



A-489-829

Administrative Review  
POR: 3/7/2017 – 6/30/2018  
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March 13, 2020

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2017-2018 Administrative Review of the Antidumping Duty Order  
on Steel Concrete Reinforcing Bar from Turkey

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in this administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). Based on the analysis of the comments received, we made certain changes to the margin calculations for mandatory respondents, Kaptan Demir Celik Endüstrisi ve Ticaret A.S. (Kaptan Demir) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S., (Icdas) (*see* Section IV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

### General Issues

- Comment 1: Whether a Particular Market Situation (PMS) Exists With Respect to the Turkish Billet Market
- Comment 2: Whether Commerce Should Revise its Duty Drawback Adjustment
- Comment 3: Whether Commerce Should Rely on Theoretical or Actual Weight in the Home Market
- Comment 4: SAS Programming Errors

### Icdas-Specific Issues

- Comment 5: Whether Commerce Should Use Contract Date as Icdas’s U.S. Date of Sale
- Comment 6: Whether Commerce Should Use “Partial” Quarters in its Quarterly Cost Analysis
- Comment 7: Whether Commerce Should Reallocate the Cost of Icdas’s Short-Length Rebar to Prime Products
- Comment 8: Whether Commerce Should use Icdas’s Reported General and Administrative (G&A) and Interest Expense Ratio (INTEX) Expenses



## II. BACKGROUND

On December 17, 2019, we published the *Preliminary Results* of this administrative review.<sup>1</sup> On January 30, 2020, we issued the Post-Preliminary PMS Memorandum.<sup>2</sup> On February 11, 2020, we received case briefs from Kaptan Demir,<sup>3</sup> Icdas,<sup>4</sup> and the petitioner,<sup>5</sup> and on February 18, 2020, we received rebuttal briefs from Icdas and the petitioner.<sup>6</sup> Commerce did not receive any requests to conduct a hearing in this proceeding.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on January 8, 2020, Commerce extended the deadline to issue these final results by 59 days.<sup>7</sup> Accordingly, the deadline for these final results is March 13, 2020.<sup>8</sup>

## III. SCOPE OF THE ORDER

The product covered by this review is rebar from Turkey. For a full description of the scope, *see* Appendix I of the accompanying *Federal Register* notice.<sup>9</sup>

## IV. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made the following changes:<sup>10</sup>

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<sup>1</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 68884 (September 16, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, “Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: Post-Preliminary Decision Memorandum on Particular Market Situation Allegation,” dated January 30, 2020 (Post-Preliminary PMS Memorandum).

<sup>3</sup> See Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from Turkey: Kaptan Case Brief,” dated February 11, 2020 (Kaptan Demir’s Case Brief).

<sup>4</sup> See Icdas’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Case Brief,” dated February 11, 2020 (Icdas’s Case Brief).

<sup>5</sup> The petitioner is the Rebar Trade Action Coalition and its individual members, the Nucor Corporation, Gerdau Ameristeel U.S. Inc., Commercial Metals Company, Byer Steel Group, Inc., and Steel Dynamics, Inc. See Petitioner’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Petitioner’s Case Brief,” dated February 11, 2020 (Petitioner’s Case Brief).

<sup>6</sup> See Icdas’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Rebuttal Brief,” dated February 18, 2020 (Icdas’s Rebuttal Brief); and Petitioner’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Petitioner’s Rebuttal Brief,” dated February 18, 2020 (Petitioner’s Rebuttal Brief).

<sup>7</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey,” dated January 8, 2020.

<sup>8</sup> *Id.*

<sup>9</sup> See unpublished *Federal Register* notice, “*Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review; 2017-2018*,” dated concurrently with this memorandum.

<sup>10</sup> See Memoranda, “Analysis for the Final Results: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.,” (Icdas’s Final Analysis Memorandum); and, “Analysis for the Final Results: Kaptan Demir Celik Endüstrisi ve Ticaret A.S.,” (Kaptan Demir’s Final Analysis Memorandum), both of which are dated concurrently with this Issues and Decision Memorandum (IDM).

- For both Icdas and Kaptan Demir, we relied on actual weight for the calculation of each respondent's estimated weighted-average dumping margin;
- For both Icdas and Kaptan Demir, we revised certain currency calculation errors in the home and U.S. market programs;
- We relied on Icdas's sales to affiliated resellers that passed the arms-length test;
- We revised the USMONTH calculation in Icdas's margin program; and
- We deducted the movement expenses of affiliated resellers from Icdas's normal value (NV).

## V. DISCUSSION OF THE ISSUES

### General Issues

#### **Comment 1: Whether a Particular Market Situation (PMS) Exists With Respect to the Turkish Billet Market**

##### *Petitioner's Case Brief:*

- Contrary to Commerce's finding in the Post-Preliminary PMS Memorandum: (1) Government of Turkey (GOT) subsidies to rebar producers extend to and benefit their billet production; (2) the distortions caused by the GOT's control over Erdemir extend to the steel billet market; and (3) the effects of global steel overcapacity contribute to the distortive PMS with respect to rebar.<sup>11</sup>
- The overlap in rebar and billet production in Turkey and the substantial portion of rebar costs attributable to the billet input are factors that serve to impact and/or distort the rebar market.<sup>12</sup>
- Past cost-based PMS decisions that relied on subsidies granted to producers of the primary input, rather than the subject merchandise, involved products with distinct value chains, in particular, pipe products that use hot-rolled coil (HRC) as the primary input.<sup>13</sup>
- While Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) may play a larger role in the Turkish HRC market than the billet market, Erdemir's share of the billet market, relative to its share of the HRC market, is irrelevant to the analysis of whether the GOT's control over Erdemir, through the Oyak Mining Metallurgy Group, distorts the Turkish billet market.<sup>14</sup>

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<sup>11</sup> See Petitioner's Case Brief at 2-7.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 5 (citing, e.g., *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 85 FR 2715 (January 16, 2020) (*CWP from India*), and accompanying IDM; and *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2017-2018, 85 FR 3616 (January 22, 2020) (*CWP from Turkey*), and accompanying IDM).

<sup>14</sup> See Petitioner's Case Brief at 6 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Particular Market Situation Allegation and Factual Information," dated May 24, 2019 (Petitioner's PMS Allegation)).

- Given the GOT's control over Erdemir, it is only logical to conclude that GOT influence extends to and distorts the billet market – as it distorts the Turkish market for all steel products produced by Erdemir.<sup>15</sup>
- As active participants in the global and domestic Turkish steel markets and as producers, buyers, and sellers of steel billet, the respondents' self-production does not isolate them from the impacts of prevailing prices – *i.e.*, market value – for billet.<sup>16</sup>
- In *WLP from Korea*, Commerce acknowledged the logical connection between purchased and self-produced inputs: “{c}ompanies do not operate in a vacuum, but, rather purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to costs.”<sup>17</sup>
- Contrary to recent determinations, Commerce's finding with respect to global overcapacity is overly simplistic, ignores the dynamics of the global steel overcapacity crisis, and fails to address the impact of that crisis on the Turkish steel market.<sup>18</sup>
- Contrary to standard practice, Commerce relied on export data, which is largely self-reported, distortive, and unchecked.<sup>19</sup>
- Commerce should rely on import data, which shows that China is indeed a significant global source of steel billet, particularly the 2013-16 period when the global steel overcapacity crisis was at its peak.<sup>20</sup>
- The rigorous empirical analysis used in the allegation confirms that the relationship between excess capacity and national import average unit values (AUVs) for rebar and billet is economically and statistically significant.<sup>21</sup>
- A surge in Chinese billet exports to the Turkish market in 2015 and 2016 precipitated significant declines in AUVs for billet imported into Turkey from all sources.<sup>22</sup>
- As confirmed in *CWP from Turkey*, distortions from the Chinese market have spilled over to other countries to the extent that countries import steel or subsidize their domestic industry in response to the problem.<sup>23</sup>

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 7-8 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 33919 (July 18, 2018) (*WLP from Korea*), and accompanying IDM at 15-16).

<sup>18</sup> *Id.* at 9 (citing *CWP from India* IDM at Comment 1; and *CWP from Turkey* IDM at Comment 1).

<sup>19</sup> The petitioner states, “For example, in assessing negligibility under U.S. trade law, the U.S. ITC relies on import data,” but does not cite a specific regulation or statutory guideline. *See* Petitioner's Case Brief at 9-10.

<sup>20</sup> *Id.* at 10 (citing Petitioner's Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on Icdas and Kaptan Demir's Rebuttal PMS Filings,” dated September 17, 2019 (Petitioner's PMS Rebuttal Comments)).

<sup>21</sup> *Id.* at 10 (citing Petitioner's PMS Allegation at 47-48 and Exhibits 43.1 and 43.2).

<sup>22</sup> *Id.* at 11 (citing Petitioner's PMS Allegation at 40-43; and Kaptan Demir's Letter, “Steel Concrete Reinforcing Bar from Turkey: Kaptan PMS Rebuttal Submission,” dated August 19, 2019 (Kaptan Demir's PMS Rebuttal Comments) at 18).

<sup>23</sup> *Id.* at 12 (citing *CWP from Turkey* IDM at Comment 1; and Petitioner's PMS Allegation at 36-37).

*Icdas's Rebuttal Brief:*

- Commerce should continue to find that a PMS does not exist with respect to the Turkish billet market because: (1) Icdas's rebar production is not impacted by market prices of billets; (2) allegedly GOT-controlled suppliers do not control the Turkish billet market; and (3) the Turkish billet market is not distorted by Chinese excess capacity.<sup>24</sup>
- The petitioner's allegation that there is a "fundamental link between rebar and billet production in Turkey" is unsupported by record evidence, as is the assumption that "subsidies that benefit billet producers flow through to rebar."<sup>25</sup>
- Billet and rebar are fundamentally distinct products, with billet clearly delineated as an input in the production of rebar and other downstream products, such as wire rod.<sup>26</sup>
- Icdas's production decisions and prices of rebar primarily reflect its own cost to manufacture billets from scrap, not market prices; its billet prices are impacted by global prices for the scrap from which billet is produced internally.<sup>27</sup>
- The petitioner's attempt to rewrite Commerce's regulations to apply the major input rule, and restructure Icdas's business model to create a billet-market in this case is not supported by record evidence and should be disregarded.<sup>28</sup>
- The petitioner's reference to *WLP from Korea* not does support a finding of a PMS here, as "pipe producers typically do not produce their HRC input," and, as such, "{t}he Turkish rebar value chain is distinctly different from the pipe value chain," as emphasized by the petitioner itself.<sup>29</sup>
- Commerce should continue to reject the petitioner's claim that "Erdemir's position in the Turkish billet market is not insignificant" and, as such, "it is only logical to conclude that GOT influence extends to and distorts the billet market" because: Icdas self-produces the vast majority of billets used to manufacture rebar and does not purchase any billets from Erdemir; and, with such a small share of the billet market, Erdemir does not dominate or control the Turkish billet market, and as a result, the market is not distorted by GOT control.<sup>30</sup>
- While the petitioner takes issue with Commerce's "reliance almost entirely on Chinese export data," Turkish import data similarly shows Chinese contributions to the Turkish market to be insignificant during the POR.<sup>31</sup>
- While the petitioner cites declines in the AUV of imports from China, the AUV of Turkish billet imports from China has been sporadic, with the 2014 to 2016 declines,

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<sup>24</sup> See Icdas's Rebuttal Brief at 2-10.

<sup>25</sup> *Id.* at 2-3 (citing Petitioner's Case Brief at 3-5).

<sup>26</sup> *Id.* at 3 (citing Icdas's February 5, 2019 BCDQR at D-6, D-7, and D-21).

<sup>27</sup> *Id.* at 4 (citing Icdas's February 5, 2019 BCDQR at D-5; and Icdas's July 22, 2019 SQR at Exhibit S2-1; and Icdas's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas's Response to Particular Market Situation Allegation Initiation," dated August 20, 2019 (Icdas's PMS Rebuttal Comments) at 6 and Exhibit 6).

<sup>28</sup> *Id.* at 5 (citing Petitioner's Case Brief at 5, 8; and *WLP from Korea* IDM at 13, 16).

<sup>29</sup> *Id.* at 5 (citing Petitioner's Case Brief at 7).

<sup>30</sup> *Id.* at 6 (citing Petitioner's Case Brief at 6; Post-Preliminary PMS Memorandum at 8-9; and Icdas's PMS Rebuttal Comments at 6-7).

<sup>31</sup> *Id.* at 8 (Citing Petitioner's Case Brief at 9; Petitioner's PMS Allegation at 40-42; and Kaptan Demir's PMS Rebuttal Comments at 18).

which are outside the POR, following peak prices in 2013.<sup>32</sup> By 2017, China's AUVs had increased six times over 2016 levels to well above the global average AUV for billets and was similarly high in 2018.<sup>33</sup>

- The petitioner also fails to consider that the majority of steel imports into Turkey for use in domestic production are currently subject to high *ad valorem* tariffs: Chinese billet imports are subject to a tariff of 22.5 percent.<sup>34</sup>
- The petitioner's request that Commerce "adopt {a} revised methodology and make the appropriate upward adjustment to respondents' billet input costs" has been rejected by the Court of International Trade (CIT), which upheld that the adjustment pertains only to PMS "in the context of constructed value, *i.e.*, when the dumping margin calculation is based on comparing U.S. prices to constructed value, but only when constructed value is the basis of 'normal value,' not home-market sales."<sup>35</sup>

### Commerce's Position:

We continue to find that a PMS does not exist with respect to the Turkish billet market during the period of review (POR). In reaching this determination, we examined the following three factors raised by the petitioner: (1) GOT subsidization of companies that produce rebar; (2) the GOT's controlling interest in a major Turkish billet supplier; and (3) global steel overcapacity.<sup>36</sup>

We discuss the arguments concerning each of the factors below.

#### GOT Subsidization of Companies that Produce Rebar

As noted in the Post-Preliminary PMS Memorandum, record information evidences the GOT's subsidization of companies that produce rebar.<sup>37</sup> Previous cost-based PMS determinations regarding a primary input used to product the subject merchandise have relied on subsidy findings concerning the primary input.<sup>38</sup> In previous cost-based PMS determinations, Commerce has not relied on subsidies granted to companies that produce subject merchandise as the basis for finding a PMS with respect to the inputs used to produce that subject merchandise.<sup>39</sup> In each

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<sup>32</sup> *Id.* at 8 (citing Kaptan Demir's PMS Rebuttal Comments at 18).

<sup>33</sup> *Id.* at 8 (citing Kaptan Demir's PMS Rebuttal Comments at 18, 39-40).

<sup>34</sup> *Id.* at 9 (citing Icdas's PMS Rebuttal Comments at 7, Exhibits 6-8; Petitioner's Case Brief at 9; and Post-Preliminary PMS Memorandum at 10).

<sup>35</sup> *Id.* at 10 (citing *Saha Thai Steel Pipe Pub. Co. v. United States*, No. 18-00214, 2019 WL 6997904 at 4 (CIT December 18, 2019) (*Saha Thai II*); and section 773(e) of the Act).

<sup>36</sup> We declined to initiate on the fourth prong of the petitioner's allegation regarding potential impacts of the Turkish duty drawback program. See Memorandum, "Allegation of a Particular Market Situation in the 2017-18 Antidumping Duty Administrative Review of Steel Reinforcing Bar from Turkey," dated August 6, 2019 (PMS Initiation Memorandum); and Post-Preliminary PMS Memorandum at 9.

<sup>37</sup> See Post-Preliminary PMS Memorandum at 8 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017)).

<sup>38</sup> For example, in *CWP from Turkey*, Commerce determined that a PMS existed in Turkey during the POR which distorted the cost of HRC, a main input in the production of subject merchandise, based, in part, on Turkish subsidies on the HRC inputs. See *CWP from India* IDM at Comment 1.

<sup>39</sup> See Post-Preliminary PMS Memorandum at 8 (citing, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-15*, 82 FR 18105; *Certain Corrosion-*

of these cases, Commerce examined pipe producers with “distinct value chains” than the one at issue in the instant review.<sup>40</sup>

The petitioner argues that: (1) there is a “fundamental link between rebar and billet production in Turkey;”<sup>41</sup> (2) “no bright line distinction {exists} between the primary steel input and the subject merchandise;”<sup>42</sup> and (3) rebar and billet significantly overlap as a result of the substantial portion of rebar production costs attributable to the production costs of the intermediate billet input.<sup>43</sup> The record shows, however, that billets and rebar are distinct products, and that billets are the primary input into multiple products (*i.e.*, rebar, wire rod, *etc.*).<sup>44</sup> The recipients of the subsidies self-produce the vast majority of billet they consume to make rebar.<sup>45</sup> The subsidies at issue are not directly tied to the production of billets in particular. Thus, it is unclear how the subsidies at issue supposedly distort the Turkish market for billets. Furthermore, we continue to find that there is no information on the record which demonstrates that the GOT’s subsidization of companies that produce rebar distorts the cost of scrap and other inputs used in the production of billets such that these costs do not reflect the ordinary course of trade.

#### GOT Ownership of a Billet Producer

Commerce preliminarily determined that because of Erdemir’s small share of the billet market and each respondent’s large share of self-produced billet, the record evidence does not indicate that the GOT’s ownership of Erdemir significantly impacted the cost of production (COP) of billet.<sup>46</sup> In response, the petitioner reiterated its argument that Erdemir’s billet production is “not insignificant,” and that any influence the GOT has over Erdemir logically extends to the billet market – “as it distorts the Turkish market for all steel produced by Erdemir.”<sup>47</sup>

However, as stated in the Post-Preliminary PMS Memorandum, Erdemir accounts for only a small share of the Turkish billet market. Thus, it is unclear how Turkish control of Erdemir could significantly distort the Turkish market for billet. (The petitioner does not allege that the GOT controls Icdas or Kaptan Demir.)

The petitioner’s reliance on *WLP from Korea* is misplaced. Contrary to the petitioner’s claim, *WLP from Korea* does not stand for the notion that self-produced inputs reflect prevailing market prices, but rather, that a company-specific analysis is not necessarily appropriate or necessary

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*Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-17*, 84 FR 10784 (March 22, 2019); *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018); and *WLP from Korea*).

<sup>40</sup>*Id.*

<sup>41</sup> See Petitioner’s Case Brief at 4-5.

<sup>42</sup> *Id.* at 4-5.

<sup>43</sup> *Id.* at 4-5.

<sup>44</sup> See, *e.g.*, Icdas’s February 5, 2019 BCDQR at D-6.

<sup>45</sup> See Icdas’s February 5, 2019 BCDQR at D-6-D-7; and Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from Turkey; Kaptan Response to D SQR,” dated July 21, 2019 at Exhibit SD-5.

<sup>46</sup> See Petitioner’s Case Brief at 6 (citing Post-Preliminary PMS Memorandum at 8-9).

<sup>47</sup> See Petitioner’s PMS Allegation.

when Commerce has determined that a PMS exists, and thus, distorts the cost data reported by the company.<sup>48</sup> By contrast, in this case, Commerce has not determined that a PMS exists.

### Global Steel Overcapacity

In the Post-Preliminary PMS Memorandum, Commerce recognized that global overcapacity is a concern in steel production in many countries and that the global overcapacity crisis will manifest its distortive effects differently in different markets.<sup>49</sup> We affirm this finding in these final results.

However, the petitioner fails to explain how the crisis supposedly distorted the Turkish market for billets. In fact, the record shows that China accounted for an insignificant share of the world's billet market during the POR.<sup>50</sup> In addition, the record shows that Turkey imported only 234 metric tons (MT) of billet from China, relative to 2.5 million MT of billets from the world as a whole.<sup>51</sup> Thus, it is unclear how the global overcapacity crisis, specifically spurred by Chinese excess production capacity, has "spilled over" into the Turkish billet market, as the petitioner argues.<sup>52</sup>

In addition, the petitioner's arguments on this point are unclear in other respects. For example, in arguing that Commerce should rely on import data because it is "standard practice,"<sup>53</sup> the petitioner references the U.S. International Trade Commission's (ITC) assessment of negligibility.<sup>54</sup> The petitioner does not explain why the ITC negligibility analysis is relevant to Commerce's analysis. Moreover, the petitioner argues that import data are more reliable than export data, but also identifies distortions to the import data it recommends due to "lack of reporting from several major billet importers."<sup>55</sup>

Finally, we note that in 2017 and 2018, the AUV of Turkish billet imports from China (2017: 1.838; 2018: 1.264) was higher than the AUV of Turkish billet imports from the world (2017: 0.450; 2018: 0.578).<sup>56</sup>

Consistent with *CWP from India* and *CWP from Turkey*, Commerce has analyzed the particular factors alleged in this review, including the dynamics of the global steel overcapacity crisis, determining here, that the record evidence is insufficient to demonstrate that distortions from the Chinese market have spilled over into the Turkish billet market.<sup>57</sup>

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<sup>48</sup> See Petitioner's Case Brief at 7; and *WLP from Korea* IDM at 12-18.

<sup>49</sup> *Id.*

<sup>50</sup> See Kaptan Demir's PMS Rebuttal Comments at 18 and Exhibits 9 and 11.

<sup>51</sup> *Id.*

<sup>52</sup> See Petitioner's Case Brief at 9-10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 9-10, FN 30.

<sup>55</sup> See Petitioner's PMS Rebuttal Comments at 9, FN 29.

<sup>56</sup> *Id.* at 19.



## Comment 2: Whether Commerce Should Revise its Duty Drawback Adjustment

### *Kaptan Demir's Case Brief:*

- For the statutory drawback adjustment to U.S. price, Commerce added to U.S. price, the drawback calculated for the adjustment to COP.<sup>58</sup>
- Court precedent requires that Commerce apply the full amount of drawback to U.S. price, by dividing the amount of drawback on U.S. sales by total U.S. exports of subject merchandise.<sup>59</sup>

### *Icdas's Case Brief:*

- Commerce found that Icdas met both prongs of the duty drawback two-prong test and granted Icdas a “duty neutral” duty drawback adjustment, which is inconsistent with the plain language of the statute, that directly links the drawback adjustment to actual export sales.<sup>60</sup>
- Consistent with the CIT, Commerce should revise its methodology to rely on total exports, rather than total production, in calculating the duty drawback adjustment.<sup>61</sup>

### *Petitioner's Rebuttal Brief*

- Commerce's preliminary duty drawback methodology is statutorily firm, supported by prior case law, and duty-neutral.<sup>62</sup>
- Congress intended for the duty drawback adjustment to export price (EP) and constructed export price (CEP) to: (1) counteract unfair import pricing behavior that materially injures U.S. producers of like products; and (2) measure any such unfair import pricing behavior as accurately as possible.<sup>63</sup>
- Congress intended to resolve the distortion that arose as a result of government-rebated import duties on inputs used to produce goods for import by granting Commerce the

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<sup>58</sup> See Kaptan Demir's Case Brief at 2-3 (citing section 772(c)(1)(B) of the Act).

<sup>59</sup> *Id.* at 3 (citing *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. v. United States*, Slip Op. 20-10 at 10-18 (CIT January 28, 2020) (*Icdas Slip Op.* 20-10)).

<sup>60</sup> See Icdas's Case Brief at 2-3 (citing *Preliminary Results PDM* at 10; and section 772(c)(1)(B) of the Act).

<sup>61</sup> See Icdas's Case Brief at 3-5 (citing *Icdas Slip Op.* 20-10; *Eregli Demir Celik Fab. A.S. v. United States*, 357 F. Supp. 3d 1325 (CIT 2018) (*Eregli I*); *Eregli Demir Celik Fab. A.S. v. United States*, Consol. Ct. No. 16-00218, Slip Op. 19-135 (CIT October 29, 2019) (*Eregli II*); *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 361 F. Supp. 3d 1314 (CIT 2019) (*Habas I*); *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Consol. Court. No. 17-00204, Slip Op. 19-130 (CIT October 17, 2019) (*Habas II*); *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, 321 F. Supp. 3d 1270 (CIT 2018) (*Toscelik*); *Uttam Galva Steels Ltd. v. United States*, 311 F. Supp. 3d 1345 (CIT 2018) (*Uttam Galva I*); *Uttam Galva Steel Ltd. v. United States*, 374 F. Supp. 3d 1360 (CIT 2018) (*Uttam Galva II*); *Rebar Trade Action Coal. V. United States*, No. 14-268, 2016 WL 5122639 (CIT September 21, 2016) (*RTAC II*)).

<sup>62</sup> See Petitioner's Rebuttal Brief at 2 (citing *Saha Thai Steel Pipe (Pub). Co. v. United States*, 635 F. 3d 1335, 1342-43 (Fed. Cir. 2011) (*Saha Thai I*)).

<sup>63</sup> *Id.* at 3, 9 (citing, e.g., *Lasko Metal Prods. V. United States*, 43 F. 3d 1442, 1446 (Fed. Cir. 1994)).

authority to take into account these rebated duties when calculating EP and CEP, such that EP and/or CEP and NV are calculated on the same, tax-neutral basis.<sup>64</sup>

- Under modern “substitution” drawback arrangements, a foreign producer may use imported inputs in producing goods for the domestic market, but nonetheless avoid import duties on those inputs by exporting goods made using commercially-equivalent domestic inputs, resulting in a duty-exclusive NV.<sup>65</sup>
- Consistent with *Saha Thai I*, Commerce developed a practice of making cost-side drawback adjustments, to ensure that both sides of its antidumping equation were duty inclusive: Commerce allocated the foregone duties over U.S. sales when making the sales-side adjustment, but allocated the same amount over total costs when making the cost-side adjustment.<sup>66</sup>
- Commerce realized that the methodology relied upon in *Saha Thai I*, in some instances, could result in different allocation of duties to EP and costs, resulting in EP and NV calculations that are not duty-loaded or duty-reflective to the same degree.<sup>67</sup>
- As discussed in *Saha Thai I*, if a respondent uses a mix of domestic/imported inputs (or only domestic inputs) in producing for the home market, or otherwise manages its imports and exports such as to effectively pay no import duties regardless of the market for which its good are destined (as is the case in this proceeding) the result is that the duty-inclusive EP/CEP is compared to a home market price that is not fully duty loaded.<sup>68</sup>
- For example:<sup>69</sup>
  - The inputs for 1 metric ton (MT) of rebar cost 100 U.S. dollars (USDs), and are subject to a 10 percent import duty. The respondent produces 2 MT of rebar and sells 1 MT to the U.S. and 1 MT domestically.
  - Under standard duty drawback, for the 1 MT sold to the U.S., the respondent is exempt from 10 USD worth of import duties; for the 1 MT sold domestically, the respondent is responsible for 10 USD worth of import duties.
  - Respondents’ preferred sales-side method: allocate the exempted duties across the volume of U.S. sales:<sup>70</sup>

$100 \text{ USD (price of rebar/MT)} + 10 \text{ USD (duties exempted)/1 MT (volume sold)} = 110 \text{ USD/MT}$

- Respondents’ preferred cost-side method: allocate the sales-side drawback over the total volume of merchandise produced:<sup>71</sup>

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<sup>64</sup> *Id.* at 3 (citing *Saha Thai I*, 635 F. 3d 1342,-43; S. Rep. No 67-16 (1921) at 12; and *Allied Tube & Conduit Corp. v. United States*, 29 CIT 502, 506 (2015)).

<sup>65</sup> *Id.* at 4 (citing *Saha Thai I*, 635 F. 3d at 1342-43).

<sup>66</sup> *Id.* at 4-5 (citing *Saha Thai I*, 635 F. 3d at 1342-43; and *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 73 FR 61019 (October 15, 2008), and accompanying IDM at Comment 5).

<sup>67</sup> *Id.* at 5 (citing, e.g. *Rebar Trade Action Coal. V. United States*, No 14-000268, Slip. Op. 15-130 at 9-10 (CIT November 23, 2015) (*RTAC I*)).

<sup>68</sup> *Id.* at 5-6 (citing *Saha Thai I*, 635 F. 3d at 1342-43).

<sup>69</sup> *Id.* at 5-6.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 6.

$$100 \text{ USD (COP/MT)} + 10 \text{ USD (duties exempted)}/2 \text{ MT (volume produced)} = 105 \text{ USD/MT}$$

- The methodology relied upon by Commerce in the *Preliminary Results* does not result in this distortion. Commerce allocated exempted duties for both the EP/CEP and NV sides of the calculation over the total quantity of merchandise produced.<sup>72</sup>
- Commerce’s preliminary sales-side method: allocate exempted duties over the total volume of merchandise produced.<sup>73</sup>

$$100 \text{ USD (price of rebar/MT)} + 10 \text{ USD (duties exempted)}/2 \text{ MT (volume produced)} = 105 \text{ USD/MT}$$

- Commerce’s preliminary cost-side method: allocate the exempted duties over the total volume of merchandise produced.<sup>74</sup>

$$100 \text{ USD (COP/MT)} + 10 \text{ USD (duties exempted)}/2 \text{ MT (volume produced)} = 105 \text{ USD/MT}$$

- Commerce’s preliminary methodology ensures that drawback-related differences in tax incidence do not distort the margin calculations.
- Contrary to respondents’ arguments that the CIT has found the methodology inconsistent with the Tariff Act of 1930, there has been no such finding by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and more to the point, the methodology is statutorily sound.<sup>75</sup>
- Section 772(c)(1)(B) of the Act does not specify how Commerce’s allocation of the duties foregone must be performed.<sup>76</sup>
- Icdas argues that Commerce’s calculation of EP does not reflect the “full” value of foregone duties, however, the figure is included as the numerator of the per-unit allocation calculation.<sup>77</sup>
- Contrary to Icdas’s argument, Commerce’s preliminary methodology is duty-neutral and consistent with *Saha Thai I*. While *Saha Thai I* focused on Commerce’s authority to impute duty costs to NV, the Federal Circuit also recognized that Commerce sought to impute such costs for the purpose of ensuring that both NV and EP/CEP were duty-loaded to an equivalent degree.<sup>78</sup>
- Commerce’s preliminary methodology, while ensuring that exempted duties are allocated on the same basis on both the cost and sales sides of the antidumping equation, effects the purpose of the drawback adjustment, as articulated by *Saha Thai I*.<sup>79</sup>

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<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 8 (citing Kaptan Demir’s Case Brief at 3; and Icdas’s Case Brief at 3-5).

<sup>76</sup> *Id.* (citing section 772(c)(1)(B) of the Act).

<sup>77</sup> *Id.* (citing Icdas’s Case Brief at 4-6).

<sup>78</sup> *Id.* at 9 (citing Icdas’s Case Brief at 5-7; and *Saha Thai I*, 635 F. 3d at 1342-43).

<sup>79</sup> *Id.* at 10.

## Commerce's Position:

We have continued to grant a duty drawback adjustment to Kaptan Demir and Icdas for these final results. Specifically, we calculated Kaptan Demir and Icdas's exempted import duty ratios by dividing each respondent's POR-exempted import duties by the company's total cost of sales during the POR.<sup>80</sup> Next, Commerce calculated the per-unit amount of exempted import duties by multiplying the POR-exempted import duty ratio and the control number (CONNUM)-specific revised per-unit total cost of manufacturing.<sup>81</sup> This amount represents the amount of import duties which respondents would have recorded in their books and records as cost of materials but for the exemption of these import duties under Turkey's Inward Processing Regime (IPR) program. Commerce added this amount of imputed import duty cost to each respondent's cost of production.<sup>82</sup> Commerce limited the amount of each respondent's claimed per-unit duty drawback adjustment by the per-unit import duty cost reflected in each company's cost of production.<sup>83</sup> Under this approach, it is recognized that the average duty can be recovered by the company in any sale and in any market. Thus, the U.S. price adjustment for duty drawback is limited by the amount of import duties reflected in NV (*i.e.*, the price of a home market sale that passed the sales below cost test), and, thus, the comparison of NV and U.S. price is duty-neutral and constitutes a fair comparison, in accordance with section 773(a) of the Act.

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.<sup>84</sup>

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<sup>80</sup> See *Preliminary Results*; Icdas's Final Analysis Memorandum; and Kaptan Demir's Final Analysis Memorandum.

<sup>81</sup> See Icdas's Final Analysis Memorandum; and Kaptan Demir's Final Analysis Memorandum.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> The Federal Circuit stated in the *Saha Thai I* litigation that "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha Thai's actual import duty exemptions under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha Thai would have paid on the inputs in category C if Saha Thai has hold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." See *Saha Thai I*, 635 F. 3d at 1338, 1344 (citing *Hornos Electricos de Venezuela v. United States*, 285 F. Supp. 2d 1353, 1358 (CIT 2003); and 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.")).

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 NV to avoid or adjust for differences between sales which affect price comparability.<sup>85</sup> Additionally, “to achieve that end, the statute and {Commerce’s} regulations call for adjustments to the base value of both {NV} and United States price to permit comparison of the two prices at a similar point in the chain of commerce,”<sup>86</sup> which, in general, Commerce has viewed as the point where the subject merchandise is ready to leave the producer’s or exporter’s premises<sup>87</sup> ready for exportation to the United States.

In accordance with the statute, Commerce strives to ensure a fair comparison of U.S. price with NV, 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.”<sup>88</sup> 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.<sup>89</sup> 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...”<sup>90</sup> 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.

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<sup>85</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 820.

<sup>86</sup> See *Torrington Co. v. United States*, 68 F. 3d 1347, 1352 (Fed. Cir. 1995).

<sup>87</sup> See SAA at 809 (“...comparisons be made ... at the ex-factory level...”).

<sup>88</sup> See section 772(c)(1)(B) of the Act.

<sup>89</sup> See *Saha Thai I*, 635 F. 3d at 1340.

<sup>90</sup> See section 772(c)(1)(B) of the Act.

As noted by Icdas, 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.”<sup>91</sup>

Commerce agrees with the petitioner’s statement that Congress intended for the duty drawback adjustment to EP and CEP to: (1) counteract unfair import pricing behavior that materially injures U.S. producers of like products; and (2) measure any such unfair import pricing behavior as accurately as possible.<sup>92</sup> In the absence of a duty drawback adjustment, the U.S. price does not reflect the import duty cost which is reflected in NV (including the product’s COP) 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 each respondent’s duty drawback adjustment by the amount of import duties reflected in the comparison NV.

Icdas’s reliance on *Saha Thai I* that the full amount of the claimed duty drawback adjustment be added to the U.S. price is misplaced. *Saha Thai I* did not address the amount of the duty drawback adjustment. The issues addressed in *Saha Thai I* 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 on a COP and CV that do not reflect those import duties. Under the “matching principle,” EP, COP, and CV should be increased together, or not at all.”<sup>93</sup>

As noted above, the Federal Circuit recognized, as the CIT in *Carlisle Tire*,<sup>94</sup> 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 NV.

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<sup>91</sup> See Icdas’s Case Brief at 4-5 (citing section 772(c)(1)(B) of the Act; *Icdas Slip Op* 20-10; *Eregli II*; *Habas II*; *Toscelik*, 321 F. Supp. 3d 1270; *Uttam Galva II*, 374 F. Supp. 3d 1360; *Habas I*, 361 F. Supp. 3d 1314; *Eregli I*, 357 F. Supp. 3d 1325; *Uttam Galva I*, 311 F. Supp. 3d 1345; and *RTAC II*).

<sup>92</sup> See Petitioner’s Rebuttal Brief at 3, 9 (citing, e.g., *Lasko Metal Prods. V. United States*, 43 F. 3d 1442, 1446 (Fed. Cir. 1994)).

<sup>93</sup> See *Saha Thai I*, 635 F. 3d at 1342-43.

<sup>94</sup> See *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987) (*Carlisle Tire*).

Lastly, we note that there has been no finding in the Federal Circuit that Commerce's duty-neutral methodology, as applied here, is inconsistent with the statute. Further, the respondents' contentions that Commerce's duty drawback adjustment is contrary to the CIT's findings rely on the pending results of litigation.<sup>95</sup>

### **Comment 3: Whether Commerce Should Rely on Theoretical or Actual Weight in the Home Market**

#### *Icdas's Case Brief:*

- Commerce has consistently used actual weight in cases involving rebar and similar products.<sup>96</sup>
- Because all of Icdas's sales in the home market are made on an actual weight basis, Icdas does not record theoretical weight or number of pieces of rebar for its home market sales, and rebar bundles do not have a fixed number of pieces, Commerce should rely on actual weight.<sup>97</sup>
- Icdas devised a methodology to approximate theoretical weight based on sample data collected by the Quality Control Department once every 20 metric tons of production and actual weight data.<sup>98</sup>
- Unlike Icdas's theoretical weight approximation, Icdas's actual weight is more reliable, as it is recorded in Icdas's accounting system in the ordinary course of business for both home market and U.S. sales, and thus, is known, accurately documented, and verifiable by Commerce.<sup>99</sup>
- If Commerce relies on theoretical weight, it should convert reported expenses and allowances from an actual to theoretical basis to make an "apples to apples" comparison.<sup>100</sup>

#### *Kaptan Demir's Case Brief*

- Commerce used theoretical gross unit price and theoretical quantity, but made adjustments reported on an actual weight basis. Commerce should convert the adjustments to a theoretical weight basis for the final.<sup>101</sup>

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<sup>95</sup> See, e.g., *Icdas Slip-Op*. 20-10.

<sup>96</sup> See Icdas's Case Brief at 7 (citing, e.g., *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018); *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) (*Turkey Rebar Final Determination*); and *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)).

<sup>97</sup> *Id.* at 7-8 (citing Icdas's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s First Supplemental Sections A-C Questionnaire Response," dated July 9, 2019 (Icdas's July 9, 2019 SQR) at S1-47-48, and Exhibit S1-47).

<sup>98</sup> *Id.* at 8 (citing Icdas's July 9, 2019 SQR at S1-48).

<sup>99</sup> *Id.* at 9.

<sup>100</sup> *Id.* at 9-11 (citing *Jacobi Carbons AB v. United States*, 992 F. Supp. 2d 1360, 1369 (CIT 2014), affirmed, 619 F. App'x 992 (Fed. Cir. 2015)).

<sup>101</sup> See Kaptan Demir's Case Brief at 2.

- In the *Preliminary Results*, for the calculation of quarterly costs, Commerce relied on Kaptan Demir's quarterly cost database reported in actual kilograms, and converted this to theoretical cost using a fixed ratio.<sup>102</sup>
- The use of a single factor to convert actual to theoretical weight is distortive, as the relationship between actual and theoretical weight is highly dependent on diameter, and thus Commerce should rely on Kaptan Demir's suggested ratios in order for Commerce's determination to be mathematical and factual.<sup>103</sup>

*Petitioner's Rebuttal Brief:*

- While theoretical weight should generally be used over actual weight, the petitioner finds that the record is wholly lacking on this issue and that the methodology used by the respondents is highly suspect.<sup>104</sup>
- In this review, and for the limited reason that respondents' reported theoretical weight is suspect, actual weight should be used. However, the petitioner requests that Commerce continue to examine this issue in the subsequent review.<sup>105</sup>
- Kaptan Demir's argument that Commerce's fixed ratio to convert its reported costs from actual to theoretical weight is baseless.<sup>106</sup>
- Kaptan chose not to report its costs on a theoretical weight basis, and thus, Commerce should not give Kaptan the benefit of recalculating cost data now.<sup>107</sup>
- Further, there is no justification to recalculate costs using the actual-theoretical ratio based on common diameter sizes.<sup>108</sup>
- Because Kaptan provided no explanation regarding its suggested methodology, Commerce should dismiss this argument.<sup>109</sup>

**Commerce's Position:**

For these final results, we rely on actual weight for the calculation of the estimated weighted-average dumping margins for each respondent.<sup>110</sup>

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<sup>102</sup> *Id.* at 3 (citing Memorandum, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results Analysis Memorandum for Kaptan Demir Celik Endustrisi ve Ticaret A.S.," dated September 6, 2019 (Kaptan Demir's Preliminary Analysis Memorandum) at 2).

<sup>103</sup> *Id.* at 3 (citing *Nan Ya Plastics Corp. v. United States*, 810 F. 3d 1333, 1344 (Fed. Cir. 2016)).

<sup>104</sup> See Petitioner's Rebuttal Brief at 13 (citing Icdas's Case Brief at 8; and Memorandum, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results Analysis Memorandum for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated September 6, 2019 (Icdas's Preliminary Analysis Memorandum)).

<sup>105</sup> *Id.* at 13.

<sup>106</sup> *Id.* at 15.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See Icdas's Final Analysis Memorandum; and Kaptan Demir's Final Analysis Memorandum.



Kaptan Demir and Icdas both reported selling on an actual weight basis in their home market and on a theoretical weight basis in the U.S. market.<sup>111</sup> In the ordinary course of business, each respondent reported documenting the actual weight in both markets.<sup>112</sup> At Commerce's request, both respondents also reported U.S. and home market sales databases on a theoretical weight basis, although neither respondent records theoretical weight in its ordinary course of business in its home market.<sup>113</sup> Commerce did not request that either respondent report its cost databases on a theoretical weight basis.

Kaptan Demir and Icdas both estimated the theoretical weight of their home market sales by devising an actual to theoretical weight ratio based on quality control procedure samples.<sup>114</sup> Each respondent's theoretical weight was devised based on its reported actual weight. In the *Preliminary Results*, we relied upon these databases for our comparison, and converted each respondent's cost databases to theoretical weight based on a fixed ratio.

Although the petitioner previously argued that Commerce should compare NV and U.S price on a theoretical weight basis, in its rebuttal brief, the petitioner argues that Commerce cannot rely on the theoretical weight estimated by the respondents because the methodology used by each is "highly suspect."<sup>115</sup> Icdas argues that, because it does not track the parameters required to calculate theoretical weight in the home market, comparing actual weight would be more reliable, as it is recorded in its accounting system, invoices, and is verifiable by Commerce.<sup>116</sup>

We note that no party currently supports calculating the respondents' margins based on a theoretical weight basis. Further, because neither respondent reported its cost database on a theoretical weight basis, and Commerce did not request that either respondent report in this manner, the most complete data available on the record of this review are those reported on an actual weight basis.

For these final results, because: it is unclear whether actual or theoretical weight is more accurate based on the reporting in this review; and the data for actual weight are reported for both cost and sales databases, we will rely on actual weight for the calculation of the estimated weighted-average dumping margins for each respondent.

Because we are not relying theoretical weight, the arguments concerning the conversion of data from actual to theoretical weight are moot.

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<sup>111</sup> See Icdas's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Section D Questionnaire Response," dated February 5, 2019 (Icdas's February 5, 2019 BCDQR) at B-26 and C-22; and Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from Turkey; Kaptan Response to B,,D,D QR," dated January 29, 2019 (Kaptan Demir's January 29, 2019 BCDQR) at B-22 and C-20.

<sup>112</sup> See Icdas's February 5, 2019 BCDQR at B-26 and C-22; and Kaptan Demir's January 29, 2019 BCDQR at B-22 and C-22.

<sup>113</sup> See Icdas's July 9, 2019 SQR at 48; and Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from Turkey; Kaptan Response to A-C SQR," dated July 1, 2019 (Kaptan Demir's July 1, 2019 SQR) at 14.

<sup>114</sup> See Icdas's July 9, 2019 SQR at 48; and Kaptan Demir's July 1, 2019 SQR at 15.

<sup>115</sup> See Petitioner's Rebuttal Brief at 15.

<sup>116</sup> See Icdas's Case Brief at 9.

#### Comment 4: SAS Programming Errors

##### *Kaptan Demir's Case Brief:*

- Some of Kaptan Demir's home market sales, U.S. brokerage, and export fees were reported in USD and incorrectly converted into Turkish lira.<sup>117</sup>
- Commissions were reported in Turkish lira, but Commerce failed to convert these fields to USD.<sup>118</sup>
- Commerce should revise its currency-conversion methodology for the final.<sup>119</sup>

##### *Icdas's Case Brief:*

- In converting USD to Turkish lira in its calculations, Commerce erroneously multiplied the USD values by the exchange rate instead of dividing them.<sup>120</sup>
- Additionally, Commerce converted euro values to Turkish lira by dividing the euro values by the exchange rate, then multiplying the amount by the Turkish exchange rate, rather than multiplying the euro values by the exchange rate, then dividing the amount by the Turkish exchange rate.<sup>121</sup>
- During the POR, Icdas sold subject merchandise in the U.S. and home market directly through affiliated resellers.<sup>122</sup>
- Because three resellers passed Commerce's arms-length test in this review, Commerce should rely on Icdas's sales to these resellers for its calculation in the final results.<sup>123</sup>
- Commerce properly calculated the home market month field (HMMONTH) based on 2016 data, but calculated the U.S. month field (USMONTH) based on 2017 data. This discrepancy between USMONTH and HMMONTH prevents monthly matching of U.S. and home market sales, and results in all U.S. sales instead matching to constructed value.<sup>124</sup>
- Commerce should have weight averaged USD, Turkish lira, and euro values separately, and then converted them to Turkish lira at the date of the U.S. sale, as it did in the home market.<sup>125</sup>
- Although Icdas provided the unit movement expenses for each affiliated reseller for sales of subject merchandise, in the *Preliminary Results*, Commerce did not deduct the average unit movement expenses to be applied for the transactions of affiliated resellers from home market price.<sup>126</sup>

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<sup>117</sup> See Kaptan Demir's Case Brief at 2.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Icdas's Case Brief at 15 (citing *Preliminary Results* PDM at 15-16).

<sup>121</sup> *Id.* at 15.

<sup>122</sup> *Id.* at 19 (citing Icdas's December 3, 2018 AQR at A-13 and Exhibit A-4).

<sup>123</sup> *Id.* at 19.

<sup>124</sup> See Icdas's Case Brief at 14.

<sup>125</sup> *Id.* at 14 and Attachment 1.

<sup>126</sup> *Id.* at 18 (citing Icdas's February 5, 2019 BCDQR at B-40).

- Movement expenses of affiliated resellers are legitimate, normal movement expenses incurred in selling product to the customer, and thus, are an appropriate deduction from NV.<sup>127</sup>

### **Commerce's Position:**

For these final results, Commerce has revised the following inadvertent SAS programming errors: (1) revised the abovementioned currency calculation errors in the home and U.S. market programs for both Icdas and Kaptan Demir; (2) relied on Icdas's sales to affiliated resellers that passed the arms-length test; (3) revised the USMONTH calculation in Icdas's margin program; and (4) deducted the movement expenses of affiliated resellers from Icdas's NV.<sup>128</sup>

### Icdas-Specific Issues

#### **Comment 5: Whether Commerce Should Use Contract Date as Icdas's U.S. Date of Sale**

##### *Icdas's Case Brief:*

- Icdas provided substantial evidence to demonstrate that its U.S. terms of sale were established at the contract date.<sup>129</sup>
- Commerce's practice is to use the invoice date as the date of sale unless a better date reflects the date on which the material terms of sale are established;<sup>130</sup> by reporting "the latter of the final contract, purchase order, receipt of size breakdown date or the signature date on the contract," Icdas reported the date of sale that reflects the date on which the material terms of sale are established.<sup>131</sup>
- Icdas reported "the latest date after when there will be no changes," and thus, Commerce's reliance on the invoice date as the U.S. date of sale in the *Preliminary Results* was incorrect.<sup>132</sup>

##### *Petitioner's Rebuttal Brief*

- Icdas's sales documents do not confirm that the material terms are set at the final contract date in the U.S. market. Indeed, Icdas reports that "{a} sales contract or purchase order may change" if requested by the customer."<sup>133</sup>
- Icdas claims that all potential changes would be covered by its reporting of the "final contract, purchase order, receipt of size breakdown or the signature date of the contract,"

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<sup>127</sup> *Id.* at 18.

<sup>128</sup> See Icdas's Final Analysis Memorandum.

<sup>129</sup> See Icdas's Case Brief at 11-12 (citing Icdas's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Section A Response," dated December 3, 2018 (Icdas's December 3, 2018 AQR) at A-22; Icdas's February 5, 2019 BCDQR at C-18 and Exhibit C-6; and Icdas's July 9, 2019 SQR at S1-51 and Exhibit S1-51).

<sup>130</sup> *Id.* at 12 (citing 19 CFR 351.401(i); and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756 (July 19, 1999)).

<sup>131</sup> *Id.* at 12-13 (citing *Preliminary Results* PDM at 9; and Icdas's July 9, 2019 SQR at S1-51, S1-26, and Exhibit S1-51).

<sup>132</sup> *Id.* at 13-14 (citing Icdas's July 9, 2019 SQR at S1-27).

<sup>133</sup> See Petitioner's Rebuttal Brief at 11 (citing Icdas's Case Brief at 12-13; and Icdas's July 9, 2019 SQR at S1-26).

however, Icdas's sales documents merely confirm that these changes did not occur in the instances provided as examples by Icdas.<sup>134</sup>

- In the investigation, Icdas reported invoice date as the date of sale, as “there can be changes to price and quantity after the initial agreement with the {U.S.} customer,” and admits that “{a} sales contract or purchase order may change” if requested by the customer.<sup>135</sup>
- Commerce should follow its standard practice and find that invoice data is the date at which material terms are no longer subject to change for the U.S. market.<sup>136</sup>

### Commerce's Position:

We continue to find that Icdas's invoice date is the date of sale in its U.S. market because invoice date best reflects when the material terms of sale are established for its U.S. sales.

In Icdas's December 3, 2018 AQR, “Icdas reported...contract date as the U.S. market {date of sale}.”<sup>137</sup>

In Icdas's February 5, 2019 BCDQR, it stated:

ICDAS has reported the contract date in this {U.S. date of sale} field. ICDAS uses the contract date of sale in the normal course of business because the material terms of sale such as unit price, quantity, and size breakdown are determined at the contract/purchase order date. *ICDAS has reported the latter of the date of contract/purchase order or the signature date.*<sup>138</sup>

In Icdas's July 9, 2019 SQR, it reported:

*ICDAS generally reported the latter of the final contract, purchase order, size breakdown receipt date or the signature date on the contract* as it was reported in the previous proceedings.<sup>139</sup>

Icdas uniquely defined “contract date” three times in this review. In addition, it noted that a sales contract or purchase order may change based on customer request.<sup>140</sup> Although Icdas argues that it provided substantial evidence to demonstrate that its U.S. terms of sale were established at the contract date, it is unclear from its statements and nebulous definition of “contract date” that material terms are established prior to the final invoice date.

Accordingly, in accordance with our normal practice, in the absence of information indicating that a different date of sale better reflects the date on which the material terms of sale are

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<sup>134</sup> *Id.* at 12 (citing Icdas's Case Brief at 11, 13).

<sup>135</sup> *Id.* at 11-12 (citing *Turkey Rebar Final Determination* IDM at 8; and Icdas's July 9, 2019 SQR at S1-26).

<sup>136</sup> *Id.* at 12.

<sup>137</sup> See Icdas's December 3, 2018 AQR at 22.

<sup>138</sup> See Icdas's February 5, 2019 BCDQR at C-18 (emphasis added).

<sup>139</sup> See Icdas's July 9, 2019 SQR at S1-26 (emphasis added).

<sup>140</sup> *Id.*

established, we are using invoice date as date of sale, except when shipment date precedes invoice date. This conforms with our longstanding practice of using the earlier of the invoice date or the shipment date as the date of sale, if not other date is more appropriate.<sup>141</sup>

### **Comment 6: Whether Commerce Should Use “Partial” Quarters in its Quarterly Cost Analysis**

#### *Petitioner’s Case Brief:*

- Commerce’s practice to rely on a single month’s data as a quarter for its quarterly cost analysis in the first POR of a proceeding, in this case, leads to distorted and skewed results.<sup>142</sup>
- Comparing one month against five full quarters leads to precisely the outcome that Commerce is attempting to avoid when examining quarterly costs.<sup>143</sup>
- The London Metal Exchange (LME) scrap pricing, directly based on the Turkish prices for 80-20 mix scrap, demonstrate that Icdas’s reported costs in June 2018 for steel used to make rebar are greatly distorted.<sup>144</sup>

#### *Icdas’s Rebuttal Brief:*

- The petitioner’s claim that Commerce’s use of the partial quarterly data reported for June 2018 results in distortions and skewed results is not supported by record evidence.<sup>145</sup>
- Despite its allegation that “{t}reating June 2018 as an entire quarter is problematic and anomalous,” and that, “as a matter of practice, {Commerce} should only consider quarters based on three full months of data and disregard the final month of the POR,” it was the petitioner that initially requested that Icdas report six quarters of data in this review.<sup>146</sup>
- Further, the petitioner argued that the collection of quarterly data without regard to Icdas’s actual fiscal- or calendar year quarters was the most “predictable and consistent approach for evaluating whether it is appropriate to depart from the normal methodology

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<sup>141</sup> See *Preliminary Results* (citing, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664 (June 8, 1999), and accompanying IDM at Comment 5).

<sup>142</sup> See Petitioner’s Case Brief at 13-19.

<sup>143</sup> *Id.* at 18 (citing *Stainless Steel Sheet and Strip in Coils from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 39622 (August 7, 2009)).

<sup>144</sup> For the proprietary discussion of this issue, see Icdas’s Final Analysis Memorandum; and Petitioner’s Case Brief at 14-15 (citing Petitioner’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Submission of New Factual Information,” dated August 7, 2019 (Petitioner’s August 7, 2019 Comments)).

<sup>145</sup> See Icdas’s Rebuttal Brief at 10-11 (citing Petitioner’s Case Brief at 14).

<sup>146</sup> *Id.* at 11 (citing Petitioner’s Case Brief 14; and Petitioner’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Deficiency Comments on Icdas’ Sections A-D Initial Questionnaire Responses,” dated March 5, 2019 (Petitioner’s March 5, 2019 Comments) at 39).

of relying on annual average costs,” which is a notion supported by Commerce’s practice.<sup>147</sup>

- It is improper for Commerce to “cherry-pick {} data points with the sole purpose of increasing the margin for cooperative ... respondents,” and thus, Commerce should continue to rely on quarterly cost data as properly reported by Icdas, pursuant to the petitioner’s request.<sup>148</sup>
- Contrary to the petitioner’s claim, Icdas’s June 2018 costs are not “greatly distorted when compared to Turkish scrap prices,”<sup>149</sup> because scrap is not a high-value, “just-in-time” inventory item, and thus, the scrap used by Icdas in June was purchased several months prior to actual usage, thus, June 2018 costs would not match June 2018 scrap prices, because June costs are based on the June *consumption* of scrap, not the purchase date.<sup>150</sup>
- By intentionally cherry-picking numbers to support its analysis, the petitioner creates an apples-to-oranges comparison in violation of Commerce’s statutory duty to calculate dumping margins as “accurately as possible” using the “best available information” to create an apples-to-apples comparison.”<sup>151</sup>
- The petitioner alleges a quarterly divergence index difference that erroneously relies on a comparison of scrap prices reported in USD to Icdas’s production reported in Turkish lira.<sup>152</sup>
- The petitioner’s argument that post-POR scrap costs in July and August 2018 would make it so Icdas would not qualify for quarterly costs if the POR were expanded to include a full three-month quarter, is inappropriate, because the POR ends on June 2018 and is based on speculation regarding predicted outcomes.<sup>153</sup>

### Commerce’s Position:

Consistent with the *Preliminary Results*, Commerce continues to rely on our quarterly cost methodology for Icdas because the change in its cost of manufacturing (COM) is above Commerce’s well-established alternative cost calculation methodology threshold.<sup>154</sup>

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<sup>147</sup> *Id.* at 12 (citing Petitioner’s March 5, 2019 Comments at 39; *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018), and accompanying IDM).

<sup>148</sup> *Id.* at 12 (citing *Nayneet Publ’ns (India) Ltd. v. United States*, 999 F. Supp 2d 1354, 1361 (CIT 2014)).

<sup>149</sup> *Id.* at 12 (citing Petitioner’s Case Brief at 15).

<sup>150</sup> *Id.* at 13 (citing Petitioner’s Case Brief at 15-16; Petitioner’s August 7, 2019 Comments; Icdas’s February 5, 2019 BCDQR at D-6 and Exhibit D-5; and Icdas’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Response to RTAC Pre-Preliminary Comments Dated August 9, 2019 and New Factual Information Submission Dated August 7, 2019,” dated August 22, 2019 (Icdas’s August 22, 2019 Comments) at 6-7).

<sup>151</sup> *Id.* at 14-15 (citing *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F. 3d 1376, 1382 (Fed. Cir. 2001); and *Jacobi Carbons AB v. United States*, 992 F. Supp. 2d 1360, 1369 (CIT 2014), affirmed in 619 F. App’x 992 (Fed. Cir. 2015)).

<sup>152</sup> *Id.* at 15 (citing Petitioner’s Case Brief at Exhibit 1; and Icdas’s August 22, 2019 Comments at 8).

<sup>153</sup> *Id.* at 16 (citing Petitioner’s Case Brief at 15-16; and Icdas’s August 22, 2019 Comments 10).

<sup>154</sup> See *Preliminary Results* PDM at 13-15 (citing *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; and *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*), and accompanying IDM at Comment 4).

To determine whether to use the quarterly cost calculation methodology for a respondent, it is our practice to analyze the quarterly cost data based on the actual manufacturing costs incurred by respondents as recorded in their normal books and records.<sup>155</sup> Based on the review of Icdas's reported cost of manufacturing data, Icdas experienced significant cost changes during the POR. While the petitioner argues that Icdas's June 2018 raw material cost data is distorted when compared to the LME scrap prices, the petitioner's analysis is based on the comparison of the LME scrap prices to Icdas's total raw material costs.<sup>156</sup> This comparison, however, is flawed, as Icdas's reported material costs include more than just scrap.<sup>157</sup> They include scrap, billets, and alloys.<sup>158</sup> In addition, Icdas purchases scrap from domestic sources and also imports scrap.<sup>159</sup> Therefore, the petitioner's scrap cost comparison analysis between the LME price and Icdas's reported cost data is not on the same basis, and the scrap purchased by Icdas cannot be directly compared to the 80-20 grade scrap prices from the LME.<sup>160</sup>

Commerce disagrees with petitioner's assumption that the use of shorter cost-averaging periods in the *Preliminary Results* was based only on changes in prices of scrap. Commerce acknowledges that the fluctuations in scrap costs impacted the changes in COM in this case. However, Commerce's practice in determining whether the use of shorter cost-averaging periods appropriately is to analyze changes in COM during the POR rather than changes in a single input.<sup>161</sup> Commerce's analysis considers the changes in COM between the lowest cost quarter and the highest cost quarter of the POR. We believe this approach provides a more thorough analysis of changes in cost which may affect Commerce's normal annual average cost calculations. In this case, we find the fluctuations in COM of the subject merchandise was significant during the POR.

The months of the POR do not allow for them to be divided equally into quarters. Therefore, Commerce reasonably relied on the partial quarter. To do otherwise would have required Commerce to rely on data outside the POR or to ignore data inside the POR. As there is no reason to believe that Icdas costs, as recorded in their normal books and records for the month of June 2018 are unreliable, we will continue to rely on the reported June 2018 COM data for these final results.

#### **Comment 7: Whether Commerce Should Reallocate the Cost of Icdas's Short-Length Rebar to Prime Products**

##### *Petitioner's Case Brief:*

- Icdas reported that it treated its short-length rebar in the same manner as its scrap in its normal course of business, but for the purposes of cost, Icdas made an adjustment to its

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<sup>155</sup> See, e.g., *SSPC from Belgium*.

<sup>156</sup> See Petitioner's August 7, 2019 Comments.

<sup>157</sup> See, e.g., Icdas's July 22, 2019 SQR at S2-1.

<sup>158</sup> See, e.g., Icdas's July 22, 2019 SQR at S2-1.

<sup>159</sup> See, e.g., Icdas's February 5, 2019 BCDQR at D-13.

<sup>160</sup> For a business proprietary discussion of this issue, see Icdas's Final Analysis Memorandum.

<sup>161</sup> See, e.g., *SSPC from Belgium* IDM at Comment 4.

normal costs by reducing the costs of prime products and reallocating costs to short-length rebar.<sup>162</sup>

- In the investigation, Commerce found that Icdas should not have assigned full costs to non-prime short-length rebar, and accordingly, assigned these products the lowest COP reported for any control numbers (CONNUMs) in the cost file.<sup>163</sup>
- Commerce should counteract Icdas's adjustment by decreasing production quantity and increasing production costs by the same adjustment ratio used by Icdas to alter its normal books and records – an option not available in the investigation because Icdas never explained its cost reallocation.<sup>164</sup>

*Icdas's Rebuttal Brief:*

- Icdas provided the alternative calculation for short-length rebar based on the lowest-cost CONNUM, rather than the average cost of all prime rebar products, as requested by Commerce.<sup>165</sup>
- As requested, and in line with Commerce's practice, Icdas then re-allocated the cost difference to all prime production on both a POR and quarterly basis, identical to the methodology applied in the investigation.<sup>166</sup>
- Icdas objects to any additional adjustments regarding short-length rebar, as no further adjustment is justified or needed.<sup>167</sup>

**Commerce's Position:**

We continue to rely on Icdas's calculation for short-length rebar based on the lowest-cost CONNUM for these final results.

In the *Turkey Rebar Final Determination*, we addressed Icdas's costs associated with short-length rebar, stating:

{D}owngraded rebar is rebar of random lengths that is remaining after the standard-length rebar is cut to the desired length. Downgraded rebar is sold in bundles of mixed sizes and unidentified grades, without mill test certificates. They are sold at prices close to that of "prime" rebar because the short-length rebar can be used in many of the same rebar applications. However, while these short-lengths can apparently be used in some applications of rebar, they clearly cannot be sold as the same grade as originally intended. This is evidenced by their treatment in the normal records where short-length rebar is not assigned a cost. For reporting purposes, Icdas increased the production quantities of all rebar products to include the production of downgraded rebar in the calculation of the reported costs. We note that this methodology

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<sup>162</sup> See Petitioner's Case Brief at 19-20 (citing Icdas's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Supplemental Section D Questionnaire Response," dated July 22, 2019 (Icdas's July 22, 2019 SQR) at S2-7-8 and Exhibit S2-15).

<sup>163</sup> *Id.* at 20 (citing *Turkey Rebar Final Determination* IDM at Comment 7).

<sup>164</sup> *Id.* at 20 (citing Icdas's July 22, 2019 SQR at S2-13).

<sup>165</sup> *Id.* at 18 (citing Icdas's July 22, 2019 SQR at S2-13-14).

<sup>166</sup> *Id.* at 18-19 (citing Icdas's July 22, 2019 SQR at S2-13-14; and Icdas's August 22, 2019 Comments at 17).

<sup>167</sup> *Id.* at 19.



effectively assigns the POI average cost of all prime rebar production to the downgraded short-length products.

Accordingly, while we find that Icdas sells the downgraded rebar for use as rebar, because the short-length rebar is sold in bundles of mixed sizes with unidentified grades and without mill test certificates, we find it reasonable to assign to these products a cost equal to that of the lowest cost CONNUM in Icdas' COP/CV file, rather than the average cost of all prime rebar products assigned by Icdas. Assigning the lowest cost, rather than the average, ensures that these products sold without mill tests are not assigned a cost that is higher than the cost of the products actually produced, while still assigning to them the cost of a prime product. Thus, for the final determination, we have re-allocated the excess cost assigned to short-length products to all prime production.<sup>168</sup>

Consistent with the investigation, Icdas reported an alternative calculation for short-length rebar based on the lowest-cost CONNUM in its cost database.<sup>169</sup> We relied upon this alternative calculation in the *Preliminary Results*.<sup>170</sup>

We disagree with the petitioner's assertion that simply using the COP of any CONNUM as the COP for non-prime short-length rebar does not increase the COP for prime rebar. Contrary to the petitioner's claim, Icdas increased the COM of prime rebar based on the reallocation of cost assigned to non-prime short-length rebar.<sup>171</sup> Accordingly, we find that Icdas's calculation for short-length rebar based on the lowest-cost CONNUM, consistent with the methodology applied in the investigation, is appropriate for these final results.<sup>172</sup>

#### **Comment 8: Whether Commerce Should use Icdas's Reported General and Administrative (G&A) and Interest Expense Ratio (INTEX) Expenses**

##### *Icdas's Case Brief:*

- Commerce incorrectly revised Icdas's reported G&A to exclude "other ordinary revenue and income" items, including dispatch revenues and "demurrage revenues," because dispatch and demurrage expenses are included in its calculation of G&A, and thus, must be offset by the revenues.<sup>173</sup>
- Similarly, Commerce incorrectly revised Icdas's reported INTEX to exclude the "maturity difference income of trade receivables," (*i.e.*, the interest income from differences in the due date of the customer balances), while also including the interest expense on trade payables in its INTEX calculation.<sup>174</sup>

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<sup>168</sup> See *Turkey Rebar Final Determination* IDM at Comment 7.

<sup>169</sup> See Icdas's July 22, 2019 SQR at S2-13-14 and Exhibits S2-6 and S2-15.

<sup>170</sup> See Icdas's Preliminary Analysis Memorandum.

<sup>171</sup> See Icdas's July 22, 2019 SQR at Exhibit S2-15 at "ADJFACTOR" field.

<sup>172</sup> See *Turkey Rebar Final Determination* IDM at Comment 7.

<sup>173</sup> See Icdas's Case Brief at 15-16 (citing *Preliminary Results* PDM at 15; and Icdas's July 22, 2019 SQR at Exhibit S2-13 and S2-14).

<sup>174</sup> *Id.* at 16-17 (citing Icdas's July 22, 2019 SQR at S2-18-19 and Exhibits S2-18 and S2-19).

- Icdas's reporting is in keeping with Commerce's normal practice, and therefore, Commerce should rely on the G&A and INTEX calculations as submitted in the final results.<sup>175</sup>

### *Petitioner's Rebuttal Brief*

- Icdas's claim that it had also incurred and reported G&A expenses for dispatch and demurrage is completely unsubstantiated and should be dismissed.<sup>176</sup>
- While Icdas provided a slightly more extensive breakout of its account items listed under "other ordinary revenue and income," at Commerce's request, it still did not adequately describe the nature of these expenses.<sup>177</sup>
- If, as Icdas claims, the income from trade receivables were related to sales of subject rebar, Icdas should have reported them in its U.S. sales reporting.<sup>178</sup>
- Further, Icdas improperly conflates interest on trade receivables with interest on trade payable, which are paid on direct materials and should be reported.<sup>179</sup>

### **Commerce's Position:**

We continue to revise Icdas's calculation of the G&A expense ratio by disallowing certain "other ordinary revenue and income" items. In addition, we continue to revise Icdas's calculation of the interest expense ratio by denying Icdas's offset for income from trade receivables.<sup>180</sup>

### G&A

While Icdas argues that the corresponding expenses for dispatch income and demurrage revenues were included in its reported G&A expenses calculation, record evidence does not support Icdas's claim. Specifically, Icdas's breakdown of its "other ordinary revenue and income" account does not list the corresponding expense for dispatch income.<sup>181</sup> With respect to demurrage revenues, Icdas failed to substantiate how any reported demurrage expenses constitute cost-related expenses.<sup>182</sup> Accordingly, we do not agree that Icdas's G&A calculation should be offset for any dispatch and demurrage income.<sup>183</sup>

### INTEX

We disagree with Icdas that including interest income earned from trade receivables (*i.e.*, account receivables) as part of its INTEX calculation is in keeping with Commerce's normal practice. As noted in *Refrigerator-Freezers from Korea*, Commerce disallows interest income

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<sup>175</sup> *Id.* at 17.

<sup>176</sup> See Petitioner's Rebuttal Brief at 13-14.

<sup>177</sup> *Id.* at 14 (citing Icdas's July 22, 2019 SQR at S2-17 and Exhibit S2-13).

<sup>178</sup> *Id.* at 14-15 (citing Icdas's Preliminary Analysis Memorandum at 4).

<sup>179</sup> *Id.* at 15.

<sup>180</sup> See Icdas's Final Analysis Memorandum.

<sup>181</sup> See Icdas's July 22, 2019 SQR at Exhibit S2-13.

<sup>182</sup> *Id.*

<sup>183</sup> For a business proprietary discussion of this issue, see Icdas's Final Analysis Memorandum.

related to accounts receivable as an offset to financial expenses because such interest income is sales-related.<sup>184</sup> We agree with the petitioner that, if the income from trade receivables were related to the sales of rebar, Icdas should have reported it in its U.S. sales reporting.<sup>185</sup> Consistent with our practice, we continue to deduct income from trade receivables from Icdas's INTEX calculation.<sup>186</sup>

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree

3/13/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>184</sup> See 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 17413 (March 26, 2012) (*Refrigerator-Freezers from Korea*), and accompanying IDM at Comment 37.

<sup>185</sup> See Petitioner's Rebuttal Brief at 14-15.

<sup>186</sup> See, e.g., *Refrigerator-Freezers from Korea*.