A-489-829
Administrative Review
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May 21, 2021

MEMORANDUM TO: Christian Marsh
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 2018-2019 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 the 2018-2019 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) (collectively, the respondents). 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:

Comment 1:	Whether Commerce Should Use Contract Date for Kaptan Demir's U.S. Date of Sale
Comment 2:	Whether Commerce Should Revise the Duty Drawback Adjustment Methodology
Comment 3:	Whether Commerce Should Grant Icdas a Duty Drawback Adjustment
Comment 4:	Whether There was High Inflation in Turkey During the Period of Review
Comment 5:	Whether to Treat Section 232 Tariffs as U.S. Customs Duties
Comment 6:	Whether Commerce Erred in Calculating Icdas' Margin in the Preliminary Results
Comment 7:	Whether Commerce Should Change the Treatment of Late Payments in Icdas' Home Market and Margin Programs
Comment 8:	Whether Commerce Should Activate a Macro Pertaining to Net Price for Kaptan Demir's Downstream Home Market Sales

II. BACKGROUND

On November 24, 2020, we published the *Preliminary Results* of this administrative review.[1] On December 22, 2020, Kaptan Demir and Icdas, filed a joint case brief[2] and the Rebar Trade Action Coalition (the petitioner) also filed a case brief.[3] On January 8, 2021, we received a joint rebuttal brief from the respondents and a rebuttal brief from the petitioner.[4]

On February 26, 2021, Commerce rejected the respondents' case brief, and the petitioner's rebuttal brief.[5] On March 2, 2021, the respondents submitted a revised case brief and the petitioner submitted its revised rebuttal case brief.[6]

On December 22, and 24, 2020, Commerce received requests to hold hearings from the petitioner and the respondents, respectively, which were subsequently withdrawn by the respondents, on April 27, 2021, and the petitioner, on April 28, 2021.[7] On May 3, 2021, Commerce held an *ex parte* meeting with the respondents, and on May 4, 2021, an *ex parte* meeting with the petitioner.[8]

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on March 3, 2021, Commerce extended the deadline to issue these final results by 58 days.[9] Accordingly, the deadline for these final results is May 21, 2021.[10]

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[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No-Shipments; 2018-2019*, 85 FR 74983 (November 24, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Turkish Respondents' Case Brief," dated December 22, 2020.
[3] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC's Case Brief," dated December 22, 2020 (Petitioner's Case Brief).
[4] *See* Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Turkish Respondents' Rebuttal Case Brief," dated January 8, 2021 (Respondents' Rebuttal Brief); *see also* Petitioner's Letter, "Steel Concrete Reinforcing Bars from the Republic of Turkey: RTAC's Rebuttal Brief," dated January 8, 2021.
[5] *See* Commerce's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey – Rejection of Case Brief Containing Untimely New Factual Information," dated February 26, 2021.
[6] *See* Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Submission of Turkish Respondents' Revised Case Brief," dated March 2, 2021 (Respondents' Case Brief); *see also* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Resubmission of RTAC's Rebuttal Brief," dated March 2, 2021 (Petitioner's Rebuttal Brief).
[7] *See* Petitioner's Letter, "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* Request for a Virtual Closed Hearing," dated December 22, 2020; *see also* Respondents' Letter, "*Steel Concrete Reinforcing Bar from the Republic of Turkey:* Turkish Respondents' Hearing Request," dated December 24, 2020; Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Withdrawal of Turkish Respondents' Hearing Request," dated April 27, 2021; and Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Withdrawal of Request for Hearing," dated April 28, 2021.
[8] *See* Commerce's Letter, "*Ex Parte* Meeting with Counsel for the Respondents," dated May 4, 2021; *see also* Commerce's Letter, "*Ex Parte* Meeting with Counsel for the Petitioner," dated May 6, 2021.
[9] *See* Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey," dated March 3, 2021.
[10] *See* Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey," dated March 3, 2021.

III. SCOPE OF THE *ORDER*[11]

The merchandise subject to this *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (*e.g.*, mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject countries or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, 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 rebar.

Specifically excluded are plain rounds (*i.e.*, nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

IV. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made the following changes:

Icdas

- We deleted the macro at HM-7 Weight Average HM DATA of Icdas' margin program to ensure that, when determining U.S. gross price for HM sales, certain zero (0) home market sales values are averaged with other home market sales values in instances where data was in both Turkish Lira (TL) and U.S. dollars (USD).
- We made business proprietary changes to the programming to ensure that Icdas' affiliated reseller sales which passed the arms-length test are dropped from the dumping margin calculation. These changes are described in Icdas' Calculation and Analysis Memorandum.[12]
- We made corrections to Icdas' home market and margin programs regarding penalty interest reported by Icdas. These changes are business proprietary and are described in

[11] *See Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 FR 32532 (July 14, 2017) (*Order*).

[12] *See* Memorandum, "Calculation and Analysis Memorandum for Icdas," dated concurrently with these Final Results (Icdas' Calculation and Analysis Memorandum).

Icdas' Calculation and Analysis Memorandum.

Kaptan Demir

- We made a correction to Kaptan Demir's home market program to activate the home market net price macro for Kaptan Demir's downstream sales.[13]
- We made a correction to Kaptan Demir's margin calculation program where we removed an adjustment to the export price (EP) because the countervailing duty rate from the 2017 final results was *de minimis*.[14]

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Use Contract Date for Kaptan Demir's U.S. Date of Sale

Petitioner's Case Brief:

- Commerce used the earlier of the invoice or shipment date to determine the date of sale for Kaptan Demir's U.S. sales.[15]
- Commerce stated that "Kaptan Demir's amendments to contracts and changes in quantities that did not comport with the quantity tolerances, demonstrate that written contracts did not prevent subsequent changes to material terms of sale."[16]
- In this administrative review, Kaptan Demir focused on changes to its original contracts and not the amended contracts. However, when a contract changes through an amended contract, Commerce looks at the amended contract date to see if that is when the material terms are set.[17] Commerce should use the amended contract dates as the date of sale for Kaptan Demir's U.S. sales in this review.
- According to 19 CFR 351.401(i) Commerce "normally will use" the invoice date as the date of sale. Commerce uses another date if the "different date better reflects the date on which the exporter or producer establishes the material terms of sale."[18]
- Commerce considers delivery terms in addition to when the sale price and quantity are set to determine the material terms of sale.[19]
- In previous cases, including *Rebar from Latvia* and *HRS from Kazakhstan*, Commerce used the final amended contract date for the date of sale because that is when the material terms of sale were finalized.[20]

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[13] *See* Memorandum, "Calculation and Analysis Memorandum for Kaptan Demir," dated concurrently with these Final Results (Kaptan Demir's Calculation and Analysis Memorandum).
[14] *Id*. at 3.
[15] *See* Petitioners' Case Brief at 4 (citing *Preliminary Results* PDM at 9-10).
[16] *Id.* (citing *Preliminary Results* PDM at 10).
[17] *Id.*
[18] *Id.* at 5.
[19] *Id.* (citing *Utility Scale Wind Towers from Indonesia: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 40231 (July 6, 2020), and accompanying Issues and Decision Memorandum (IDM) at Comment 6 at 23-24).
[20] *Id.* at 5-6 (citing *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 74900 (December 13, 2006) (*Rebar from Latvia*), and accompanying IDM at Comment 2;

- In *CTLP from Romania*, despite the fact that there were minor differences between the order and invoice quantities, Commerce still used the order acknowledgement date as the date of sale instead of the invoice date because that was the date Commerce determined the quantities and prices were fixed.[21]
- Commerce should find that the contract, or where applicable amended contract date, represents the date on which the material terms of sale are established, for the subject merchandise in Kaptan Demir's U.S. sales.[22]

Respondents' Rebuttal Brief:

- Kaptan Demir's date of sale is the earlier of shipment date or invoice date for both markets.[23]
- The petitioner ignores relevant facts on the record in arguing for Commerce to select the final amended contract date as the most appropriate U.S. sale date.[24]
- Kaptan Demir's invoices include final price, quantity, delivery, and other material terms, which differ from the terms in a final contract and are thus subject to change prior to the final contract.[25]
- The petitioner misstates Commerce's standard for determining date of sale arguing "{c}hanges to the original contract do not automatically mean the invoice date becomes the proper date of sale."[26] Instead, parties must, "demonstrate that the material terms of sale were 'firmly' and 'finally' established on its proposed date of sale" rather than the date of invoice, to establish the contract date as the date of sale.[27]
- In citing *CTLP from Romania* to emphasize the date of sale should be the contract date, the petitioner fails to mention, that in that case, Commerce found that after the contract, "all parties agree that there can thereafter be no changes in the terms of the sale."[28] However, there is no such agreement between Kaptan Demir and its customers in this proceeding, and, in fact, the record shows that there were changes after the contract that were outside of the allowable quantity tolerances.[29]

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and *Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 22168, 22171 (May 3, 2001) (*HRS from Kazakhstan*)).

[21] *Id.* at 6 (citing *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Recission: Certain Cut-to-Length Carbon Steel Plate from Romania*, 72 FR 6522 (February 12, 2007) (*CTLP from Romania*), and accompanying IDM at Comment 1 at 2-9).

[22] *Id.* at 11.

[23] *See* Respondents' Rebuttal Case Brief at 6 (citing Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to Section A Questionnaire," March 23, 2020 at A-14).

[24] *Id*. (citing Petitioner's Case Brief at 4).

[25] *Id*.

[26] *Id.* at 7 (citing Petitioner's Case Brief at 4).

[27] *Id.* at 7 (citing *Toscelik Profil ve. Sac Endustrisi A.S*., 256 F. Supp. 3d 1260, 1263 (CIT 2017) (*Toscelik*) (citing *Antidumping Duties*; *Countervailing Duties*, 62 FR 27296, 27349 (May 19, 1997); *see also Allied Tube & Conduit Corp. v. United States*, 24 C.I.T. 1357, 1371 (2000)).

[28] *Id.* (citing *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Recission: Certain Cut-to-Length Carbon Steel Plate from Romania*, 72 FR 6522 (February 12, 2007) and accompanying IDM at 6 (Issue 1)).

[29] *Id.* (citing Petitioner's Case Brief at 6).

- The Court of International Trade (CIT) has found that there is a change in material terms even when there is a "minimal" alteration in quantity.[30] Moreover, the CIT has stated, the tolerance levels of shipments that are outside the contract levels are not "immaterial such that Commerce's reliance on the presumptive invoice date is unreasonable."[31]
- Commerce's criteria for determining the date of sale is the first point when the terms are fixed.[32]
- Kaptan Demir has continuously emphasized that a sales contract or purchase order are subject to change when requested by the customer, and such changes occurred with Kaptan Demir's sales during the period of review (POR).[33]
- The facts have not changed from the *Preliminary Results* of the administrative review, where Commerce determined that the invoice date should be used as the date of sale.[34]
- Record evidence demonstrates that significant changes to the material terms of sale occurred up until the invoice was finalized for Kaptan Demir's U.S. sales and were not insignificant as argued by the petitioner.[35]

Commerce's Position:

We agree with Kaptan Demir, that invoice date should be used as the date of sale for its U.S. sales. Commerce's practice is that it will use the invoice date as the date of sale in the absence of information indicating that a "different date better reflects the date on which the exporter or producer establishes the material terms of sale."[36]

The petitioner argues that Commerce should use either contract date, or where modified, the final amended contract date as the date of sale for Kaptan Demir's U.S. sales, because information on the record demonstrates that price and quantity were agreed upon in the final contract.[37] We disagree. As we stated in the *Preliminary Results*, "Kaptan Demir's amendments to contracts and changes in quantities that did not comport with the quantity tolerances demonstrate that written contracts did not prevent subsequent changes to material terms of sale."[38] Therefore, because record evidence indicates that the material terms of sale are not finalized prior to the invoice, for these final results of review we will continue to use invoice date as the date of sale for all of Kaptan Demir's U.S. sales.

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[30] *Id.* at 8 (citing *ArcelorMittal USA LLC v. United States*, 302 F. Supp. 3d 1366, 1377 (CIT 2018) (*ArcelorMittal*).
[31] *Id.*
[32] *Id.* (citing *Toscelik*).
[33] *Id.* at 9 (citing Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to 2nd Supplemental Sections A-D Questionnaire," dated October 20, 2020 (Kaptan Demir October 20, 2020 SQR) at S2-2 and Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Section A Response," dated March 23, 2020 (Kaptan Demir's March 23, 2020 AQR) at A-14).
[34] *Id.* at 9-10 (citing Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to RTAC's Pre-Preliminary Comments," dated November 6, 2020 at 2-3).
[35] *Id*.
[36] *See* 19 CFR 351.401(i).
[37] *See* Petitioner's Case Brief at 2.
[38] *See Preliminary Results* PDM at 10 (citing Kaptan Demir October 20, 2020 SQR at S2-2; *see also* Kaptan Demir's March 23, 2020 AQR at A-15 and Exhibit A-7).

In making its argument for using the contract date or amended contract date as the date of sale, the petitioner cites *Rebar from Latvia*, *HRS from Kazakhstan*, and *CTLP from Romania* as examples of instances where Commerce used the final amended contract date as the date of sale for U.S. sales.[39] However, the facts in all three of these cases are different from the instant proceeding. In *Rebar from Latvia*, Commerce found "that the date of the final sales contract amendment best reflects the date on which the material terms of price, quantity, and product mix are established."[40] Here, Kaptan Demir has stated very clearly, and supplied record evidence supporting that the material terms of sale are not finalized until the invoice date. In *CRS from Kazakhstan*, Commerce found "no changes in price or in quantity, outside of the contractually agreed upon tolerances, after the addendum is finalized;" that case also involved annual contracts, which is not the case for Kaptan Demir.[41] For *CTLP from Romania*, Commerce determined that the order acknowledgment contained the material terms of sale, and Commerce found that "that material terms of sale were set with the order acknowledgment throughout the entire POR**.**"[42] In addition, all parties agreed that there could thereafter be no changes in the terms of sale.[43] For this administrative review, a similar agreement does not exist between Kaptan Demir and its customers.[44] In this proceeding, the evidence on the record indicates that after the contract, and even after the amended contract in certain instances, the material terms of sale were subsequently changed up until the point of invoice. For additional detail, regarding the changes made post-contract to Kaptan Demir's U.S. sales please *see* Kaptan Demir's calculation memorandum.[45]

Moreover, Commerce's continued reliance on the invoice or shipment date instead of the contract date in this administrative review is supported by the CIT ruling in *ArcelorMittal.* There the CIT determined that changes to shipment quantities outside the quantities referenced in the contract are not minimal and therefore, qualify as a change in material terms.[46] Therefore, in such instances Commerce's reliance on invoice date as the date of sale is not unreasonable.

We continue to find that the invoice date best reflects when the material terms of sale are established for Kaptan Demir's U.S. sales.[47] Therefore, for these final results of this administrative review, we are continuing to use invoice date as the date of sale for Kaptan Demir's U.S. sales. This conforms with our longstanding practice of using the earlier of the invoice date or the shipment date as the date of sale, if no other date is more appropriate.[48]

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[39] *See* Petitioner's Case Brief at 5-6 (citing *Rebar from Latvia* IDM at Comment 2; *HRS from Kazakhstan*, 86 FR at 22171; and *CLTP from Romania* IDM at Comment 1 at 2-9).
[40] *See Rebar from Latvia* IDM at 20 at Comment 2.
[41] *See HRS Kazakhstan*, 86 FR at 22171.
[42] *See CLTP from Romania* IDM at 9.
[43] *Id.* at 6.
[44] *See* Respondents' Rebuttal Case Brief at 7; *see also* Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to 2nd Supplemental Sections A-D Questionnaire," dated October 20, 2020 at S2-2 – S2-3.
[45] *See* Kaptan Demir's Calculation and Analysis Memorandum.
[46] *See ArcelorMittal*, 302 F. Supp. 3d 1377.
[47] *Id.*
[48] *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*

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

Petitioner's Case Brief:

- Commerce articulated in the *Preliminary Results* that it is using the "the duty neutral approach" and that it "will make an upward adjustment to EP and {constructed export price (CEP)}" by "allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POR."[49]
- In Commerce's calculation of Kaptan Demir's sales-side TL/metric ton (MT) duty drawback adjustment, it incorrectly did not allocate the amount of exempted duties over Kaptan Demir's total production and therefore calculated an incorrect TL/MT amount for the sales-side adjustment used in the margin calculation.[50]
- The duty neutral approach described in the *Preliminary Results* ensures that adjustments to EP and normal value (NV) are allocated on the same basis.[51]
- Commerce should use a drawback adjustment that is calculated over total production.[52] Commerce should use the TL/MT cost-side drawback adjustment as the sales-side TL/MT drawback adjustment.[53]

Respondents' Case Brief

- In the *Preliminary Results*, Commerce incorrectly calculated the duty drawback adjustment by allocating the amount of duties rebated "or not collected to all production for the relevant period based on the cost of inputs during the POR."[54] Instead, Commerce should allocate the drawback amount over total exports.[55]
- Commerce's "duty neutral" approach is inconsistent with the statute, which links the drawback adjustment to actual export sales.[56]

Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664 (June 8, 1999), and accompanying IDM at Comment 5)).

[49] *See* Petitioner's Case Brief at 1 (citing *Preliminary Results* PDM at 14).

[50] *Id.* at 2-3 (citing Memorandum, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results Analysis Memorandum for Kaptan Demir Celik Endustri ve Ticaret A.S.," dated November 17, 2020 at Attachment 3).

[51] *Id.* at 2 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey; Final Results of Antidumping Administrative Review; 2017-2018*, 85 FR 15765 (March 19, 2020), and accompanying IDM at Comment 2, page 12; *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey; Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 30694 (June 27, 2019), and accompanying IDM at Comment 6; *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, 2019), and accompanying IDM at Comment 1; *Common Alloy Aluminum Sheet from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65346 (October 15, 2020), and accompanying PDM at pages 10-11).

[52] *Id.*

[53] *Id.*

[54] *See* Respondents' Case Brief at 3 (*citing Preliminary Results* PDM at 14).

[55] *Id.*

[56] *Id.*

- The party requesting a drawback adjustment under 771(c)(1)(B) of the Act must demonstrate: (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 the subject merchandise and (2) that there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise.[57]
- Commerce's policy is to allow a duty drawback adjustment to EP and CEP for the amount of exempted duty when a company meets these two criteria.[58]
- Commerce has historically granted an amount of adjustment calculated as the ratio of exempted or rebated duties over total exports to the United States.[59]
- In the *Preliminary Results*, Commerce did not use the duty drawback ratio reported by Kaptan Demir and instead used an imputed duty drawback adjustment that it derived by allocating the exempted import duties on exports over the COP.[60]
- Commerce's approach is inconsistent with section 771(c)(1)(B) of the Act, which mandates the increase of EP or CEP 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 Sates."[61]
- The CIT has repeatedly ruled against the "duty neutral" approach.[62] In light of these rulings, Commerce has moved away from using the duty neutral approach in its remand redeterminations.[63]
- Commerce's position is that its "duty neutral" approach "meets the purpose of the adjustment as affirmed in *Saha Thai*," but this approach conflates the duty drawback adjustment to U.S. price with the *Sala Thai* cost side adjustment.[64]
- According to the Court of Federal Appeals for the Federal Circuit (the Federal Circuit) in *Saha Thai*, the purpose of the duty drawback adjustment is to correct imbalances between COP, NV and the EP or CEP, "which could otherwise lead to an inaccurately high

[57] *Id.* at 4 (citing *Saha Thai Steel Pipe (Pub.) Co. v. United States*, 635 F. 3d 1335, 1340 (Fed. Cir. 2011); *Allied Tube 7 Conduit Corp. v. United States*, 29 CIT 502, 506, 374 F. Supp. 2d 1257, 1261 (2005)).
[58] *Id.*
[59] *Id.* (citing *Duty Drawback Practice in Antidumping Proceedings*, 70 FR 37764, 37764-66 (June 30, 2005); *Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004)).
[60] *Id.* (citing *Preliminary Results* PDM at 14).
[61] *Id.* at 5.
[62] *Id.* (citing, *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. v. United States*, 429 F. Supp. 3d 1353, 1364 (CIT 2020); *Eregli Demir Ve Çelik Fabrikalari T.A.S. v. United States*, 415 F. Supp. 3d 1216 (CIT 2019); *Habaş Sinai Ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 415 F. Supp. 3d 1195 (CIT 2019); *Toscelik Profil ve Sac Endüstrisi A.Ş. v. United States*, 321 F. Supp. 3d 1270 (CIT 2017) (*Toscelik Profil*); *Uttam Galva Steels Ltd. v. United States*, 374 F. Supp. 3d 1360 (CIT 2016); *Habas Sinai ve Tibbi Gazlar lstihsal Endustrisi A.Ş. v. United States*, 361 F. Supp. 3d 1314 (CIT 2017); *Eregli Demir ve Celik Fabrikalari v. United States*, 357 F. Supp. 3d 1325 (CIT 2018) (*Ergli Demir I*); *Uttam Galva Steels Ltd v. United States*, 311 F. Supp. 3d 1345 (CIT 2018); *RATC*, No. 14-268, 2016 WL 5122639).
[63] *Id.* at 5-6 (citing Final Results of Redetermination Pursuant to Third Court Remand Order in *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, Court No. 16-00218 (January 27, 2020); Final Results of Redetermination Pursuant to Court Remand Order in *Habas Sinai ve Tibbi Gazler Istihsal Endustri A.S. v. United States*, Consol. Ct. No. 17-00204 (January 15, 2020)).
[64] *Id.* at 6 (citing *Preliminary Results* PDM at 14 (citing *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*)).

dumping margin, by increasing EP to the level it likely would be absent the duty drawback."[65]

- Commerce's approach incorrectly "attributes some of the drawback to domestic sales, which do not earn drawback," and "lessens the upwards adjustment and conceptually reintroduces an imbalance in the dumping margin calculation."[66]

Petitioner's Rebuttal Brief:

- The respondents' proposed methodology of calculating the duty drawback adjustment by allocating the exempted duties over total U.S. sales is inconsistent with Commerce's prior practice and the statute, which requires a fair comparison between EP and NV.[67]
- Commerce's methodology ensures that both EP and NV reflect duties to the same degree because both the sales-side adjustment methodology and the cost-side adjustment allocate the total amount of duties rebated or not collected to "all production for the relevant period based on costs of inputs for the POR."[68]
- Section 772(c)(1)(B) of the Act does not specify a methodology for calculating the per-unit value of the EP or COP drawback adjustments.[69]
- The Act is silent on this issue, so Commerce should "perform it duties in the way it believes is most suitable," and the courts will uphold these decisions "{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious.[70]
- The respondents' argument that Commerce's approach did not reflect the full value of forgone duties is incorrect because the full amount of duties is the numerator of the calculation.[71]
- Commerce has only used the respondents' proposed approach under protest at the CIT, and Commerce's "duty neutral" approach is on appeal before the Federal Circuit as in issue of first impression.[72]
- The respondents' proposed approach is distortive, and a comparison of this approach to Commerce's "duty neutral" approach shows that allocating the duties over total production ensures equal allocation of the exempted duties to EP and NV.[73]

Respondents' Rebuttal Brief:

- Commerce should calculate the duty drawback adjustment by allocating the amount of exempted duties over total exports.[74] This approach ensures that the drawback adjustment is not allocated over home market sales which do not qualify for drawback in the Turkish drawback program.[75]

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[65] *Id.* at 6 (citing *Saha Thai*, 635 F.3d at 1338).
[66] *Id.* at 6-7 (citing *Eregli Demir I*, 357 F. Supp. 3d at 1333; *Toscelik Profil*, 321 F. Supp. 3d at 1278).
[67] *See* Petitioner's Rebuttal Brief at 1.
[68] *Id.* at 3 (citing *Preliminary Results* PDM at 14).
[69] *Id*.
[70] *Id.* at 4 (citing *U.S. Steel Grp. v. United State*s, 96 F.3d 1353, 1362 (Fed. Cir. 1996)).
[71] *Id.* at 5 (citing Respondents' Case Brief at 2).
[72] *Id.* (citing *Habas Sinai ve Tibbi Gazlar Intihasal Endustrisi, A.S. v. United States*, 439 F. Supp. 3d 1342 (CIT 2020) (*Habas*), appeal docketed, No. 21-1066 (Fed. Cir. October 29, 2020)).
[73] *Id.* at 7-8.
[74] *See* Respondents' Rebuttal Brief at 1-2.
[75] *Id.*

- The intent of the duty drawback adjustment is "to prevent the dumping margin from being distorted by import taxes that are imposed on raw materials used to produce subject merchandise, but which are rebated or exempted from payment when subject merchandise is exported to the United States."[76]
- The Federal Circuit's decision in *Saha Thai* is consistent with the legislative history regarding the drawback statue, which supports a full upward adjustment to U.S. price to prevent a dumping margin from arising solely because of a foreign government's forgiveness of taxes on export.[77]
- Allocating the exempted duties over total exports ensures that import duties on inputs rebated or not collected by the country of exportation on goods exported to the United States are reflected both in NV and in EP.[78]
- Both the CIT and the Federal Circuit have affirmed the practice of calculating the duty drawback adjustment by allocating the amount of exempted duties over total exports to the United States.[79]

Commerce's Position:

Section 772(c)(1)(B) of the Act states that the price used to establish EP or CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."

In determining whether an adjustment for duty drawback should be granted, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to U.S. price.[80]

The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise). The second prong of the test is that the company must demonstrate that there were sufficient imports of the relevant raw materials to account for the

[76] *Id.* at 3 (citing *Eregli Demir I*, 357 F. Supp. 3d at 1329).
[77] *Id.* at 4 (citing *Saha Thai*, 635 F.3d 1335 at 1338 (citing S. Rep. No. 67-16 at 12 (1921))).
[78] *Id. at 5* (citing *Saha Thai; Icdas Celik Enerji Tersane ve Ulasim Sanayi v. United States*, 475 F. Supp. 3d 1293, 1296 (CIT 2020)).
[79] *Id.* at 4 (citing *Saha Thai*; *Maverick Tube Corp. v. Toscelik Profil ve Sac Endustri A.S.*, 861 F.3d 1269, 1271 (Fed. Cir. 2017)).
[80] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006); *see also Saha Thai*, 635 F.3d at 1340-41.

duty drawback or exemption granted for the exportation of the manufactured product.[81] In the *Preliminary Results*, we determined that a duty drawback adjustment is warranted because the criteria described above are satisfied for the Turkish duty drawback program.[82]

Kaptan Demir and Icdas each claimed a duty drawback adjustment.[83] Commerce's current practice with regard to the Turkish inward processing regime (IPR) (which is the official mechanism for applying for exemption from import duties) is to use only closed inward processing certificates (IPCs) (*i.e.*, import certificates to which the company was no longer permitted by the Government of Turkey (GOT) to add import or export information) for purposes of calculating a duty drawback adjustment.[84] For the reasons described *infra* at Comment 3, we determine a duty drawback adjustment for Icdas is not warranted in this review. Regarding Kaptan Demir's claim, we determine that a duty drawback adjustment is warranted because Kaptan Demir provided letters from the GOT to Kaptan Demir demonstrating that some of Kaptan Demir's IPCs were closed by the GOT. Therefore, we made duty drawback adjustments for refunded duties pertaining only to the IPCs for which Kaptan Demir provided evidence demonstrating that the GOT closed.[85]

We agree with respondents that Commerce's use of the "duty neutral" methodology has not been affirmed by the CIT and the Federal Circuit. Therefore, we now are calculating drawback adjustments using the Federal Circuit affirmed practice of adding the full weight-averaged per unit amount of duty rebated or uncollected to the U.S. price and adding the rebated or uncollected amount, if not already included in the cost books and records, to the input cost allocated over total production.[86]

Following this approach, we calculated the duty drawback adjustment for Kaptan Demir by allocating the allowable amount of exempted duties (*i.e.*, the amount attributable to IPCs determined to be closed by the GOT) over the total quantity of exports under the closed IPCs listing exports to the U.S. during the POR. We then added this full weight-averaged per-unit

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[81] *Id.; see also Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

[82] *See* Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Section C Questionnaire Response," dated April 15, 2020 (Kaptan Demir's April 15, 2020 CQR) at 26 through 34; and Icdas' Letter "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. Section C Questionnaire Response," dated April 15, 2020 (Icdas' April 15, 2020 Section CQR) at C-27 through C-41; *see also Preliminary Results* PDM at 14.

[83] *See* Kaptan Demir's April 15, 2020 CQR at C-35 through C-38 and Exhibits C-16 through Exhibits C-18 Icdas' April 15, 2020 Section CQR at C-38 through C-41 and Exhibits C-18 through C-21; and Icdas' Letter, "Steel Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Section D Questionnaire Response," dated April 21, 2020 (Icdas' Section DQR) at D-29 and Exhibit D-19.

[84] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying IDM at Comment 4; *see also Light-Walled Rectangular Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments: 2018-2019*, 86 FR 11230 (February 24, 2021) (*LWRPT 2018-2019*), and accompanying IDM at Comment 2 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey, Final Determination of Sales at Less Than Fair Value*, 81 FR 47335 (July 21, 2016) (*HWRPT from Turkey*), and accompanying IDM at Comment 4).

[85] *See* Kaptan Demir's Calculation and Analysis Memorandum.

[86] This methodology was affirmed by the Federal Circuit in *Saha Thai*, 635 F.3d at 1338.

amount of duty rebated or uncollected to the U.S. price.[87] We calculated Kaptan Demir's "normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to export price (or constructed export price)."[88] For the adjustment on the cost-side, we divided the allowable amount of the duty exempted (*i.e.*, the amount attributable to IPCs determined to be closed by the GOT) by the total production quantity to arrive at the annual average per-unit import duty burden to add to the COP.[89]

We note that, although we stated in the *Preliminary Results* that we were making "a duty drawback adjustment using the duty neutral approach,"[90] no changes in the calculations of Kaptan Demir's duty drawback adjustments are needed for these final results because we inadvertently calculated them according to the methodology described above.[91]

Comment 3: Whether Commerce Should Grant Icdas a Duty Drawback Adjustment

Respondents' Case Brief:

- Commerce should find that the information Icdas initially provided is sufficient to support its duty drawback adjustment claim or provide Icdas with reasonable opportunity to remedy any defect in the information.[92] Commerce should grant Icdas a full duty drawback adjustment. Icdas timely provided sufficient evidence that its IPCs had been completed during the POR.[93]
- In its Section C Questionnaire Response, Icdas provided a full response regarding Field Number 39.0: Duty Drawback (DTYDRAWU) and, in this response, explained that, during the POR, Icdas imported scrap, ferro-alloy, pig iron and billets under IPCs for shipments to the U.S.[94]
- In this response, Icdas also provided copies of the IPCs with translations and documentation demonstrating that certain IPCs had been completed.[95]
- Icdas further explained in its response that, as of the date of the response, not all of the imports and exports under Icdas' IPCs had been completed. Therefore, Icdas provided a closing ratio in Exhibit C-21 calculated as the ratio of exports to imports from other completed IPCs to obtain a ratio to estimate the projected export quantity.[96]
- Commerce's "current practice with regard to the Turkish inward processing regime … is to use only closed IPCs (*i.e.*, import certificates to which the company was no longer permitted by the GOT to add import or export information) for purposes of calculating a duty drawback adjustment."[97]

[87] *See* Kaptan Demir's Calculation and Analysis Memorandum at Attachment 3.
[88] *Id.*
[89] *Id.*
[90] *See Preliminary Results* PDM at 14.
[91] *See* Kaptan Demir's Calculation and Analysis Memorandum.
[92] *See* Respondents' Case Brief at 11.
[93] *Id.* at 8.
[94] *Id.* at 8-9 (citing (Icdas' Section April 15, 2020 CQR at C-38 through C-41 (Field 39) and Exhibit C-19).
[95] *Id.*
[96] *Id.* at 9 (citing Icdas' Section April 15, 2020 CQR at C-21).
[97] *Id.* at 9-10 (citing *Preliminary Results* PDM at 15).

- Icdas meets this standard because it provided documentation that it had requested closure of the IPCs and therefore there was no mechanism by which Icdas could add import and export information to the IPCs.[98]
- Commerce abused its discretion because, contrary to section 782(d) of the Act, it never informed Icdas about any deficiency regarding the IPC information Icdas provided in its Section C Questionnaire Response or inquired about this information in its supplemental questionnaires.[99] The CIT recently explained that "Commerce is to give notice of a deficiency and an opportunity to cure it."[100]
- Icdas alerted Commerce that it did not have certain information and then provided it as soon as it became available, 60 days prior to the *Preliminary Results*.[101]
- Commerce determined that the information on the record is not sufficient to support Icdas' duty drawback adjustment claim. However, in previous cases, Commerce has "collected and verified" IPC closure documents for IPCs that were completed during the POR, "regardless of whether (they) closed within the POI or not."[102] The CIT has held that duty drawback adjustments should be calculated using verified information, including IPCs closed after the POI {period of investigation} and collected at verification.[103]
- In rejecting Icdas' September 17, 2020, factual submission Commerce stated that Icdas' "claim that the information provided in its September 17, 2020, submission should be accepted as timely by Commerce pursuant to 19 CFR 351.301(c)(3)(ii) is not warranted."[104]
- Commerce is putting form above substance; an inadvertent miscite to 19 CFR section 351.301(c)(3)(ii) instead of 19 CFR 351.301(c)(5) does not preclude a party from providing the information.[105]
- The CIT has explained that "although Commerce has the discretion to set and enforce its own deadlines to ensure finality, it may abuse its discretion by rejecting information that would not be burdensome to incorporate and which would increase the accuracy of the calculated dumping margins."[106]

Petitioner's Rebuttal Brief:

- Regarding the respondents' claims on the closure of its IPCs, it is the respondents' burden to demonstrate that their duty drawback claims are warranted, not Commerce's.[107]
- Commerce's practice is to calculate the allowable amount of drawback adjustment using IPCs that have been closed during the POR.[108]

[98] *Id.* at 10 (citing Icdas' Section April 15, 2020 CQR at Exhibit C-19).
[99] *Id.* at 10-11.
[100] *Id.* at 12 (citing *Hung Vuong Corp. v. United States*, 483 F. Supp. 3d 1321, 1334-35 (CIT 2020)).
[101] *Id.* at 12-13.
[102] *Id.* at 11 (citing *Toscelik Profil v. Sac Endustrisi A.S.*, 348 F. Supp. 3d 1321, 1325 (CIT 2018) (*Toscelik 2018*)).
[103] *Id.* (citing *Toscelik 2018*, 348 F. Supp. 3d at 1328).
[104] *Id.* at 13.
[105] *Id.*
[106] *Id.* at 13 (citing *Stupp Corp. v. United States*, 359 F. Supp. 3d 1293, 1312 (CIT 2019), reconsideration denied, 365 F. Supp. 3d 1373 (CIT 2019) (citing *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2021)).
[107] *Id.* at 9 (citing *Fujitsu Gen. Ltd. v. United States*, 88 F. 3d 1034, 1040 (Fed. Cir. 1996)).
[108] *Id.* (citing *HWRPT from Turkey* IDM at Comment 4)).

- Consistent with *HWRPT from Turkey*, Commerce will not include an IPC in its calculation if the party did not provided evidence that it was closed by the GOT.[109]
- Icdas has extensive experience with antidumping cases and should have been aware of Commerce's practice of only accepting IPCs that were closed by the GOT.[110]
- Icdas incorrectly argues that the documentation it placed on the record meets Commerce's standard for evidence that an IPC is closed.[111] Commerce determines that an IPC is closed based on information that is has been closed by the GOT.[112]
- The CIT recently reaffirmed Commerce's approach of rejecting IPCs that have not been closed.[113] The CIT stated that Commerce "reasonably predicates its inclusion of IPCs on evidence of closure as demonstrating final duty exemption …"[114]
- Icdas has not provided evidence that a request for closure to the GOT could not be withdrawn.[115] Commerce properly did not accept the documentation Icdas provided as proof that the IPCs were closed by the GOT.[116]
- Icdas' new factual information was untimely filed pursuant to 19 CFR 351.301(c) (1)(i) because it was not submitted by the initial questionnaire deadline.[117]
- Icdas never requested an extension to submit the information or indicated that it would be providing closure documents on a later date.[118]
- New factual information is to be filed pursuant to 19 CFR 351.301, and 19 CFR 351.301(c)(5) requires that "all submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in 19 CFR 351.102(b)(21)(i)-(iv)."[119]
- Icdas did not attempt to clarify the incorrect cite until the submission of its case brief.[120]
- Commerce correctly followed 19 CFR 351.104(a)(2)(iii) and removed the untimely and unrequested information from the record.[121]
- In *Toscelik 2018*, the CIT required Commerce to consider IPCs that were closed after the POI, noting that they were "verified information."[122] The CIT has clarified that *Toscelik 2018* "cannot be fairly read to support the proposition that Commerce must include all IPCs reflecting POI exports in its margin calculations regardless of whether record evidence demonstrates closure.[123] Therefore, *Toscelik 2018* is not on point because there is no information on the record establishing the closure of Icdas' IPCs.

[109] *Id.*
[110] *Id.* at 10.
[111] *Id.*
[112] *Id.*
[113] *Id.* (citing *Habas*, 439 F. Supp. 3d 1342).
[114] *Id.*
[115] *Id.* at 11.
[116] *Id.*
[117] *Id.* at 13.
[118] *Id.*
[119] *Id.* at 14.
[120] *Id.*
[121] *Id.*
[122] *Id.* at 15 (citing *Toscelik 2018*, 348 F. Supp. at 1325).
[123] *Id.* (citing *Habas*, 439 F. Supp. 3d at 1348-49).

Commerce's Position:

We agree with the petitioner and continue to determine, as we did in the *Preliminary Results*,[124] not to grant Icdas a duty drawback adjustment.

We disagree with the respondents that applying for closure of an IPC is enough to satisfy Commerce's requirements for granting a duty drawback adjustment. As explained in the *Preliminary Results*, Commerce's practice is to use only IPCs that have been closed by the government (*i.e.*, import certificates to which the company was no longer permitted by the GOT to add import or export information) to calculate duty drawback adjustments.[125] Despite the statement in *HWRPT from Turkey* indicating that Commerce considers an IPC closed "when the exporting company has applied to the {GOT} for closure of the {IPC}," Commerce did not follow that principle in *HWRPT from Turkey*.[126] Rather, Commerce disallowed two of the three IPCs under which the respondent requested a duty drawback adjustment because one IPC remained open and the other IPC was suspended *after* the respondent had applied for closure. Hence, application for closure was not a controlling factor in granting a duty drawback adjustment in *HWRPT from Turkey*. The duty drawback adjustment that Commerce did grant the respondent in *HWRPT from Turkey* was for the only IPC that had been closed by the GOT. Until the government closes the IPC, the duty liability remains. Moreover, in the 2015-16 administrative review of *LWRPT from Turkey*, Commerce did not consider application for closure to be the threshold for finding an IPC to be closed.[127] Specifically, Commerce determined that it was not appropriate to consider an IPC closed based on the company's application for closure.[128]

Following this approach, Commerce does not consider the application for closure to be the threshold for considering an IPC to be closed in this review. Rather, as demonstrated by the 2015-16 administrative review of *LWRPT from Turkey* and by *HWRPT from Turkey*, a company's application to close an IPC may be modified or suspended even after it has been submitted to the GOT.[129] Thus, Commerce is not satisfied that an IPC has been closed until a respondent can provide sufficient documentation establishing its closure by the GOT.[130] It is only when the government closes the IPC that the duty liability is extinguished. Until the government extinguishes the duty liability, the duty has not been drawn back and does not qualify for inclusion in the duty drawback adjustment.

The documentation that Icdas placed on the record does not indicate that the GOT formally closed any of the IPCs for which Icdas is claiming a duty drawback adjustment. In its April 15, 2020 initial questionnaire response, Icdas provided copies of several IPCs and copies of letters from Icdas to the GOT requesting formal closure by the GOT, and Icdas stated that "imports and

[124] *See Preliminary Results* PDM at 15.
[125] *Id.*
[126] *See LWRPT 2018-2019* IDM at Comment 2 (citing *HWRPT from Turkey* and accompanying IDM at Comment 4)).
[127] *Id. (*citing *Light-Walled Rectangular Pipe and Tube: Final Results of Antidumping Administrative Review and Final Determination of No Shipments:2015-2016*, 82 FR 47477 (October 12, 2017) (*LWRPT 2015-2016*) and accompanying IDM at Comment 5).
[128] *Id.*
[129] *Id.*; *see also LWRPT 2015-2016* IDM at 5 and *HWRPT from Turkey* IDM at Comment 4.
[130] *Id.*

exports have not been completed as of the date of this submission" for all of these IPCs.[131] For any uncompleted IPCs it included in its drawback claim, Icdas calculated an estimated quantity of exports that will be made once fulfilled based on a ratio of exports to imports of its completed IPCs.[132]

On September 17, 2020, Icdas submitted additional information regarding its duty drawback claim.[133] However, upon reviewing the request, we found that it did not meet the regulatory requirements for submitting factual information. On September 25, 2020, we rejected it, explaining that Icdas had not followed the regulatory requirements and deadlines for submission of factual information. Its letter containing new factual information concerning duty drawback was submitted on September 17, 2020, which is after April 15, 2020, the due date for Section C of the questionnaire. Therefore, it was untimely filed. Consistent with 19 CFR 351.302(d)(1), Commerce rejected the submission in its entirety."[134]

We also disagree with the respondents' argument that Icdas' September 17, 2020, new factual submission was timely because Icdas alerted Commerce of certain information that it was not able to include in its initial questionnaire response and then provided the information as soon as possible. The cover letter and the "General Instructions" section of the February 24, 2020, initial questionnaire contain detailed instructions on the procedure for requesting an extension of the deadline to provide information that a party wishes but is not able to provide by the original deadline.[135] These instructions state that:

> {i}f you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information and promises to supply such missing information when available in the future, do not substitute for a written extension request. Section 351.302(c) of Commerce's regulations requires that all extension requests be in writing and state the reasons for the request. Any extension granted in response to your request will be in writing; otherwise the original deadline will apply.[136]

In the "General Instructions" section of the initial questionnaire, Commerce also provided these instructions:

> {i}f you have questions, we urge you to consult with the **official in charge** named on the cover page. If for any reason you do not believe that you can complete the response to

[131] *See* Icdas' Section April 15, 2020 CQR at C-39.
[132] *Id.* at C-40 and Exhibit C-21.
[133] *See* Commerce's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey – Rejection of New Factual Information," dated September 25, 2020.
[134] *Id.*
[135] *See* Commerce's Letter, "Initial Questionnaire for Icdas," dated February 24, 2020 at G-9.
[136] *Id.*

> the questionnaire by the date specified on the cover page of this questionnaire, or in the form requested, you should contact the official in charge immediately. You must formally request an extension of time in writing. Any extension will be approved in writing; otherwise the original deadlines will apply.[137]

In addition, 19 CFR 351.301(c)(1)(iii) provides that "a notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire … is to be submitted within 14 days after the date of the questionnaire."

Although Icdas stated in its initial questionnaire response that not all of the "imports and exports have been completed as of the date of this submission," at no time during this review did Icdas request an extension or contact the official in charge regarding difficulties in submitting information or regarding information it wished, but was unable, to include in its initial questionnaire response. Therefore, we continue to determine that the new factual information Icdas attempted to provide on the record regarding its drawback claim was due on April 15, 2020, which was the extended deadline for Icdas to provide its complete Section C initial questionnaire response.[138]

Regarding the respondents' contention that Commerce abused its discretion by rejecting Icdas' new factual information submission, we again disagree. For voluntary claims such as duty drawback adjustments, it is the respondent's burden to properly follow the regulations for submission of factual information and provide the information requested by Commerce and all necessary supporting documents by the deadlines established by Commerce or to submit a written request for an extension of the deadline in advance of the deadline. It is simply not feasible for Commerce to speculate on what information a respondent does or does not wish to provide to support a request for an adjustment such as duty drawback, so it is not reasonable for a party to assume or expect that Commerce will as a matter of course issue supplemental questions to obtain additional documents that may support that claim.

The deadline for submission of IPC information was when the Section C questionnaire response was due. Icdas did not provide the documents at issue by that deadline. The only other manner in which to submit such information would be if it met the requirements under 19 CFR 351.301(c)(5). We agree with the petitioner that 19 CFR 351.301(c)(5) requires that {a}ll submission of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in 19 CFR 351.102(b)(21)(i)-(iv). In addition, any such submission must provide a detailed narrative of exactly what information is contained in the submission and why is should be considered, and the deadline for filing such information is 30 days before scheduled date of the preliminary results. Although we agree with the respondents that Icdas attempted to file this submission prior to the 30 day deadline, Icdas did not, pursuant to 19 CFR 351.301(c)(5), explain why the information included in the submission does not meet the definition of factual information under 19 CFR 351.102(b)(21)(i)-(iv). We note that although Icdas claims it inadvertently cited to the incorrect regulation when filing its submission, because it was not yet 30 days prior to the

[137] *Id.* at cover letter at 3 and G-1.
[138] *See* Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas' Request for Extension to Respond to Section B, C, and D Questionnaires," dated March 26, 2020.

preliminary results, despite Commerce's rejection, Icdas was free to refile it's submission of new factual information with the correct regulation cited and necessary detailed explanation for Commerce's consideration.

Because the record of this review does not contain certifications from the GOT indicating that the IPCs for which Icdas claimed a duty drawback adjustment have been formally closed, the record does not demonstrate that Icdas' duty liability was extinguished. Thus, there is no evidence on the record to support a finding that Icdas' IPCs have been closed. For these reasons, consistent with our past treatment of not-yet-closed IPCs, for these final results, we have continued to deny Icdas' request for a duty drawback adjustment.

Comment 4: Whether There was High Inflation in Turkey During the POR

Respondents' Case Brief:[139]

- Commerce should find that high inflation existed in Turkey during the POR.[140] In the *Preliminary Results*, Commerce incorrectly determined that high inflation did not exist in Turkey during the POR by ignoring its high inflation calculation methodology, statute, and recent precedent.[141]
- In the *Preliminary Results*, Commerce determined that high inflation did not exist by calculating the change in PPI from the first to last month of the POR.[142] This was done by dividing the June 2019 index figure by the July 2018 index figure, resulting in an 11 month period.[143] However, Turkstat and TCMB calculate the change in inflation by dividing the June 2019 index figure by the June 2018, which is a 12 month period..[144][145]
- The high inflation calculation methodology utilized by Commerce, compares the U.S. sales prices to NV based on either the home market monthly sales prices or the inflation adjusted constructed value of the same month.[146] Moreover, the Antidumping Manual states that Commerce will determine that the country experienced high inflation, if the annualized rate of inflation over the relevant reporting period exceeds the 25 percent threshold.[147]
- Commerce should find that high inflation in Turkey during the POR is above its 25 percent threshold because the producer price index (PPI) data provided from the Turkish Statistical Institute (Turkstat) shows that the annual inflation rate for the last month of the

[139] *See* Respondents' Case Brief at 14-20.
[140] *Id.* at 14.
[141] *Id.* (citing *Preliminary Results* PDM at 9).
[142] *Id.*
[143] *Id.*
[144] *Id.* at 18-19 (citing Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Factual Information," dated November 25, 2020 (Respondents' Rebuttal Factual Information) at 3 and Exhibits 2-4).
[145] *See* Respondents' Case Brief at 17-18 (citing Respondents' Rebuttal Factual Information at 3).
[146] *See* Respondents' Case Brief at 14 (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission, and Preliminary Determination of No Shipments*; 2018-2019, 85 FR 44861 (July 24, 2020) (*LWRPT 2018-2019 Prelim*), and accompanying PDM at 7, unchanged in *LWRPT 2018-2019*).
[147] *Id.* at 15 (citing Antidumping Manual at Chapter 8, page 74).

POR, June 2019, exceeded 25 percent[148] and the Central Bank of the Republic of Turkey (TCMB) published PPI that shows a 25.04 percent inflation change during the POR.[149]

- In every administrative review with a 2018-2019 POR, Commerce has found high inflation in Turkey, including *LWRPT from Turkey*, which was cited by Commerce in the *Preliminary Results*.[150]
- In determining that high inflation did not exist during the POR, Commerce divided the June 2019 PPI number by the July 2018 PPI number.[151] This methodology does not measure the "annualized rate"[152] because it contradicts how Turkstat and the TCMB measure inflation, which calculate annual changes in the PPI index by dividing the June, 2019 index figure by the June 2018 index figure.[153]
- Commerce placed on the record an assessment of Turkey's statistics regime conducted by the International Monetary Fund (IMF), which states that the monthly price information is "published on the third work day of the month following the reference month" and that data used for the publication is collected "the 5th, 15th and 25th of each month."[154] Turkstat's methodology confirms that published PPI data for July is actually data through the end of June.[155]

Petitioner's Rebuttal Brief:[156]

- Commerce properly determined that high inflation did not exist in the *Preliminary Results*, finding that the inflation rate was below the 25 percent threshold, while using its established high inflation methodology.[157]
- The respondents cite *LWRPT from Turkey* in arguing that Commerce calculated high inflation in Turkey for every administrative review with a 2018-2019 POR,[158] despite the fact that this administrative review has a different POR.[159]
- Using the same methodology used in *LWRPT from Turkey*, only making changes based on the POR in this case, Commerce preliminarily determined inflation is below 25 percent in

[148] *See* Respondent's Case Brief at 16 (citing Icdas' Section April 21, 2020 Section DQR at Exhibit D-11; Kaptan Demir Celik Endustrisive Ticaret A.S.'s Section D Questionnaire Response at Exhibit D-8 (April 20, 2020); *see also* Respondents' Rebuttal Factual Information at Exhibits 2-3.
[149] *See* Respondents' Case Brief at 16 (citing Respondents' Rebuttal Factual Information at Exhibit 4).
[150] *Id.* at 17 (citing *Preliminary Results* PDM at 9, n.34 (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission, and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 44861(July 24, 2020)).
[151] *Id*.
[152] *Id.* at 18 (citing Antidumping Manual at Chapter 8 at 74).
[153] *Id.* at 18 (citing Respondents' Rebuttal Factual Information at 3 and Exhibits 2-4).
[154] *See* Respondents' Case Brief at 18 (citing *Preliminary Results* PDM at 9 and Commerce's Letter, "Memorandum "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Factual Information and Deadline for Rebuttal Factual Information," dated November 18, 2020 (New Factual Information) at Section 3.1.3 and 4.1.2).
[155] *Id.* at 18 (citing New Factual Information at 17, 20 (Sections 3.1.3 and 4.1.2); *see also* Respondents' Rebuttal Factual Information at 2).
[156] *See* Petitioner's Rebuttal Brief.
[157] *Id.* at 16.
[158] *Id.* at 17 (citing Respondents' Case Brief at 16-17).
[159] *Id.* at 17.

Turkey during the POR for this administrative review.[160] Commerce should continue to use the PPI data from the first through last month of the POR to calculate inflation in this annual review,[161] just as it did in *LWRPT from Turkey.*[162]

- The respondents have not explained why Commerce should deviate from its high inflation methodology.[163] The respondents are instead offering a results-driven methodological change to ensure Commerce determines there is high inflation during the POR.[164]
- The respondents falsely accuse Commerce of deviating from its standard high inflation methodology and want Commerce to rely on data outside the POR, suggesting the use of PPI data from June 2018, which is the month prior to the beginning of the POR, to calculate the change in inflation[165]
- The respondents recognize that the Turkish PPI data are prices collected on the 5th, 15th, and 25th of each month[166] meaning the June 2018 PPI number contains data from outside the POR and thus, the July 2018 through June 2019 PPI numbers are data from within the POR.[167]
- The respondents emphasize the date in which the monthly PPI data is published, however, is irrelevant because the published PPI data represents the previous month's survey of prices.[168] In addition, the methodology Commerce uses to calculate high inflation differs from the calculation methodologies of both the Turkstat and TCMB. Commerce measures the change in inflation from July 2018 through June 2019, which is within the POR, and Turkstat and TCMB calculate the change in inflation from June 2018 to June 2019, which incorporates data outside the POR.[169]

Commerce's Position:

We disagree with the respondents and are unpersuaded by their arguments to change Commerce's methodology used at the *Preliminary Results* to determine whether there was high inflation during the POR such that Commerce should change from calculating a POR annual average COP in favor of a monthly indexed POR average COP. Thus, for these final results, we continue to rely on the data and methodology that was used in the *Preliminary Results* and determine that high inflation in Turkey during the POR did not reach our 25 percent threshold.[170]

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[160] *Id.* (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Comments on High Inflation and Kaptan Demir's Section A, B, C, and D Initial Questionnaire Responses," dated June 12, 2020 at Exhibit 2 and Attachment 1).
[161] *Id*.
[162] *Id.* at 17 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Comments on High Inflation and Kaptan Demir's Section A, B, C, and D Initial Questionnaire Responses," dated (June 12, 2020) at Exhibit 2).
[163] *Id.* at 17.
[164] *Id.* at 18.
[165] *Id.*
[166] *Id.* at 18 (citing Petitioner's Letter "*Steel Concrete Reinforcing Bar from the Republic of Turkey*: Comments on the Department's New Factual Information," dated November 25, 2020; Respondents' Case Brief at 16).
[167] *Id.* at 18.
[168] *Id.* at 18-19 (citing Respondents' Case Brief at 18 (citing New Factual Information at 17 and 20).
[169] *Id.* at 18-19.
[170] *See Preliminary Results* PDM at 9. Commerce obtained Turkish domestic producer price index information from TurkStat and calculated the change in price level during the POR by subtracting the July 2018 PPI index of 372.06 from the June 2019 index of 457.16 to obtain the change during the period and then dividing by the July 2018 index of 372.06, which equals a 22.87 percent change during the POR.

In a normal antidumping proceeding, we require respondents to report its cost of production (COP) and constructed value (CV) information on a POR annual average basis, using nominal costs. However, we recognize that during periods of high inflation, it may be necessary to use a monthly indexation methodology to account for the effects of high inflation when computing an annual weighted average cost. Commerce's standard methodology for determining whether high inflation occurred during a POR is to "measur{e} the change in producer price index in a country from the first month of the POR to the last month of the POR"[171] to determine whether the country experienced inflation greater than 25 percent during the POR. Using the published PPI numbers in the POR, from July 2018 through June 2019, Commerce determined the change in inflation during the POR to be 22.87 percent, which falls below the 25 percent threshold.[172]

The respondents argue that the PPI data published by Turkstat in its "Domestic Producer Price Index and Rate of Change" chart and PPI data released by TCMB show that the inflation rate during the POR was 25.04 percent.[173] However, in calculating the 25.04 percent inflation rate, respondents rely on PPI data from June 2018, which is outside the POR.

We disagree with the respondents' assertion that Commerce measured the price level change over only an 11-month period rather than a 12-month period, as our calculation clearly relies on July 2018 to June 2019, the full twelve-month POR. Commerce captures the full price level change between July 2018 and June 2019. We are not concerned about the price level change between June 2018 and July 2018 because the POR starts after this period of time and the reported COPs and CVs did not include costs incurred in June 2018. The goal is to determine the impact of the price level change on the reported annual average costs.

Respondents incorrectly argue that the PPI index number for any given month does not in fact represent the price level of that month but rather the price level of the prior month. It appears that the respondents argue this as their basis for inserting June 2018 data into the calculation. We agree with the petitioner that this is incorrect. As the petitioners note, the respondents themselves recognize that the Turkish PPI data are prices collected on the 5th, 15th, and 25th of each month,[174] and are released early the following month.[175] However, based on our examination of the data, we find that the monthly indexes in the chart for each month reflect the data for that month and therefore the associated calculated price level. This means the June 2018 PPI number is calculated from June data, outside the POR, and thus, the July 2018 through June 2019 PPI indices reflect the price levels from within the POR,

We believe that there is no reason to expand the period to include the price level change between the month prior to the POR. Record evidence shows that measuring the change in the PPI during the same period in which the COP and CV are reported is reasonable and predictable and it

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[171] *See Preliminary Results* PDM at 9 (citing *LWRPT 2018-2019 Prelim*, unchanged in *LWRPT 2018-2019*).
[172] *Id.*
[173] *See* Respondents' Case Brief at 16 (citing Respondents' Rebuttal Factual Information at Exhibits 2-4).
[174] *See* Petitioner's Rebuttal Brief at 18 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on the Department's New Factual Information," dated November 25, 2020, and Respondents' Case Brief at 16.)
[175] *See* Petitioner's Rebuttal Brief at 19 (citing Respondents' Case Brief at 18 (citing New Factual Information at 17, 20)).

directly addresses the specific area of concern. Therefore, Commerce is not departing from its long-established methodology and is continuing to rely on the data and methodology that was used in the *Preliminary Results*;[176] and, as a result, we continue to determine that high inflation did not exist in Turkey during the POR.

Comment 5: Whether to Treat Section 232 Tariffs as U.S. Customs Duties

Respondents' Case Brief:

- Certain imports of rebar were subject to tariffs from section 232 of the Trade Expansion Act of 1962 (section 232 duties).[177] Section 232 duties are special tariffs used to address national security threats and are relevant to this administrative review because they also concern the viability of the U.S. steel industry.[178]
- In the *Preliminary Results*, Commerce found that the "Section 232 duties are not akin to antidumping or Section 201 duties."[179] However, section 232 duties are similar to section 201 duties, which are considered "safeguard duties" because they are remedial, temporary, and implemented through Congress's delegation of authority.[180]
- Commerce should not deduct the 25 percent section 232 duties from the EP because they are "special duties" just like section 201 safeguard duties, and antidumping and countervailing duties, which are different from ordinary customs duties.[181]
- Commerce determined in the *Preliminary Results* that section 232 duties should be deducted from the U. S. price because they are normal U.S. import duties for purposes of section 772(c)(2)(A) of the Act and similar to U.S. Customs duties.[182]
- By treating section 232 duties as "normal duties" in the *Preliminary Results*, which increased the antidumping margins, Commerce ignored precedent of excluding adjustments for "special duties."[183]
- Section 232 steel tariffs were implemented to address a national security threat and the viability of the US steel industry.[184] Commerce contemplated that section 232 duties were an alternate mean to assist a domestic industry which is similar to the purpose of the section 201 duties.[185]
- In previous determinations, Commerce determined that "U.S. import duties" did not include all U.S. customs duties imposed on imported merchandise[186] and excluded

[176] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999); *see also LWRPT 2018-2019*.
[177] *See* Respondents' Rebuttal Brief (citing 19 U.S.C. 1862; *see also* Icdas' April 15, 2020 Section CQR at C-33 and Exhibits C-15 – C-16; Kaptan Demir's April 15, 2020 CQR at C-34 and Exhibit C-22; *see also Preliminary Results* PDM at 13).
[178] *Id.* at 21 (citing *Publication of a Report on the Effect of Imports on Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended*, 85 FR 40202 (July 6, 2020)).
[179] *Id.* at 24 (citing *Preliminary Results* PDM at 12).
[180] *Id.* at 24-25.
[181] *Id.* at 23.
[182] *Id.* at 21 (citing *Preliminary Results* PDM at 12).
[183] *Id.* at 21.
[184] *Id.* at 24.
[185] *Id.* at 24-25.
[186] *Id.* at 22 (citing *Stainless Steel Wire Rod from the Republic of Korea*, 69 FR 19153, 19159 (April 12, 2004)).

"special" safeguard duties, and remedial remedies, which should not be considered "U.S. import duties" in calculating the gross U.S. price.[187]

- In *Stainless Steel Wire Rod from Korea*, Commerce determined that U.S. import duties only meant regular customs duties and not "special duties," including antidumping duties.[188] Commerce determined that section 201 safeguard duties, just like section 232 duties, are remedial, deducting them from the U.S. price would be a double remedy, and they should not be deducted from U.S. price under section 1677a(c)(2)(A) of the Act.[189]
- The Federal Circuit in *Wheatland Tube Co. v. United States* (*Wheatland Tube*) ruled that section 201 safeguard duties were special duties that should not be deducted from the EP or CEP and Congress never intended for all duties to be considered U.S. import duties.[190] Section 201 safeguard duties are similar to section 232 duties that should not be deducted from the EP.[191]
- Commerce determined that deductions for U.S. sales only applies to regular customs duties and not special remedial duties or tariffs because they are distinct from each other based on section 772(c)(2)(A) of the Act.[192]
- The President and the Secretary of Commerce have stated that section 232 duties, section 201 duties, and antidumping and countervailing duty laws on steel imports are "directed at the same overarching purpose — protecting the bottom line of domestic producers."[193]
- Commerce determined in the *Preliminary Results* that section 232 duties are "not focused on remedying injury" but instead "on addressing national security prerogatives."[194] This contradicts the implementation of section 232 duties, which are imposed by the Executive Branch after the determinations of the existence of particular conditions such as dumping/subsidization, import surges, or impairment of national security.[195]
- Section 232 duties are temporary, similar to antidumping and countervailing duties, and section 201 safeguard duties,[196] and are different from regular customs duties because they are not passed by Congress, which has "sole authority" to levy tariffs.[197] Moreover, the President is allowed to impose special duties under the Trade Expansion Act of 1962.[198]

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[187] *Id.* (citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404, 18421 (April 15, 1997)).
[188] *Id.* (citing *Stainless Steel Wire Rod from the Republic of Korea*, 69 FR 19159 (April 12, 2004); S. Rep. No. 16, 67th Cong., 1st Sess. at 4 (1921)).
[189] *See* Respondents' Case Brief at 22-23 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19159-19161 (April 12, 2004)).
[190] *Id.* at 23 (citing *Wheatland Tube Co v. United States*, 495 F.3d 1355, 1361 (Fed. Cir. 2007) (*Wheatland Tube*)).
[191] *Id.*
[192] *Id.* (citing 19 USC 1677a(c)(2)(A)).
[193] *Id.* at 25 (citing Memorandum "Issues and Decision Memo for the Final Normal Value Calculations to be Effective from Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine," dated February 15, 2019 at 7 (citing *Wheatland Tube*, 495 F.3d at 1364)).
[194] *Id.*at 27 (citing *Preliminary Results* PDM at 12).
[195] *Id.* at 27 (citing 19 USC 1671; 19 USC at 2251; 19 USC at 1862).
[196] *Id.* at 28.
[197] *Id.* at 28-29 (citing S. Rep. No. 90-1385, pt 2 at 1385 (1968)).
[198] *Id*.

- The CIT has ruled that the deduction of special duties from the U.S. price in calculating dumping margins results in double-counting.[199] According to the Federal Circuit, deducting safeguard duties from the dumping margin may be punitive because safeguard duties "may reduce or eliminate the injury that is required for an antidumping duty to continue and because deducting … safeguard duties from the EP my create an artificial dumping margin."[200]
- In *Wheatland Tube*, the Federal Circuit, ruled that, "deducting the 201 duties from U.S. prices effectively would collect the 201 duties twice – first as 201 duties, and a second time as an increase in that dumping margin,"[201] and this occurred in the *Preliminary Results*.[202]
- Even though Icdas states that no section 232 duties should be deducted from the U.S. price, Icdas argues, any deduction should not be greater than 25 percent, because in *Transpacific Steel*, the CIT determined that 50 percent tariff duties on Turkish steel products are illegal based on *Proclamation 9772*.[203]
- Section 232 duties do not require Congressional action to be modified,[204] and since the publication of *Proclamation 9705*, the President has modified the section 232 duties on steel, by including changing the countries covered, raising and lowering the application duty rates, and expanding the scope to include certain downstream derisive products.[205]
- Section 232 duties are not "ordinary duties" duties because they are not passed by Congress and imposed by the President.[206] Only Congress has the authority to raise tariffs and modify the HTSUS.[207] Section 232 duties are placed under HTSUS Chapter 99, which is reserved for temporary special duties.[208]

[199] *Id.* at 31 (citing *AK Steel Corp. v. United States*, 988 F. Supp. 594, 607 (CIT 1997)).
[200] *Id.* at 31 (citing *Wheatland Tube*, 495 F.3d 1355).
[201] *Id.* (citing *Wheatland Tube*).
[202] *Id.*
[203] *Id.* at 30 (citing *Transpacific Steel LLC v. United States*, 466 F. Supp. 3d 1246, 1249 (CIT 2020), appeal docketed, Fed. Cir. No. 20-2157 (August 17, 2020) (*Transpacific Steel*) (citing *Presidential Proclamation No. 9772 Adjusting Imports of Steel Into the United States*, 158 FR 40429 (August 15, 2018)).
[204] *Id.* at 28 (citing *Proclamation 9705*, 83 FR at 11628).
[205] *Id.* at 28 (citing *See Proclamation 9711*, 83 FR 13361 (March 22, 2018); *Proclamation 9740*, 83 FR 20683 (May 7, 2018); *Proclamation 9759*, 83 FR 25857 (May 31, 2018); *Proclamation 9772*, 83 FR 40429 (Aug 10, 2018); *Proclamation 9886*, 84 FR 23421 (May 16, 2019); *Proclamation 9894 of May 19, 2019 Adjusting Imports of Steel Into the United States*, 84 FR 23987 (May 23, 2019); *Proclamation 9980 of January 24, 2020 Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 FR 5281 (January 29, 2020)).
[206] *Id.* at 28.
[207] *Id.* at 29 (citing 19 U.S.C. 3004 (1994)).
[208] *Id.* at 29-30 (citing HTSUS, Ch. 99; *see also Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System*, Inv. No. 332-131, USITC Pub. 1400 (June 1983) at 16 n.1 and 28).

Petitioner's Rebuttal Brief:

- In the *Preliminary Results*, Commerce correctly determined that section 232 duties are "U.S. Customs duties" which are deducted from the U.S. price. Commerce had similar determinations in *Rebar from Taiwan* and *CWP from Turkey*.[209]
- In *CWP from Turkey*, Commerce rejected treating section 232 duties as "special duties" similar to antidumping and section 201 duties.[210] Commerce stated that section 232 duties are unlike "special duties" because they are focused on national security threats due to imports, as opposed to section 201 duties, which are focused on assisting domestic industries affected by import surges.[211]
- In *Wheatland Tube*, the Federal Circuit determined that U.S. Customs duties "have no termination provision" while "special dumping duties" are temporary.[212] Section 232 duties can last indefinitely while section 201 duties must eventually be phased down.[213]
- Respondents argue that section 232 duties are "special duties" because Congress has delegated the authority to the President to impose section 232 duties by placing them under Chapter 99 of the HTSUS.[214] Although Chapter 99 of the HTSUS is reserved for temporary legislation,[215] section 232 duties still have indefinite timelines.[216]
- In *Wheatland Tube*, the Federal Circuit determined that Congress did not intend all duties to be "United States import duties" and section 201 safeguard duties should not be deducted from the EP and CEP.[217]
- As in the *Preliminary Results*, Commerce should continue to deduct the section 232 duties from the U.S. price when calculating the final dumping margins.[218]

Commerce's Position:

We disagree with Kaptan Demir and Icdas' assertions that section 232 duties are special duties similar to section 201 safeguard, antidumping, or countervailing duties. Both Kaptan Demir and Icdas reported paying section 232 duties on certain U.S. sales.[219] For the purposes of the final results, we find that section 232 duties should be treated as U.S. import duties for purposes of section 772(c)(2)(A) of the Act – and thereby as U.S. Customs duties, which are deducted from U.S. price.

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[209] *See* Petitioner's Rebuttal Brief at 19 (citing *Preliminary Results* PDM at 13; *Steel Concrete Reinforcing Bar from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 63505 (October 8, 2020), and accompanying IDM at 10-13 (*Rebar from Taiwan*); *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*)).
[210] *Id.* at 20.
[211] *Id.* at 21 (citing 19 USC 1862(b)(3)(A) and S. Rep. No. 93-1298 at 119 (1974); 19 USC 2252(b)(1)).
[212] *Id.* at 22 (citing *Wheatland Tube*, 495 F. 3d at 1362-63).
[213] *Id.* at 22 (citing 19 USC 2253(e)(1); 19 USC 2253(e)(3); 19 USC 2253(e)(5)).
[214] *Id.* at 22 (citing Respondents' Case Brief at 29).
[215] *Id.* at 22 (citing HTSUS, Section XXII, Chapter 99, Subchapter III U.S. Note 20(c); *see also* Respondents' Case Brief at 29-30).
[216] *Id.* at 23.
[217] *Id.* at 23 (citing *Wheatland Tube*, 495 F.3d at 1361).
[218] *Id.* at 23.
[219] *See* Kaptan Demir's April 15, 2020 CQR at C-34 and Exhibit C-22, Parts A and B; *see also* Icdas' April 15, 20 Section CQR at C-33 and Exhibit C-14 through Exhibit C-16.

Commerce considered section 201 duties in *Stainless Steel Wire Rod from Korea* and determined not to deduct section 201 duties from U.S. prices in calculating dumping margins,[220] and this decision was sustained by the Federal Circuit in *Wheatland Tube*.[221] While Kaptan Demir and Icdas cite these decisions[222] to support their arguments that section 232 duties should not be deducted, the issues are different as treatment of section 201 duties differs from treatment of section 232 duties.

The respondents are incorrect to claim that the Federal Circuit's characterization of section 201 duties in *Wheatland Tube* as temporary duties apply to section 232 duties.[223] Rather, the holding in *Wheatland Tube* is based on a close examination of section 201 duties and does not extend to section 232 duties. In other words, *Wheatland Tube* assesses Commerce's interpretation of "United States import duties" and "special dumping duties" in consideration of the function and treatment of section 201 safeguard duties. Moreover, on February 17, 2021, in *Borusan v. United States*, the CIT agreed with Commerce that section 232 duties are to be treated as "United States import duties."[224]

As explained in *CWP from Turkey*, we find that section 232 duties are not akin to antidumping or section 201 duties. In contrast to the respondents' contention that section 232 duties are remedial in nature,[225] we find that section 232 duties are not focused on remedying injury to a domestic injury. The objective of antidumping duties is to "remedy sales by a foreign exporter in the U.S. market at less than fair value" and section 201 duties aim to "remedy the injurious effect on the U.S. industry of significant surge in imports."[226] As such, these types of duties "are all directed at the same overarching purposes – protecting the bottom line of domestic producers."[227] By contrast, we find that section 232 duties are not focused on remedying injury to a domestic industry. As noted in the *Preliminary Results*, the Presidential *Proclamation 9705* states that it "is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security …"[228] Commerce noted that the text of section 232 duties of the Trade Expansion Act of 1962 also clearly concerns itself with "the effects on the national security of imports of the article."[229]

Regarding respondents' argument that any section 232 duty deductions should not exceed 25 percent, Commerce continues to determine, consistent with our practice in *Circular Welded*

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[220] *See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*,, 69 FR at 19154-19156.
[221] *See Wheatland Tube*, 495 F. 3d at 1366.
[222] *See* Respondents' Case Brief at 22- 24.
[223] *Id.* at 28 (citing *Wheatland Tube*, 495 F.3d at 1362).
[224] *See Borusan Mannesmann Boru Sanayi Ve Ticaret A.A. and Borusan Bannesmann Pipe U.S. Inc. v. United States* (*Borusan*) dated February 17, 2021 at 9.
[225] *See* Respondents' Case Brief at 25.
[226] *See Wheatland Tube*, 495 F. 3d at 1362; *see also* section 201 of the Trade Act of 1974; section 731(1) of the Act.
[227] *See Wheatland Tube*, 495 F. 3d at 1364.
[228] *See Proclamation 9705*, 83 FR 11627 (emphasis added).
[229] *See* section 232(b)(1)(A) of the Trade Expansion Act of 1962; *see also* section 232(a) of the Trade Expansion Act of 1962 (explaining that "{n}o action shall be taken … to decrease or eliminate duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.").

Pipe,[230] that an adjustment to Icdas' reported section 232 duties is not warranted for these final results. The respondents reference *Transpacific Steel* in making their argument, however, Commerce notes that the ruling in *Transpacific Steel* is not final and conclusive as this matter is still subject to litigation. In addition, Icdas has not provided evidence on the record warranting Commerce to make such an adjustment, regardless of the finality of the litigation. Icdas, has not provided record evidence that refunds have been provided by CBP regarding disputed section 232 duties. There is also no record evidence demonstrating that exporters or producers set prices of subject merchandise to ultimate customers in reliance on a promise of potential post-sale refunds pursuant to subsequent court decisions. Furthermore, there is no evidence on the record of post-sale refunds from the exporters and producers to the ultimate consumers.[231] Accordingly, we see no reason as to why any adjustment would be appropriate to the antidumping calculations in this review, even if the litigation were final and conclusive.

We note that the Presidential Proclamations state that section 232 duties are to be imposed in addition to other duties, unless expressly provided for in the proclamations.[232] The Annex to *Proclamation 9705* refers to section 232 duties as "ordinary" customs duties, and it also states that "{a}ll anti-dumping and countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."[233] Notably, there is no express exception in the HTSUS revision in the Annex. In other words, we find that section 232 duties are treated as any other duties. No express reduction to antidumping duties by the amount of the section 232 duties is contained in the *Proclamation 9705*. Had the President intended that antidumping duties be reduced by the amount of section 232 duties imposed, *Proclamation 9705* would have expressed that intent.

The respondents argue that deducting section 232 duties from the U.S. price will result in double-counting.[234] However, the function of section 232 duties and section 201 duties are separate and distinct; there is no overlap between the two distinct types of duties, and thus, they do not provide multiple remedies for the same situation. In addition, we find that reducing U.S. prices for Kaptan Demir and Icdas by the amount of reported section 232 duties in the context of this administrative review is consistent with section 772(c)(2)(A) of the Act, because it instructs Commerce to adjust EP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties."[235]

Record evidence demonstrates that for imports into the United States, Kaptan Demir paid all of

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[230] *See Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019,* 86 FR 15190 (March 22, 2001) (*Circular Welded Pipe*) and accompanying IDM at 24.
[231] *Id.* (citing Commerce's Letter, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Borusan Section 232 Notification Letter," dated March 15, 2021).
[232] *See Proclamation 9705*, 83 FR at 11627; *see also Proclamation 9711*, 83 FR at 13363; *Proclamation 9740*, 83 FR at 20685-87 ("All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."); *Proclamation 9759*, 83 FR at 25857; *Proclamation 9772*, 83 FR at 40403-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that section 232 duties receive differential treatment.
[233] *See Proclamation 9740*, 83 FR at 20685-87.
[234] *See* Respondents' Case Brief at 31 (citing *AK Steel Corp. v. United States*, 988 F. Supp. 594, 607 (CIT 1997)).
[235] *See* section 772(c)(2)(A) of the Act.

the section 232 duties where it was the importer of record,[236] and Icdas paid the section 232 duties as it was the importer of record for all its imports to the United States.[237] Because the section 232 duties were included in the U. S. prices for both Kaptan Demir and Icdas, we deducted the reported section 232 duties as a "U.S. Customs duty" from the price of all U.S. sales for both Kaptan Demir and Icdas.

For the reasons noted above, in these final results, we continue to treat Sections 232 duties as U.S. import duties and pursuant to section 777(c)(2)(A) of the Act, we find that it is appropriate to deduct this amount from Kaptan Demir and Icdas' reported U.S. prices to calculate EP.

Comment 6: Whether Commerce Erred in Calculating Icdas' Margin in the Preliminary Results

Respondents' Case Brief:

- In determining U.S. gross price for the home market (HM) sales, Commerce set certain zero (0) values in Icdas' margin program to "missing" when weight averaging above cost sales [238]
- Some HM sales were in TL, and other sales were denominated in USD for the same CONNUM/month. For such cases, the values should be averaged so that the total overall price (the TL price plus the USD price added together) is not overstated.[239]
- Icdas' margin program for the *Preliminary Results* adds a full TL price and a full USD price together, thus doubling the reported HM gross price.[240]
- This is also true for other adjustments; if some sales have a zero value for movement, for example, the zero value should be weight averaged in with other values.[241]
- The second error is that Icdas' Preliminary Results margin program did not drop reseller sales that passed the arm's-length test to avoid double-counting them when calculating NV.[242] Icdas' sales to resellers that passed the arm's length test should be used in the dumping margin calculation. The sales from these resellers to the unaffiliated customer, should not be used in instances where the sales between Icdas and the reseller passed the arm's-length test.

No other party commented on these issues.

Commerce's Position:

[236] *See* Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to the Supplemental Sections A-D Questionnaire," dated August 10, 2020 at S1-10 and Exhibit S1-20.
[237] *See* Idcas' Section April 15, 2020 CQR at C-33 and Exhibit C-14 through Exhibit C-16 and Icdas' Letter "Steel Concrete Reinforcing Bar from the People's Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Supplemental Sections A-D Questionnaire Response," dated August 27, 2020 at S-27 through S-28, Exhibit S1-9, and Exhibit S1-21.
[238] *See* Respondents' Case Brief at 33.
[239] *Id.*
[240] *Id.*
[241] *Id.*
[242] *Id.* at 34.

We agree with respondents that, when determining U.S. gross price for HM sales, certain zero values reported in mixed currencies by Icdas should be averaged with other home market sales values and therefore should not have been changed to "missing" values. To make this correction, we have deleted the macro at HM-7 Weight Average HM DATA, and, thus, are no longer setting zero values to missing when computing weighted-average amounts.

We also agree with respondents that Icdas' affiliated reseller sales which passed the arms-length test should be dropped from the dumping margin calculation. We have made business proprietary changes to the programming that are described in Icdas' Calculation and Analysis Memorandum.

Comment 7: Whether Commerce Should Change the Treatment of Late Payments in Icdas' Home Market and Margin Programs

Petitioner's Case Brief:

- Icdas stated in its initial questionnaire response regarding the late payment field (LATEPAYH) that it may charge "penalty interest to the customers who failed to make their payments timely"[243]
- Icdas presented these payments as revenue items that should be added to price.[244] However, for the *Preliminary Results*, Commerce inadvertently treated these late payments incorrectly, so the petitioner provided recommended corrections to the home market and margin programs for Icdas.[245]

Commerce's Position:

We agree with the petitioner that there was an error in how we treated Icdas' reported late payments. Because the discussion on how we are treating these late payments and the corrections needed in Icdas' home market program and in the margin program to implement this change concern business proprietary information, please *see* Icdas' Calculation and Analysis Memorandum for further discussion.

[243] *See* Petitioner's Case Brief. at 11 (citing Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Section B Questionnaire Response," dated April 15, 2020 at B-42.)

[244] *Id.* at 11-12 (citing Icdas' Letter "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Supplemental Sections A-D Questionnaire Response," dated August 17, 2020 at S1-26)

[245] *Id.* at 12 (citing Memorandum "Antidumping Duty Administrative Review of Steel Concrete Reinforcing bar from the Republic of Turkey: Preliminary Results Analysis Memorandum Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (November 17, 2020) at Attachment 1 (Home Market Log)).

Comment 8: Whether Commerce Should Activate a Macro Pertaining to Net Price for Kaptan Demir's Downstream Home Market Sales

Petitioner's Case Brief:

- Commerce included Kaptan Demir's home market and downstream sales to affiliates in the *Preliminary Results*.[246]
- Commerce incorrectly calculated the home market net price for Kaptan Demir's downstream sales to affiliates.[247]

Commerce's Position:

We agree with the petitioner that changes need to be made to the home market program, in order to correctly calculate net prices for sales contained in the downstream database. We have made such changes for these final results, which are addressed in Kaptan Demir's Calculation and Analysis Memorandum.

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

5/21/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

[246] *See* Petitioner's Case Brief at 13 (citing *Preliminary Results* PDM at 16).
[247] *Id.* at 13.