally, the record also shows a link between sales and cost changes.[49] Thus, we continue to find a basis for using quarterly cost.

Moreover, when using its quarterly cost methodology, U.S. sale prices are compared to a normal value which is based on either HM sale prices of such or similar merchandise within the same quarter, or on the quarterly cost of production of the subject merchandise. Thus, under the quarterly cost methodology, neither comparison market sales nor costs of production for the 90/60 day window periods are relevant for the dumping analysis.

Comment 5: Costs Recovery Test

Petitioners' Case Brief:

- Commerce did not perform the cost recovery test, as stated in the *Preliminary Results* PDM. Commerce should not find that HM sales with incomplete CONNUMHs passed the cost recovery test. These HM sales cannot be tested through the CONNUM-specific average pricing of the cost recovery test because they have no costs. Commerce should revise its SAS ME Macro program accordingly.[50]

Antidumping Duty Administrative Review, 62 FR 42496, 42505-06 (August 7, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934, 8935 (February 23, 1998); *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742, 747-748 (January 6, 2000); *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) and accompanying IDM at Comment 1; Final Results of Redetermination Pursuant to Court Remand: *Certain Steel Concrete Reinforcing Bars from Turkey* (A-489-807) at 7 (September 8, 2009); and *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009), and accompanying IDM at Comment 1(b)).

[45] *See* Colakoglu Rebuttal Brief at 9 (citing *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 33 CIT 1721 (2009); *Pastificio Lucio Garofalo, S.p.A. v. United States*, 783 F. Supp. 2d 1230, 1238-40 (CIT 2011), *aff'd* 469 F. App'x 901 (Fed. Cir. 2012)).

[46] *See* Colakoglu Rebuttal Brief at 9.

[47] *Id*. at 10 (citing *CORE Carbon Steel Korea AR 07-08 Final* IDM at Comment 3; *see also Union Steel Mfg. Co., Ltd. v. United States* 190 F. Supp. 3d 1326, 1336-41 (CIT 2016)).

[48] *See Preliminary Results* PDM at 17; *see also* Preliminary Calculation Memorandum.

[49] *See Preliminary* PDM at 17; *see also* Preliminary Calculation Memorandum.

[50] *See* Petitioners Case Brief at 13.

Colakoglu's Rebuttal Brief:

- Colakoglu has explained that HM sales with incomplete CONNUMHs are sales of non-prime products which should be excluded from the dumping analysis and thus, those sales should not be included in the cost recovery test.[51]

Commerce's Position: The record shows that we conducted the cost recovery test in the manner stated in the *Preliminary Results* PDM. Specifically, the SAS ME Macro language (*i.e.*, "%LET RUN_RECOVERY = YES") shows that we did perform the cost recovery test. The petitioners' argument is apparently based on an assumption that the cost recovery test should be product-specific of both prime and non-prime merchandise. The change suggested by the petitioners would turn off the cost recovery test, which would run contrary to section 773(b) of the Tariff Act of 1930, as amended (the Act). It is Commerce's practice to run the cost recovery test for prime and non-prime merchandise separately.[52] As we have determined that Colakoglu's HM sales with incomplete CONNUMHs are sales of non-prime merchandise, they have not been included in the cost recovery test of prime merchandise in the final results.[53]

Comment 6: Duty Drawback

Petitioners' Case and Rebuttal Briefs:

- Colakoglu significantly overstated its duty drawback. Its ratio calculation includes imports for exporting non-subject merchandise and Inward Processing Certificates (IPCs) that include entries/exports that occurred outside of the POR. The purported "duties" cannot be quantified accurately, because there is no clear link between each slab imported and the associated export sale. As total imports are less than total exports, Colakoglu's own methodology indicates that: (1) export transactions are not directly linked to slab imports; and (2) there are insufficient imports to account for the drawback claimed on the export of the manufactured products. Thus, Colakoglu failed to meet Commerce's two-pronged test, and, therefore, should not be granted a duty drawback adjustment.[54]
- Colakoglu incorrectly claimed that the CIT and U.S. Court of Appeals for the Federal Circuit (Federal Circuit) have affirmed that respondents are entitled to the full amount of the duty drawback adjustment. In *Saha Thai*, the Federal Circuit found that the statute contemplated Commerce granting a duty drawback adjustment where the respondent had been exempted from paying duties, rather than receiving rebates for duties that were paid at the time of importation. The CIT's remands in *Toscelik*, *Uttam Galva*, and *RTAC* on the duty drawback

[51] *See* Colakoglu Rebuttal Brief at 11-12.
[52] *See* Final Calculation Memorandum.
[53] *Id.*
[54] *See* Petitioners Case Brief at 16-17.

allocation methodology are not finalized.[55] In *Maverick Tube I*, the CIT further found that Commerce is entitled to deference in interpreting the duty drawback section of the Act.[56]

- Commerce's established practice in recent cases is to limit any adjustment to the total duties allocated to total production.[57] That practice is applicable in the instant review, as the record shows that Colakoglu consumes both imported and self-produced slab.

Colakoglu's Case and Rebuttal Briefs:

- There are more than sufficient imports to account for the drawback received, as drawback claims are not merely linked to quantity but to value, as well.[58] Commerce has consistently rejected the assertion that there must be a "clear link between each slab imported and the associated export sale."[59] As IPCs cover specific volumes rather than time periods, there is no practical way to report drawback earned on a strict POR basis.[60] It is irrelevant under U.S. law whether duties are actually paid, because the duty liability is incurred upon importation.[61] Limiting the drawback amount to the imports that occurred during the POR is misguided, because a significant percentage of those imports would have no corresponding export, as either production or exports have yet to occur. The actual duty exemption occurs with the corresponding export that includes the matching inputs.[62]
- By allocating total exempted duties over total production cost, Commerce attributed a portion of the adjustment to HM sales, which is contrary to law.[63] There is nothing in the statute to suggest that the duty drawback adjustment should be allocated over anything other than the U.S. sales to which the duty drawback amount relates.[64]
- By allocating the duty drawback adjustment over production rather than exports, Commerce ignored the necessary linkage between the adjustment and the act of exporting ("by reason

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[55] *See* Petitioners Rebuttal Brief at 2-3 (citing *Toscelik Profil ve SAC Endustrisi A.S. v. United States*, 321 F. Supp. 3d 1270 (CIT 2018) (*Toscelik*); *see also Uttam Galva Steels Ltd. v. United States*, 311 F. Supp. 3d 1345 (CIT 2018) (*Uttam Galva I*); *Rebar Trade Action Coal. v. United States*, Slip Op. 16-88 (CIT 2016); *Saha Thai Steel Pipe (Pub.) Co. v. United States*, 635 F.3d 1335, 1340 (Fed. Cir. 2011) (*Saha Thai*); *Wheatland Tube Co. v. United States*, 414 F. Supp. 2d 1271 (2006); *ArcelorMittal USA Inc. v. United States*, Slip Op. 08-52 (CIT 2008); and *Mittal Steel USA, Inc. v. United States*, Slip Op. 07-117 (2007) (*RTAC*)).

[56] *See* Petitioners Rebuttal Brief at 2-3 (citing *Maverick Tube Corp. v. United States*, 163 F. Supp. 3d 1345, 1356 (CIT 2016) (*Maverick Tube I*)).

[57] *Id*. at 6 (citing *Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 29094 (June 22, 2018), and accompanying IDM at Comment 3).

[58] *See* Colakoglu Rebuttal Brief at 16.

[59] *Id*. at 13 (citing *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying IDM at Comment 2).

[60] *See* Colakoglu Rebuttal Brief at 14 (citing *Heavy Walled Pipes and Tubes from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 10583 (March 1, 2016) and accompanying PDM at 10).

[61] *See* Colakoglu Rebuttal Brief at 15 (citing 635 F.3d 1335 (Fed. Cir. 2011); *see also Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (Fed. Cir. 2005) (*Allied Tube*)).

[62] *See* Colakoglu Rebuttal Brief at 16.

[63] *See* Colakoglu Case Brief at 2-4 (citing section 772(c)(1)(B) of the Act; *see also Toscelik; Uttam Galva I*; and *RTAC*).

[64] *See* Colakoglu Case Brief at 4-6 (citing *Allied Tube*, 374 F. Supp. 2d at 1257).

of") in the statute's text.[65] Also, the CIT and Federal Circuit have categorically rejected any deviation from Commerce's two-prong test (such as allocating the drawback adjustment over total shipments) finding that they would impermissibly add "a third prong" to Commerce's judicially approved test.[66]

- There is no legal or factual basis for computing a per-unit drawback adjustment to U.S. price over any other denominator than the exports to which it is linked. In *Saha Thai*, the Federal Circuit affirmed the full upward adjustments to U.S. price for the exempted duties and an adjustment to cost of production. More recently, the CIT, in both *Toscelik* and *Uttam Galva*, found that allocating exempted import duties over total production cost is inconsistent with the statute.[67]

Commerce's Position: We have continued to grant a duty drawback adjustment to Colakoglu for these final results. Specifically, we have made an upward adjustment to Colakoglu's export price (EP) and constructed export price (CEP) sale prices based, in part, on the per-unit amount of duty drawback claimed by Colakoglu. This adjustment was limited by the product-specific, per-unit amount of import duties included in the normal value (*i.e.*, reflected in Colakoglu's cost of production). Further, we imputed an import duty cost to Colakoglu's cost of production based on the exempted amount of import duties during the POR (*i.e.*, import duties forgone on IPCs closed during the POR and not recorded in Colakoglu's cost of production), allocated over Colakoglu's total direct material costs. The ratio of exempted import duties to Colakoglu's costs is multiplied by the product-specific, per-unit cost of materials to derive the per-unit import duty cost for each product.

Section 772(c)(1)(B) of the Act states that Commerce shall add to U.S. price "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 exportation of subject merchandise to the United States…." According to the Federal Circuit:

> 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 {U.S. Price} to the level it likely would be absent the duty drawback.[68]

Section 773(a) of the Act directs that "a fair comparison shall be made between export price or constructed export price and normal value." "To achieve such a fair comparison, section 773 of the Act provides for the selection and adjustment of normal value to avoid or adjust for

[65] *See* Colakoglu Case Brief at 7.
[66] *Id*. at 7-8.
[67] *Id*. at 8 (citing *Toscelik* and *Uttam Galva I*).
[68] *See Saha Thai*, 635 F.3d at 1338 (citing *Hornos Electricos de Venezuela v. United States*, 285 F. Supp. 2d 1353, 1358 (CIT 2003); *see also* S. Rep. No. 67-16, at 12 (1921) ("In order that any drawback given by the country of exportation upon the exportation of merchandise shall not constitute dumping, it is necessary also to add such items to the purchase price.")).

differences between sales which affect price comparability."[69] Additionally, "to achieve that end, the statute and {Commerce's} regulations call for adjustments to the base value of both {normal value} and United States price to permit comparison of the two prices at a similar point in the chain of commerce,"[70] which, in general, Commerce has viewed as the point where the subject merchandise is ready to leave the producer's or exporter's premises[71] ready for exportation to the United States.

In accordance with the statute, Commerce strives to ensure a fair comparison of U.S. price with normal value, including when a respondent has claimed a duty drawback adjustment. As noted above, the statute requires that Commerce increase U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[72] In order to determine whether an exporter is eligible for such an adjustment, Commerce requires that an exporter satisfy each requirement of the "two-prong test:" (1) the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, that the exemption is linked to the exportation of the subject merchandise; and (2) there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise.[73] Both the statute and Commerce's practice begin with the amount of import duties as the basis for any benefit to the producer based on duty drawback, and, consequently, any adjustment to U.S. price.

The amount of duty drawback is directly and explicitly linked with the amount of import duties. Further, the amount of duty drawback cannot exceed the amount of import duties because, as the statute states, the adjustment is for: "… the amount of import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation ..."[74] An amount refunded or exempted by the country of exportation in excess of the amount of import duties cannot be defined as duty drawback and consequently cannot be part of an adjustment for duty drawback to U.S. price. Likewise, the second prong of the two-prong test requires that a producer import a sufficient amount of the material input, *i.e.*, incur a sufficient amount of import duties, to account for the amount of duty drawback claimed for the exported merchandise. Clearly, on a company-wide basis, the concept of duty drawback requires that the amount of duty drawback cannot be greater than the amount of import duties.

We disagree with the petitioners' contention that we should deny Colakoglu a duty drawback adjustment because Colakoglu's IPCs: (1) do not directly link its POR exports of subject merchandise with POR imports of material inputs; and (2) show insufficient imports to account for the drawback claimed on the export of the manufactured products. As noted above, Commerce's two-prong test to determine whether a respondent is eligible for a duty drawback adjustment requires: (1) that the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, that the exemption is linked to the exportation of

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[69] *See* SAA at 820.
[70] *See Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995).
[71] *See* SAA at 809 ("…comparisons be made … at the ex-factory level…").
[72] *See* section 772(c)(1)(B) of the Act.
[73] *See Saha Thai*, 635 F.3d at 1340.
[74] *See* section 772(c)(1)(B) of the Act.

the subject merchandise; and (2) that there are sufficient imports of the raw materials to account for the duty drawback on the exports of the subject merchandise. It does not require a direct link between the exported products and imported materials. Moreover, while duty drawback is granted based on the export of the manufactured products the amount of duties exempted is tied to the value of the imported raw materials. Thus, the fact that Colakoglu reported a larger volume of exported products than imported raw materials is not evidence that Colakoglu had insufficient imports to account for the drawback claimed.

As noted by Colakoglu, the CIT has stated that the statute requires Commerce to make an adjustment based on the full amount of the benefit from the exporting country claimed for duty drawback "by reason of the exportation of the subject merchandise to the United States."[75] In general, Commerce agrees with Colakoglu's statements that "duty drawback is an *upward* adjustment to U.S. price … intended to 'prevent dumping margins' from occurring because the export country rebates, or provides exemptions for import duties or taxes that it had imposed upon raw materials used to produce merchandise, that is subsequently exported."[76] In the absence of a duty drawback adjustment, the U.S. price does not reflect the import duty cost which is reflected in normal value (including the product's cost of production) because that import duty cost is recovered as a duty drawback from the government of the exporter. Accordingly, a dumping margin may be created because the U.S. price does not reflect the import duty cost whereas the normal value does. Accordingly, section 772(c)(1)(B) of the Act provides for an adjustment to U.S. price for "duty drawback" to "prevent dumping margins." However, the amount of the adjustment for duty drawback to "prevent dumping margins" is limited by the amount of the import duties reflected in normal value which may cause the creation of dumping margins. An amount claimed as duty drawback that is in excess of the matching import duties cannot, by definition, be considered duty drawback. Accordingly, Commerce has continued to limit the amount of Colakoglu's duty drawback adjustment by the amount of import duties reflected in the comparison normal value.

Colakoglu's reliance on *Saha Thai* that the full amount of the claimed duty drawback adjustment be added to U.S. price is misplaced. Saha Thai did not address the amount of the duty drawback adjustment. The issues address in Saha Thai were: (1) whether a duty drawback adjustment was warranted; (2) whether Commerce's addition of imputed import duties is appropriate; and (3) whether Commerce double-counted the respondent's import duty costs. In particular, we note that the Federal Circuit stated:

> Thus, because COP and CV are used in the NV calculation, COP and CV should be calculated as if there had been no import duty exemption. It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import

[75] *See* Colakoglu Case Brief at 4 (citing *Rebar Trade Action Coalition v. United States*, No. 14-00268, 2016 Ct. Intl. Trade LEXIS 90 (CIT Sept. 21, 2016) (*RTAC II*); *see also Uttam Galva I*; *Toscelik*, 321 F. Supp. 3d at 1270; *Eregli Demir ve Celik Fabrikalari v. United States*, 357 F. Supp. 3d 1325 (CIT 2018); and *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 2019 Ct. Intl Trade LEXIS 13 (CIT Jan. 23, 2019).
[76] *See* Colakoglu's Case Brief at 4 (emphasis in original, citation omitted).

duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all.[77]

As noted above, the Federal Circuit recognized, as did the CIT in *Carlisle Tire III*,[78] that there is a direct link between the amount of import duties and the amount of duty drawback, and that the amount of duty drawback cannot exceed the amount of import duties reflected in normal value.

Commerce disagrees with Colakoglu's characterization that it has allocated duty drawback to total production. In imputing a cost for import duties, Commerce has allocated the total amount of import duties as reported by Colakoglu as not having been recorded in its books and records as a cost of materials. As is Commerce's standard practice, costs of production, including the cost of materials, are allocated to all production to derive a single cost of production for each product. If Colakoglu had recorded its import duties as a cost of materials, this same per-unit amount of import duties, where the amount of import duties is allocated over production, would be included and reported to Commerce as part of its cost of production for each product. Commerce has respectively disagreed with the CIT's five opinions that it must make a "full" adjustment for duty drawback, no matter what that amount might be and with no relationship to the amount of import duties reflected in normal value. In making an adjustment for duty drawback, the normal value must include at least the same amount of import duties as the amount of duty drawback to make a fair comparison.

Comment 7: U.S. Date of Sale

Colakoglu's Case Briefs:

- Commerce's regulation states that a date other than the invoice date (*e.g.*, order date) may be used for date of sale, when it is generally the date on which the parties establish the material terms of the sale, which normally includes the price, quantity, delivery terms, and payment terms.[79] Where material terms of sale do not change after the order date, Commerce has consistently found the order date to be the date of sale.[80]
- Colakoglu reported order date as its U.S. date of sale. Nevertheless, in the *Preliminary Results*, Commerce used invoice date as the U.S. date of sale. To support its use of invoice date as date of sale, Commerce found that the sample U.S. sale documentation indicated that Colakoglu's terms of sale were not finalized until the subject merchandise was produced yet failed to elaborate on which term it believed was not finalized on the order date.[81]

[77] *See Saha Thai* at 1342-43.
[78] *See Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987) (*Carlisle Tire III*).
[79] *See* Colakoglu Case Brief at 9 (citing 19 CFR 351.401(i); *see also ArcelorMittal USA Inc. v. United States*, Slip Op. 08-52 (CIT 2008); *Mittal Steel USA, Inc. v. United States*, Slip Op. 07-117 (2007); and *USEC Inc. v. United States*, 498 F. Supp. 2d 1337 (CIT 2007)).
[80] *See* Colakoglu Case Brief at 9-10 (citing *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 37518 (June 15, 2000) and accompanying IDM at Hylsa Comment 1; *see also Oil Country Tubular Goods, Other Than Drill Pipe from Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 12520 (March 19, 2002) and accompanying IDM at Comment 3; and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27349 (May 19, 1997) (Congress "expressed its intent that, for antidumping purposes, the date of sale be flexible so as to accurately reflect the true date on which the material elements of sale were established.")).
[81] *See* Colakoglu Case Brief at 9.

- Substantial record evidence shows that all material terms of sale are finalized when MedTrade Incorporated (MedTrade) issued the order form to a U.S. customer . U.S. orders require significant lead times, as they are much larger than typical HM sales. They are negotiated and concluded several months before the actual shipment and invoice dates.[82]

Petitioners' Rebuttal Brief:

- Colakoglu failed to support its claim that order date is the appropriate date of sale for its U.S. sales. It did not define the order date, demonstrate that the order date was recorded in its accounting system, or establish that variances/tolerances are always established on the order date.[83]
- The documentation on the record is insufficient and contradicts Colakoglu's position on its U.S. date of sale. Two customers' purchase orders represent a very small percentage of total U.S. sales quantities. Colakoglu did not provide the contracts and/or agreements referred to in these purchase orders, nor did it provide its internal purchase orders and invoices for sales to MedTrade. Further, one of these purchase orders implies that the terms of sale are not always finalized at the time of the issuance of the purchase order.[84]

Commerce's Position: We have continued to use invoice as the date for sale for Colakoglu's U.S. sales. Section 351.401(i) of Commerce's regulations states that:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

The CIT has found that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' {Commerce} that a different date better reflects the date on which the producer or exporter establishes the material terms of sale."[85] The date of sale is generally the date on which the parties establish the material terms of the sale,[86] which normally include the price, quantity, delivery terms and payment terms.[87]

Colakoglu reported that order date was "{b}ased on the purchase order received from the customer, Medtrade prepare {sic} an order form and the date of this form is provided as agreed PO date."[88] Our analysis indicates that Colakoglu has reported "order date" based on different events and documentation. In certain instances, Colakoglu reported order date based on the date that its U.S. customer issued its purchase order.[89] However, for other U.S. sales, Colakoglu has

[82] *See* Colakoglu Case Brief at 10.
[83] *See* Petitioners Rebuttal Brief at 10.
[84] *Id*. at 11.
[85] *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001).
[86] *See* 19 CFR 351.401(i).
[87] *See USEC Inc. v. United States*, 489 F. Supp. 2d 1337, 1055 (CIT 2007).
[88] *See* Colakoglu's July 31, 2018 SABCQR at Supp-2.
[89] *See* Colakoglu's February 20, 2018 AQR at Exhibit A-10.

reported order date as the date that MedTrade processed an internal order form.[90] Moreover, neither of these dates are recorded in Colakoglu's books and records.[91] Finally, the record also indicates that sales terms such as shipment date and due date (*i.e.*, delivery date) are subject to change after the order. Specifically, information on the record shows that both the shipment date and the delivery date recorded on the purchase order are subject to change.[92]

Given that the record indicates that the reported order date is based on different events and documents, and that all material terms of a sales are not finalized on the order date, we continue to find that Colakoglu has not established that order date better reflects the date on which it established the material terms of sale. Therefore, we have continued to use invoice date as the date sale for Colakoglu's U.S. sales.

Comment 8: CEP Offset

Colakoglu's Case Brief:

- Colakoglu performed the same selling functions at the same level of intensity for both HM and U.S. sales (based on CEPs) as it did during the underlying investigation, during which Commerce concluded that a CEP offset was warranted.[93]
- There are clear and substantial differences in the selling activities between the HM and the U.S. market. The record shows that Colakoglu puts considerable resources (*e.g.*, staff) into processing HM sales (*e.g.*, logistic support, technical services). In contrast, Colakoglu only performs administrative and logistical selling activities for its U.S. sales to MedTrade.

Petitioners' Rebuttal Brief:

- Commerce is not necessarily bound by a decision made in a different segment of a proceeding with a different factual record.[94] Nevertheless, it is not clear from the IDM of the underlying investigation how the selling functions in that segment compare to the selling functions in the instant review.[95]
- Colakoglu failed to support its assertion that there are "substantial differences in selling functions" for its HM and U.S. sales. It simply claims that it is "more involved" in its HM sales. It provides scant empirical evidence to support its claim of substantially different selling functions for the two markets, and simply places greater emphasis on functions it thinks warrant a CEP offset.[96]

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[90] *See* Colakoglu's July 31, 2018 SABCQR at Exhibit S1-3.
[91] *See* Colakoglu's July 31, 2018 SABCQR at Supp-2.
[92] *See* Colakoglu's February 20, 2018 AQR at Exhibit A-10.
[93] *See* Colakoglu Rebuttal Brief at 15 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15231 (March 22, 2016) and accompanying PDM at 17).
[94] *See* Petitioners Rebuttal Brief at 19 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) and accompanying IDM at Comment 3).
[95] *See* Petitioners Rebuttal Brief at 19, n.69.
[96] *Id*. at 19 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*Heavy Walled Pipes and Tubes from Korea*) and accompanying IDM at Comment 7).

- The calculation of indirect selling expenses for HM sales (INDIRSH) and indirect selling expenses incurred in HM for U.S. sales (DINDIRSU) indicate no discernable difference in the underlying activities Colakoglu performed for its HM and U.S. sales. Additional record evidence points to similar levels of intensity in U.S. sales and HM sales. Further, Colakoglu failed to report certain functions performed for U.S. sales to Medtrade.

Commerce's Position: We continue to find that a CEP offset is not warranted for the final results of this review.[97] Our analysis continues to show that the selling activities Colakoglu performed for its HM sales were virtually identical to those performed for its U.S. sales, and that it performed those selling functions at the same or comparable levels of intensity in each market.[98]

As an initial matter, Colakoglu's argument that Commerce should grant a CEP offset in this segment because it did so in other proceedings, and in the underlying investigation in this proceeding, is misplaced. The decision to grant a CEP offset is a fact-specific inquiry that must be made based on the instant record.[99] Commerce is not necessarily bound by its determinations in a segment of a separate proceeding, or a prior segment of this proceeding, because each segment of a proceeding has its own unique factual record.[100] Commerce must examine each record based on its own merits.

Colakoglu's claims of clear and substantial differences in the selling activities between its HM and its U.S. market sales are not supported by the record. Colakoglu reported that it performed thirty-two activities in its selling functions chart, but it reported expense fields for only nine of those activities.[101] Thus, Colakoglu provided no expense records to support the majority of claimed selling activities.

Therefore, we continue to determine that Colakoglu's HM sales and its U.S. sales were made at the same level of trade (LOT), and that no LOT adjustment, or CEP offset, is warranted.[102]

[97] *See Preliminary Results* PDM at 23.
[98] *See* Final Calculation Memorandum.
[99] *See Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017) and accompanying IDM at Comment 4.
[100] *See, e.g.*, *Pakfood Public Co. Ltd. v. United States*, 724 S. Supp. 2d 1327, 1345 (CIT 2010); *see also Alloy Piping Products, Inc. v. United States*, No. 08-00027, 2009 WL 98307831, at *5-*6 (CIT 2009).
[101] *See* Colakoglu's February 20, 2018 AQR at Exhibit A-9; *see also* Colakoglu's July 31, 2018 SABCQR at Exhibits S1-5 and S1-53; Colakoglu's March 15, 2018 BQR at Exhibit B-19.
[102] *See Heavy Walled Pipes and Tubes From Korea*, 81 FR at 47349, and accompanying IDM at Comment 7.

Comment 9: SAS Programing Errors

Petitioners' Case and Rebuttal Briefs:

- Commerce discarded and did not consider HM sales with incomplete CONNUMHs for which no costs were reported in the *Preliminary Results*. Commerce should use surrogate costs for the HM sales with missing costs, in accordance with its normal practice.[103]
- Commerce should exclude all overrun sales rather than only those with incomplete CONNUMHs from the HM sales analysis as overrun sales were outside the ordinary course of trade.[104]
- Commerce's preliminary calculations incorrectly defined the ENDDAY to 03NOV20I7 instead of 30NOV2017 in the HM analysis program, and the BEGINWINDOW to April 1, 2016, instead of December 1, 2015, in the margin program.[105] Commerce also failed to deduct Inland Freight-Vessel to Customer (INLFTC1H) and Demurrage (DEMH) from HM price in those calculations.[106]

Colakoglu's Case and Rebuttal Briefs:

- The petitioners correctly point out that Commerce discarded HM sales with incomplete CONNUMHs; however, they are incorrect that "no costs were reported." Colakoglu reported surrogate costs in the COP/CV files to Commerce. There are no provisions in the regulations that would trigger use of the window period costs, and Commerce never requested such information in this review.[107]
- Commerce correctly determined that overrun sales were made outside the ordinary course of trade. The petitioners have provided no argument to support changing Commerce's overrun determination.[108]
- Commerce incorrectly defined the BEGINWINDOW as April 1, 2016, instead of December 1, 2015, in the margin program.[109]
- Commerce failed to deduct INLFTC1H and DEMH from HM price.[110]

Commerce's Position: We have made the following changes in the final HM analysis program: (1) we changed the "find surrogate cost" macro to "YES"; and (2) we excluded overruns because they were made outside the ordinary course of trade.

In the *Preliminary Results*, we deducted Inland Vessel Freight (Plant to Customer) (INLFTC2H) and Inland Vessel Freight Demurrage (DEM1H) expenses denominated in TL but did not deduct the Inland Vessel Freight (Plant to Customer) (INLFTC1H) and Inland Vessel Freight

[103] *See* Petitioners Case Brief at 18 (citing *Certain Pasta from Italy: Notice of Final Results of 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010-2011*, 78 FR 9364 (February 8, 2013) and accompanying IDM at Comment 5).
[104] *See* Petitioners Case Brief at 18-19.
[105] *Id*. at 19.
[106] *See* Petitioners Rebuttal Brief at 21.
[107] *See* Colakoglu Rebuttal Brief at 12.
[108] *Id*. at 18.
[109] *Id*. at 18.
[110] *See* Colakoglu Case Brief at 20.

Demurrage (DEMH) expenses denominated in USD,[111] because Colakoglu did not provide general ledgers and cost center records showing these expenses in USD.[112] However, Colakoglu converted those expenses from USD to TL and reconciled the total expenses to its general ledger in TL.[113] Therefore, we have deducted INLFTC1H and DEMH for the final results.[114]

Because we are using quarterly cost, we have redefined ENDDAY" to "30SEP2017" and "BEGINWINDOW" to "22MAR2016."

VII. RECOMMENDATION

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

☒	☐
Agree	Disagree

6/21/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[111] *See* Colakoglu's March 15, 2018 BQR at B-34 and Exhibit B-1.
[112] *See* Colakoglu's July 31, 2018 SABCQR at Supp-35, Supp-36, and Exhibits S1-48 and S1-49.
[113] *Id*. at Supp-35, Supp-36, and Exhibits S1-48 and S1-49.
[114] *See* Final Calculation Memorandum.