



A-489-829  
Administrative Review  
POR: 7/1/2019-6/30/2020  
**Public Document**  
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July 30, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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 Preliminary Results of  
the Antidumping Duty Administrative Review: Steel Concrete  
Reinforcing Bar from the Republic of Turkey; 2019-2020

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) covering the period of review (POR) July 1, 2019, through June 30, 2020.<sup>1</sup> The review covers nine companies. We preliminarily find that mandatory respondent Kaptan Demir Celik Industrisi Ve Ticaret A.S. (Kaptan Demir) made sales of the subject merchandise at prices below normal value. We also find that mandatory respondent Colakoglu Metalurji A.S. (Colakoglu Metal) did not make sales of subject merchandise at prices below normal value. The estimated weighted-average dumping margins are shown in the “Preliminary Results of this Review” section of the accompanying *Federal Register* notice. We are conducting this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

## II. BACKGROUND

Commerce published the AD order on rebar from Turkey on July 14, 2017.<sup>2</sup> On July 1, 2020, Commerce notified interested parties of the opportunity to request an administrative review on orders, findings, or suspended investigations with anniversaries in July, including the *Order*.<sup>3</sup>

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

<sup>2</sup> 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*).

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).



Pursuant to section 751(a)(1) the Act and 19 CFR 351.213(b), on July 30, 2020, and July 31, 2020, we received requests for an administrative review of the *Order* for nine companies: (1) Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas); (2) Kroman Celik Sanayi A.S. (Kroman); (3) Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş. (YIIP); (4) Colakoglu Metal; (5) Colakoglu Dis Ticaret A.S. (COTAS) (6) Kaptan Demir (7) Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (Kaptan Metal) (8) Diler Dis Ticaret A.S. (Diler); and (9) Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S. (Habas).<sup>4</sup>

On September 3, 2020, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of the administrative review of the *Order* that listed these nine companies.<sup>5</sup> In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of rebar from Turkey during the POR.<sup>6</sup> On October 6, 2020, relying on CBP data, Commerce selected Colakoglu Metal and Kaptan Demir as the mandatory respondents for this review.<sup>7</sup>

Commerce issued its AD questionnaires to Kaptan Demir and Colakoglu Metal on October 7, 2020.<sup>8</sup> Between November 4, 2020, and December 3, 2020, Kaptan Demir and Colakoglu Metal submitted timely responses to Commerce’s initial questionnaires.<sup>9</sup>

Between December 7, 2020, and January 20, 2021, the Rebar Trade Action Coalition (the petitioner) submitted comments regarding Colakoglu Metal’s and Kaptan Demir’s initial

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<sup>4</sup> See Icdas’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas’s Request for Antidumping Administrative Review,” dated July 30, 2020; see also Kroman and YIIP’s Letter, “Steel Concrete Reinforcing Bar from Turkey; Kroman and YIIP’s Request for Antidumping Administrative Review,” dated July 30, 2021; Colakoglu Metal’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu’s Request for Antidumping Administrative Review,” dated July 30, 2020; Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan’s Request for Antidumping Administrative Review,” dated July 31, 2021; and Petitioner’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Administrative Review,” dated July 31, 2021.

<sup>5</sup> See *Initiation Notice*.

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

<sup>7</sup> See Memorandum, “Respondent Selection for the Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2019-2020,” dated October 6, 2020.

<sup>8</sup> See Commerce’s Letter, “Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey – Initial Questionnaire,” dated October 7, 2020.

<sup>9</sup> See Colakoglu Metal’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu Section A Response,” dated November 4, 2020 (Colakoglu Metal’s November 4, 2020 AQR); see also Colakoglu Metal’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu Sections B-C Questionnaire Response,” dated December 1, 2020 (Colakoglu Metal’s December 1, 2020 BCQR); Colakoglu Metal’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu Section D Questionnaire Response,” dated December 3, 2020; Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan’s Response to the Department’s Section A Questionnaire,” dated November 4, 2020 (Kaptan Demir’s November 4, 2020 AQR); Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.’s Section B Questionnaire Response,” dated December 1, 2020; 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 December 1, 2020; and Kaptan Demir’s Letter, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.’s Section D Questionnaire Response,” dated December 3, 2020.

questionnaires.<sup>10</sup> On January 11, 2021, Colakoglu Metal and Kaptan Demir responded to the petitioner's comments to their initial questionnaires.<sup>11</sup> On April 9, 2021, the petitioner submitted comments on the usage of actual and theoretical weights, and the respondents subsequently responded on April 29, 2021.<sup>12</sup>

Between December 30, 2020, and July 2, 2021, Commerce issued supplemental questionnaires to Kaptan Demir and Colakoglu Metal.<sup>13</sup> Subsequently, Colakoglu Metal and Kaptan Demir provided timely responses to the supplemental questionnaires between January 13, 2021, and July 14, 2021.<sup>14</sup> On July 16, 2021, the petitioner submitted comments on the July 14, 2021,

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<sup>10</sup> See Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on Colakoglu's Section A Questionnaire Response," dated December 4, 2020; *see also* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Comments on Kaptan's Section A-C Questionnaire Responses," dated December 30, 2020; Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on Colakoglu's Section B and C Questionnaire Responses," dated December 30, 2020; Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Comments on Kaptan's Section A-C Questionnaire Responses," dated December 30, 2020; and Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Comments on Kaptan's Section D Questionnaire Response," dated January 20, 2021.

<sup>11</sup> See Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan's Response to RTAC's Comments on Section A-C Questionnaire Responses," dated January 11, 2021; *see also* Colakoglu Metal's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Response to Rebar Trade Action Coalition's Comments on Colakoglu's Sections B and C Questionnaire Responses," dated January 11, 2021.

<sup>12</sup> See Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on Actual and Theoretical Weights," dated April 9, 2021; *see also* Respondents' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Response to Rebar Trade Action Coalition's Comments on Actual and Theoretical Weights," dated April 29, 2021.

<sup>13</sup> See Commerce's Letter, "Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey - First Supplemental Questionnaire to Sections A through D of Initial Questionnaire Response," dated December 30, 2020; *see also* Commerce's Letter, "Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey - Supplemental Questionnaire on the Colokoglu Sections A through C Initial Questionnaire Responses," dated January 27, 2021; Commerce's Letter, "Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey - Supplemental Questionnaire to Sections A through D of Initial Questionnaire Response," dated February 16, 2021; Commerce Letter, "Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey - Supplemental Questionnaire on Colokoglu's Sections A through D Initial Questionnaire Responses," dated June 10, 2021; Commerce's Letter, "Antidumping Duty Review Steel of Concrete Reinforcing Bar from the Republic of Turkey - Second Supplemental Questionnaire to Sections A through C of Initial Questionnaire Response," dated Jun 17, 2021; and Commerce's Letter, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: 3rd Section D Supplemental Questionnaire," dated July 2, 2021.

<sup>14</sup> 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 Department's Supplemental Sections A-D Questionnaire," dated January 13, 2021; *see also* Colakoglu Metal's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu Supplemental Sections A-C Questionnaire Response," dated February 17, 2021 (Colakoglu Metal's February 17, 2021 A-CSQR); Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to the Department's Second Supplemental Sections A-C Questionnaire," dated March 9, 2021 (Kaptan Demir's March 9, 2021 A-CSQR); Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to the Department's Third Supplemental Sections A-C Questionnaire," dated June 28, 2021 (Kaptan Demir's June 28, 2021 A-CQR); Colakoglu Metal's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu Second Supplemental Sections A-D Questionnaire Response," dated July 6, 2021; and Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan Demir Celik Endustrisive Ticaret A.S.'s Response to the Department's Third Supplemental Section D Questionnaire," dated July 17, 2021.

supplemental Section D questionnaire response submitted by Kaptan Demir.<sup>15</sup> On July 26, 2021, Kaptan Demir provided comments in response to the petitioner's July 16, 2021, comments.<sup>16</sup>

On July 1, 2021, the petitioner submitted pre-preliminary results comments pertaining to Kaptan Demir.<sup>17</sup> On July 14, 2021, the petitioner submitted pre-preliminary results comments pertaining to Colakoglu Metal.<sup>18</sup>

On March 15, 2021, we extended the preliminary results of this review to no later than July 30, 2021.<sup>19</sup>

### III. SCOPE OF THE *ORDER*

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.

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<sup>15</sup> See Petitioner's Letter, "Steel Concrete Reinforcing bar from the Republic of Turkey: Comments on Kaptan's Section D Third Supplemental Questionnaire Response," dated July 16, 2021.

<sup>16</sup> See Kaptan Demir's Letter, "Steel Concrete Reinforcing bar from the Republic of Turkey: Pre-Preliminary Comments as to Colakoglu," dated July 26, 2021.

<sup>17</sup> See Petitioner's Letter, "Steel Concrete Reinforcing bar from the Republic of Turkey: Pre-Preliminary Comments as to Kaptan," dated July 1, 2021.

<sup>18</sup> See Petitioner's Letter, "Steel Concrete Reinforcing bar from the Republic of Turkey: Pre-Preliminary Comments as to Colakoglu," dated July 14, 2021.

<sup>19</sup> See Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 15, 2021.

#### IV. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

This review covers seven companies that were not selected for individual examination: (1) Icdas; (2) Kroman; (3) YIIP; (4) Diler; (5) Habas (6) COTAS; and (7) Kaptan Metal. With the exception of Habas, none of these seven companies: (1) were the subject of a withdrawal of a request for review; (2) requested to participate as a mandatory respondent; or (3) submitted a claim of no shipments. For these preliminary results, Kaptan Demir is being collapsed with Kaptan Metal (collectively, Kaptan) and COTAS is being collapsed with Colakoglu Metal (collectively, Colakoglu) so that they will be treated as single entities. We provide the analysis in the “Affiliation and Single Entity” section below.

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in market economy proceedings, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

Accordingly, in this review, we have preliminarily assigned to four companies not individually examined in this review – (1) Icdas; (2) Kroman; (3) YIIP; and (4) Diler – a margin of 1.05 percent, which is the weighted average of the estimated weighted-average dumping margin calculated for Kaptan, because it is the only dumping margin calculated for a mandatory respondent in this administrative review that is not zero or *de minimis*.

#### V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Among the companies for which Commerce initiated an administrative review, Habas reported that it made no shipments of subject merchandise to the United States during the POR.<sup>20</sup> To confirm this no-shipment claim, Commerce performed a CBP data query to determine whether there were suspended entries of subject merchandise during the POR from Habas, and the CBP data confirmed Habas’ no-shipment claim.<sup>21</sup> Commerce further issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims of these companies.<sup>22</sup> On October 14, 2020, CBP informed Commerce that its data indicated that Habas had no shipments during the POR.<sup>23</sup>

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<sup>20</sup> See Habas Letter, “Steel Concrete Reinforcing Bar from Turkey; Habaş No Shipment Letter,” dated September 6, 2020.

<sup>21</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from Turkey: Release of U.S. Customs and Border Protection Entry Data for Respondent Selection,” dated September 16, 2020.

<sup>22</sup> See Memorandum, “No shipment inquiry with respect to the company below during the period 07/01/2019 through 06/30/2020,” dated December 10, 2020.

<sup>23</sup> *Id.*

Based on the certification of Habas claiming no shipments and the lack of record evidence contradicting its no-shipment claims, we preliminarily determine that Habas had no shipments of subject merchandise during the POR. However, consistent with Commerce's practice, it is not appropriate to rescind the review with respect to Habas at this time; rather, Commerce will complete the review with respect to Habas and issue appropriate liquidation instructions to CBP based on the final results of the review.<sup>24</sup>

## VI. AFFILIATION AND SINGLE ENTITY

For these preliminary results, Commerce's preliminarily determines to collapse Kaptan Demir and Kaptan Metal and treat them as a single entity. Commerce also preliminarily determines to collapse Colakoglu Metal and COTAS.

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: (1) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (section 771(33)(F) of the Act); or (2) any person who controls any other person and such other person (section 771(33)(G) of the Act). Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statements of Administrative Action (SAA) notes that control may be found to exist within corporate or family groupings.<sup>25</sup> Commerce's regulations at 19 CFR 351.102(b)(2) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. We examined record evidence to determine whether an affiliation existed between Kaptan Demir and Kaptan Metal during the POR. We also examined record evidence to determine whether an affiliation existed between Colakoglu Metal, COTAS, and Medtrade Incorporated (Medtrade).

Commerce's regulations at 19 CFR 351.401(f) state that it will treat affiliated producers as a single entity where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f) of Commerce's regulations further states that in identifying a significant potential for manipulation, Commerce may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated

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<sup>24</sup> See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32090, 32091 (June 5, 2015), unchanged in *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674 (December 10, 2015).

<sup>25</sup> See SAA at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings; (2) franchises or joint ventures; (3) debt financing; and (4) close supplier relationships in which either party becomes reliant upon the other).

producers. The *Preamble* to the final regulations clarifies how Commerce should apply this section in its collapsing analysis, explaining that this list of factors is “non-exhaustive.”<sup>26</sup> The *Preamble* states, however, that Commerce must still find that the potential for manipulation of price and production is significant.<sup>27</sup> Commerce also previously explained its practice of collapsing affiliated companies:

Because Commerce calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. Commerce reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, Commerce normally examines the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”<sup>28</sup>

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.<sup>29</sup> While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated exporting companies as a single entity,<sup>18</sup> as well as producers and exporters as a single entity.<sup>30</sup> In addition, the Court of International Trade (CIT) has upheld Commerce’s practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.<sup>31</sup>

### *Kaptan Demir and Kaptan Metal*

According to the record, Kaptan Demir and Kaptan Metal are part of the Kaptan group of companies mainly involved in steel manufacturing, shipping/transportation, and construction.<sup>32</sup>

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<sup>26</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).

<sup>27</sup> See *Preamble*, 62 FR at 27345-46.

<sup>28</sup> See *Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)).

<sup>29</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) (*Shrimp from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5; and *Certain Quartz Surface Products from the Republic of 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*, 84 FR 68111 (December 13, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 5-7 (*Quartz from Turkey Preliminary Determination*), unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25389 (May 1, 2020) (*Quartz from Turkey Final*).

<sup>30</sup> See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

<sup>31</sup> See *United States Steel Corp. v. United States*, 179 F. Supp 3d 1114, 1135 (CIT 2016).

<sup>32</sup> See Kaptan Demir’s November 4, 2020 AQR at A-7 and Exhibit A-4.

In the case of Kaptan Demir, its board of directors is made up entirely of Kaptan Demir shareholders, who are all members of the Cebi family.<sup>33</sup> Moreover, the Cebi family is the principle shareholders of the Kaptan group of companies, of which Kaptan Metal is a member.<sup>34</sup> Because both Kaptan Demir and Kaptan Metal are directly controlled by the Cebi family, pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(a)(3), we preliminarily find that Kaptan Demir and Kaptan Metal are affiliated through the common control of the Cebi family.

We also preliminarily determine that, through the affiliation between Kaptan Demir and Kaptan Metal, the operations of the two companies are very much intertwined and can result in significant manipulation of price or production. As stated on the record, Kaptan Metal is the affiliated trading company of Kaptan Demir handling all exports to most countries with Kaptan Demir invoicing Kaptan Metal who then invoices unaffiliated customers when Kaptan Metal is the exporter.<sup>35</sup> Although 19 CFR 351.401(f) applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.<sup>36</sup> Here, Kaptan Demir reported that it is the sole producer of the subject merchandise<sup>37</sup> and that Kaptan Metal has no manufacturing capabilities of its own.<sup>38</sup> However, their operations are further intertwined with each companies' employees being located in the same building and Kaptan Demir incurring shared expenses such as catering for personnel, certain telecommunication charges, and vehicle rentals used by both companies' employees.<sup>39</sup> When this occurs, Kaptan Demir issues invoices to Kaptan Metal for the relevant expenses. Kaptan Demir also issues invoices to Kaptan Metal for services including commission fees and movement expenses. For additional details *see* Kaptan's Preliminary Analysis Memorandum.<sup>40</sup>

Based on the information on the record, Commerce preliminary finds that the Cebi family controls both Kaptan Demir and Kaptan Metal and that, under this joint control, there exists significant potential for manipulation of price among these two companies. Therefore, based on 19 CFR 351.401(f) and the Commerce's practice,<sup>41</sup> Commerce is collapsing Kaptan Demir and Kaptan Metal and treating them as a single entity for these proceedings (collectively, Kaptan).

#### *Colakoglu Metal, COTAS, and Medtrade*

We preliminarily determine that Colakoglu Metal, COTAS, and Medtrade are affiliated. Colakoglu Metal reported in its Section A questionnaire response that all three companies are

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<sup>33</sup> See Kaptan Demir's November 4, 2020 AQR at A-5.

<sup>34</sup> *Id.* at A-7.

<sup>35</sup> See Kaptan Demir's June 28, 2021 A-CSQR at S3-2.

<sup>36</sup> See, e.g., *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances In Part*, 80 FR 34893 (June 18, 2015) (*Passenger Tires*), and *Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015) (*Steel Nails*).

<sup>37</sup> See Kaptan Demir's June 28, 2021 A-CSQR at S3-2.

<sup>38</sup> *Id.* at S3-3.

<sup>39</sup> *Id.*

<sup>40</sup> See Memorandum, "Preliminary Results Analysis Memorandum for Kaptan Demir Celik Endustrisi ve Ticaret A.S.," dated concurrently with this PDM (Kaptan's Preliminary Analysis Memorandum).

<sup>41</sup> See, e.g., *Shrimp from Brazil* and accompanying IDM at Comment 5; and *Quartz from Turkey Preliminary Determination* and accompanying PDM at 5-7, unchanged in *Quartz from Turkey Final*.



affiliated due to common ownership by various Colakoglu family members (*i.e.*, brothers, their children, and spouses) and due to having common officers and interlocking directorates.<sup>42</sup> For further information, *see* Colakoglu's Preliminary Analysis Memorandum.<sup>43</sup> We find that the three companies are affiliated within the meaning of section 771(33)(F) of the Act because they are under the common control of the Colakoglu family grouping.

Colakoglu Metal is the sole producer of the subject merchandise.<sup>44</sup> Although 19 CFR 351.401(f) applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.<sup>45</sup> Colakoglu Metal reported that COTAS, one of Colakoglu's exporters, was an interested party in other investigations and administrative reviews, but was not involved in the sales of rebar to the United States during the POR.<sup>46</sup> However, Colakoglu Metal also reported that COTAS was involved in certain export sales of subject merchandise to the United States until the year 2017.<sup>47</sup> We preliminarily determine that there is a significant potential for the manipulation of price or production among these two companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature and history of the operations of these companies in the production and sale of subject merchandise. For further information, *see* Colakoglu's Preliminary Analysis Memorandum. In accordance with 19 CFR 351.401(f) and the Commerce's practice,<sup>48</sup> we are treating Colakoglu and COTAS as a single entity for the purposes of these preliminary results (collectively, Colakoglu).<sup>49</sup>

## VII. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the *Order* in accordance with section 751(a) of the Act, and 19 CFR 351.213.

### A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), to determine whether Kaptan's and Colakoglu's sales of rebar from Turkey were made in the United States at less than normal value, we compared the export price (EP) to the normal value (NV) as described in the "Export Price" and "Normal Value" sections of this notice.

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<sup>42</sup> *See* Colakoglu Metal's December 1, 2020, AQR at A-7-A-13 and Exhibits A-3-A-6.

<sup>43</sup> *See* Memorandum, "Preliminary Results Analysis Memorandum for Colakoglu," dated concurrently with this PDM (Colakoglu's Preliminary Analysis Memorandum).

<sup>44</sup> *Id.* at A-7 and A-8.

<sup>45</sup> *See, e.g., Passenger Tires and Steel Nails.*

<sup>46</sup> *See* Colakoglu Metal's February 17, 2021 A-CSQR at S-1.

<sup>47</sup> *See* Colakoglu Metal's November 4, 2020 AQR at A-11.

<sup>48</sup> *See, e.g., Shrimp from Brazil* and accompanying IDM at Comment 5; and *Quartz from Turkey Preliminary Determination* PDM at 5-7, unchanged in *Quartz from Turkey Final*.

<sup>49</sup> *See* Colakoglu's Preliminary Analysis Memorandum. We are not including Medtrade, the U.S. importer and affiliate, in this preliminary single entity determination.

## 1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a dumping margin by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average or A-to-A method) unless Commerce determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction or A-to-T method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in a less-than-fair-value investigation.<sup>50</sup>

In numerous investigations and administrative reviews, Commerce applied a “differential pricing” analysis for determining whether application of A-to-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>51</sup> Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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

In the first stage of the differential pricing analysis used here, the “Cohen's *d* test” is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, the weighted-average price) of a test group and the mean (*i.e.*,

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<sup>50</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>51</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

the weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test groups pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold (*i.e.*, 0.8).

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

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

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

## 2. Results of the Differential Pricing Analysis

### *Kaptan*

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 90.98 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>52</sup> which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Kaptan.

### *Colakoglu*

For Colakoglu, based on the results of the differential pricing analysis, Commerce preliminarily finds that 87.03 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>53</sup> which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce finds that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and an alternative method using the average-to-transaction comparison method applied to all U.S. sales. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Colakoglu.

### B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Colakoglu and Kaptan in Turkey during the POR that fit the description in the "Scope of the Order" section *supra* to be foreign like products for purposes of determining NV for comparison to the subject merchandise sold in the United States. If contemporaneous home market sales were reported for merchandise which was identical to subject merchandise sold in the U.S. market, then we calculated NV based on the monthly weighted-average home market prices of all such sales.

Where there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade and calculated NV based on the monthly weighted-average home market prices of all such sales. To identify identical or similar merchandise, we matched the subject merchandise and the foreign like product based on the physical characteristics reported by the

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<sup>52</sup> See Kaptan's Preliminary Analysis Memorandum.

<sup>53</sup> See Colakoglu's Preliminary Analysis Memorandum.

respondent. These physical characteristics are as follows: type of steel, minimum specified yield strength, coating, martensitic, nominal diameter, and form.<sup>54</sup>

Following our practice of measuring the change in producer price index in Turkey from the first month of the POR to the last month of the POR, we preliminarily find that Turkey's economy did not experience high inflation (*i.e.*, above 25 percent) during the POR.<sup>55</sup>

### C. Date of Sale

According to 19 CFR 351.401(i), Commerce will normally use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. However, the regulations permit Commerce to use a date other than the date of the invoice as the date of sale if it is satisfied that a different date better reflects the date on which the material terms of sale are established.<sup>56</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>57</sup>

#### *Kaptan*

For both the home and U.S. markets, Kaptan reported its date of sale as the earlier of date of shipment or date of invoice.<sup>58</sup> The information provided by Kaptan indicates that the material terms of sale are subject to change up to the date of invoice or shipment.<sup>59</sup> Specifically, record evidence demonstrates that Kaptan's post-contract amendments after the written contracts did not prevent subsequent changes to the material terms of sale during the POR in the U.S. market.<sup>60</sup> *See* Kaptan's Preliminary Analysis Memorandum for additional details.<sup>61</sup> Therefore, in accordance with our normal practice, in the absence of information indicating a different date of sale better reflects the date on which the material terms of sale are established, we are using invoice date as date of sale, except when the shipment date proceeds invoice date. This

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<sup>54</sup> *See* Colakoglu Metal's December 1, 2021 BCQR at C-13 through C-16; *see also* Kaptan Demir's December 1, 2021 CQR at C-11.

<sup>55</sup> *See, e.g., 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).

<sup>56</sup> *See* 19 CFR 351.401(i); *see also* *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>57</sup> *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and a accompanying IDM at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and a accompanying IDM at Comment 2.

<sup>58</sup> *See* Kaptan Demir's November 4, 2020 AQR at A-16.

<sup>59</sup> *See* Kaptan Demir's March 9, 2021 A-CSQR at S2-1-S2-2 and Exhibit S2-1.

<sup>60</sup> *See* Kaptan Demir's March 9, 2021 A-CSQR at S-1 through S-2 and Exhibit S2-1; *see also* Kaptan Demir's June 28, 2021 A-CQR at S3-4 and Exhibit S3-1; and Kaptan Demir's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Kaptan's Response to RTAC's Comments on Second Supplemental Sections A-C Questionnaire Responses," dated April 12, 2021 at 2-7.

<sup>61</sup> *See* Kaptan's Preliminary Analysis Memorandum.

conforms to our long-standing practice of using as date of sale the earlier of the invoice date or the shipment date, if no other date is more appropriate as date of sale.<sup>62</sup>

### *Colakoglu*

Colakoglu reported the earlier of invoice date or the shipment date as the date of sale both for U.S. sales and for home market sales.<sup>63</sup> The information provided by Colakoglu indicates that the material terms of sale are subject to change up to the date of invoice or date of shipment. Specifically, Colakoglu reported that it uses “customer order forms” instead of contracts for home market sales and the terms of sale may change after the “customer order form” is issued.<sup>64</sup> For U.S. sales, Colakoglu reported that short-term contracts and purchase orders (or occasionally emails) are used and that the material terms may change after the contracts are signed or purchase orders or emails are received.<sup>65</sup> Colakoglu also reported that, for the U.S. market, even though none of its contracts or purchase orders are made to be revised once a customer has agreed to the contract, they are still subject to change at a later date<sup>66</sup> and provided evidence of such changes in material terms.<sup>67</sup> Therefore, in accordance with our normal practice, in the absence of information indicating a different date of sale better reflects the date on which the material terms of sale are established, we are using invoice date as date of sale, except when the shipment date proceeds invoice date. This conforms to our long-standing practice of using as date of sale the earlier of the invoice date or the shipment date, if no other date is more appropriate as date of sale.<sup>68</sup>

### D. Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended,<sup>69</sup> and issued Proclamation 9705 that mandated, to address national security concerns, the imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United

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<sup>62</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664 (June 8, 1999), and accompanying IDM at Comment 5.

<sup>63</sup> See Colakoglu Metal’s November 4, 2020 AQR at A-20.

<sup>64</sup> See Colakoglu Metal’s November 4, 2020, AQR at A-23 through A-24.

<sup>65</sup> *Id.*

<sup>66</sup> See Colakoglu Metal’s February 17, 2021 A-CSQR at S-23.

<sup>67</sup> *Id.* and Exhibit SC-6; see also Colakoglu Metal’s Preliminary Analysis Memorandum for additional information regarding these changes, as details are business proprietary.

<sup>68</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 73 FR 55036 (September 24, 2008), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664 (June 8, 1999), and accompanying IDM at Comment 5.

<sup>69</sup> See 19 U.S.C. § 1862.

States import duties . . .” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The Court of Appeals for the Federal Circuit (CAFC) has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.<sup>70</sup> Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”<sup>71</sup>

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”<sup>72</sup> In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “{l}ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;” (2) “{n}ormal customs duties, in contrast, have no remedial purpose;” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “{section} 201 duties are like antidumping duties . . . because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”<sup>73</sup> In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “{t}o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”<sup>74</sup>

Section 232 duties are not akin to antidumping or 201 duties. 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* . . .”<sup>75</sup> The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the *national security* of imports of the article.”<sup>76</sup> The particular national security risk spelled out in proclamation 9705 is that the

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<sup>70</sup> See *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1363 (CAFC 2007) (*Wheatland*).

<sup>71</sup> See *Wheatland*, 495 F.3d at 1361.

<sup>72</sup> See *Wheatland*, 495 F.3d at 1362.

<sup>73</sup> See *Wheatland*, 495 F.3d at 1362-63.

<sup>74</sup> See *Wheatland*, 495 F.3d at 1365.

<sup>75</sup> See Proclamation 9705, 83 FR at 11627 (emphasis added); see also Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

<sup>76</sup> See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the

“industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”<sup>77</sup> In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.<sup>78</sup> The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll 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.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed; the Presidential Proclamation would have expressed that intent.

We have determined that section 232 duties should be treated as “United States 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.

As indicated above, the second part of the analysis is whether the section 232 duties are “included in such price.” Colakoglu reported that Medtrade, its U.S. affiliate,<sup>79</sup> was the importer of record for U.S. sales during the POR and paid the Section 232 duties and provides record evidence including (print screens, entry forms and brokers’ licenses).<sup>80</sup> Moreover, Kaptan stated that it paid all of the section 232 duties where Kaptan Demir is the importer of record.<sup>81</sup>

Evidence on the record demonstrates that the section 232 duties are “included in such price” and thus should be deducted from the U.S. price as a “U.S. Customs duty.” Accordingly, for purposes of these preliminary results, we reduced both Kaptan’s and Colakoglu’s U.S. prices to account for section 232 duties, as U.S. Customs import duties.

#### E. Export Price/Constructed Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject

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Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

<sup>77</sup> See Proclamation 9705, 83 FR at 11627.

<sup>78</sup> 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 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

<sup>79</sup> See Colakoglu Metal’s November 4, 2021 AQR at A-3.

<sup>80</sup> See Colakoglu Metal’s December 1, 2020 BCQR at C-34 through C-35 and Exhibits C-10, C-11, C-12, C-13.

<sup>81</sup> See Kaptan Demir’s December 1, 2020 CQR at C-36 and Exhibit C-21 Parts A and B.



merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).”

For all sales to the United States reported by Kaptan, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated parties in the United States<sup>82</sup> and because the CEP methodology, as defined by section 772(b) of the Act was not otherwise warranted. Moreover, for Colakoglu, all U.S. sales were made through Medtrade to unaffiliated customers,<sup>83</sup> and as such, we calculated constructed CEP based on the CEP methodology defined by section 772(b) of the Act.

For Kaptan and Colakoglu, we calculated each company’s EP or CEP based on packed prices to unaffiliated purchasers in the United States.<sup>84</sup> Where applicable, we made deductions, consistent with section 772(c)(2)(A) of the Act, from the starting price for movement expenses: domestic inland freight, domestic brokerage and handling, domestic warehousing, international freight, marine insurance, international brokerage and handling, and U.S. duties and section 232 duties, other international movement expenses.<sup>85</sup> Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP, for direct selling expenses, credit expenses, inventory carrying costs, and packing. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

#### F. Duty Drawback

Kaptan and Colakoglu each claimed a duty drawback adjustment to U.S. price.<sup>86</sup> Section 772(c)(1)(B) of the Act states that EP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, 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 traditionally use (and the CIT sustained)<sup>87</sup> the following two-prong test:<sup>88</sup> first, that the import duty paid and the rebate

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<sup>82</sup> See Kaptan Demir’s December 1, 2021 CQR at C-16.

<sup>83</sup> See Colakoglu Metal’s December 1, 2021 BCQR at C-16.

<sup>84</sup> See Kaptan Demir’s December 1, 2021 CQR at C-16; *see also* Colakoglu Metal’s December 1, 2021 CQR at C-16.

<sup>85</sup> See Kaptan Demir’s December 1, 2021 CQR at C-27 through C-36; *see also* Colakoglu Metal’s December 1, 2021 BCQR at C-30 through C-39.

<sup>86</sup> See Kaptan Demir’s December 1, 2021 CQR at C-37 through C-41, and Exhibits C-15 through C-18; *see also* Kaptan Demir’s June 28, 2021 A-CQR at S3-4 and Exhibit S3-2 and Exhibit S3-3; and Colakoglu Metal’s December 1, 2020 BCQR at C-41 through C-43, and Exhibits C-17 through C-20.

<sup>87</sup> See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed Cir. 2011) (*Saha Thai*).

<sup>88</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty*

payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exportation of the subject merchandise.<sup>89</sup>

We preliminarily find that a duty drawback adjustment is warranted because the criteria described above are satisfied for the Turkish duty drawback program.<sup>90</sup> Because Commerce's use of the "duty neutral" methodology has not been affirmed by the CIT and the CAFC, we are now calculating duty drawback adjustments using the CAFC 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.<sup>91</sup> Based on the facts of this review, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POR, including imputed duty costs for imported inputs, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act.

Following this approach, we calculated the duty drawback adjustment for both Colakoglu and Kaptan by allocating the allowable amount of exempted duties (*i.e.*, the amount attributable to IPCs determined to be closed by the Government of Turkey (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 amount of duty rebated or uncollected to the U.S. price.<sup>92</sup> 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.

Commerce's current practice with regard to the Turkish inward processing regime (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 GOT to add import or export information) for purposes of calculating a duty drawback adjustment.<sup>93</sup> Kaptan and Colakoglu both claimed a duty drawback adjustment for shipments made to the United States during the POR under certain IPCs. Kaptan did not provide

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

<sup>89</sup> See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7513 (February 13, 2006), and a accompanying IDM at Comment 2; *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and a accompanying IDM at Comment 7; and *Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

<sup>90</sup> See Kaptan Demir's December 1, 2021 CQR at C-37 through C-41; see also Colakoglu Metal's December 1, 2020, BCQR at C-41 through C-43, and Exhibits C-17 through C-20.

<sup>91</sup> This methodology was affirmed by the CAFC in *Saha Thai*, 635 F.3d at 1338.

<sup>92</sup> See Colakoglu's Preliminary Analysis Memorandum; see also Kaptan's Preliminary Analysis Memorandum.

<sup>93</sup> 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 a accompanying IDM at Comment 4.

evidence demonstrating that one of the IPCs pertaining to its duty drawback claim was closed by the GOT. Colakoglu also did not provide evidence demonstrating that one of the IPCs pertaining to its duty drawback claim was closed by the GOT. Because Commerce's practice is to use closed IPCs only for purposes of calculating a duty drawback adjustment, we are not allowing the portions of Kaptan's and Colakoglu's claims that are based on these two IPCs. Therefore, for both Colakoglu and Kaptan, we made duty drawback adjustments for exempted duties pertaining only to the IPCs for which Colakoglu and Kaptan provided evidence demonstrating that the GOT has determined are closed.<sup>94</sup> A paid duty or duty liability does not qualify as a drawn back duty until the refund occurs or the liability is extinguished by the government.

## G. Normal Value

### 1. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we normally compare the volume of each respondent's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act.<sup>95</sup>

Based on this comparison, we preliminarily determine that both Kaptan's and Colakoglu's respective aggregate volume of home market sales of the foreign like product during the POR was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise during the POR and therefore each company had a viable home market during the POR.<sup>96</sup> Consequently, for both respondents, we based NV on home market sales to unaffiliated purchasers made in usual quantities in the ordinary course of trade.

### 2. Calculation of NV Based on Comparison Market Prices

For both companies, we calculated NV based on packed, delivered, or ex-works prices to unaffiliated customers in Turkey. We also included home market sales to affiliated parties that were made at arm's-length prices, and for sales to affiliated resellers that failed the arm's length test, we used the reported downstream sales of the affiliates.

For Colakoglu, we made adjustments from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We adjusted for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (*i.e.*, imputed credit expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. We also deducted indirect selling expenses.

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<sup>94</sup> See Kaptan's Preliminary Analysis Memorandum; *see also* Colakoglu's Preliminary Analysis Memorandum.

<sup>95</sup> See Colakoglu Metal's November 4, 2020 AQR at A-2 through A-5 and Exhibit 1; *see also* Kaptan Demir's November 4, 2020 AQR at A-1 through A-4 and Exhibit A-1.

<sup>96</sup> See Colakoglu Metal's November 4, 2020 AQR at A-2 through A-5 and Exhibit 1; *see also* Kaptan Demir's November 4, 2020 AQR at A-1 through A-4 and Exhibit A-1.

For Kaptan, we made adjustments, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We adjusted for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (*i.e.*, imputed credit expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. We also deducted inventory carrying costs and indirect selling expenses.

When comparing U.S. sale prices with normal values based on home market sale prices of merchandise similar, but not identical, to that sold in the U.S. market, we adjusted for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing (COM) for the foreign like product and subject merchandise.<sup>97</sup>

### 3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>98</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>99</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP or CEP and comparison market sale prices, *i.e.*, NV based on either home market or third country prices,<sup>100</sup> we consider the starting prices before any adjustments. When Commerce is unable to base NV on sale prices of the foreign like product in the comparison market at the same LOT as the EP, Commerce may compare the U.S. sale price to a NV based on sale prices at a different LOT in the comparison market. Where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. If comparing CEP to a NV based on sale prices at a different LOT in the comparison market and when the LOT in the comparison market is more advanced than the CEP LOT, where available no data make it possible to an LOT adjustment, then a CEP offset is made under section 773(a)(7)(B) of the Act.

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<sup>97</sup> See 19 CFR 351.411(b).

<sup>98</sup> See 19 CFR 351.412(c)(2).

<sup>99</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDMA at Comment 7.

<sup>100</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

### *Kaptan*

Kaptan's questionnaire responses indicate that the LOT for the U.S. and home markets are at the same level.<sup>101</sup> In addition, Kaptan states that it "performs limited selling activities in support of its sales in the home market and in the U.S. {market}," an assertion confirmed by its chart comparing the selling functions in each market.<sup>102</sup> Specifically, based on its selling function chart, in both the U.S. and home markets, Kaptan Demir provides logistical services and sales related administrative activities.<sup>103</sup> In addition, Kaptan Demir states that the selling functions provision of sales support, provision of training services, and provision of technical support are not performed.<sup>104</sup> The reported intensities for each selling function indicate that they were performed at the same LOT. Therefore, we preliminarily determine that there is one level of trade for all sales in both the home market and the U.S. markets and, consequently, that no basis exists for an LOT adjustment. For a further discussion, *see* Kaptan's Preliminary Analysis Memorandum.

### *Colakoglu*

Colakoglu reported in its questionnaire responses that there is one channel of distribution in the home market.<sup>105</sup> According to Colakoglu, it performs the same selling functions for sales to all home market customers. Therefore, we preliminarily find that there were no significant differences in selling activities performed by Colakoglu to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Colakoglu. Consequently, no basis exists for an LOT adjustment.

With respect to the U.S. market, Colakoglu Metal reported that it made sales through one channel of distribution, *i.e.* sales to its affiliated company Medtrade, which in turn invoiced the unaffiliated customers.<sup>106</sup> Colakoglu reported that Colakoglu Metal performed only administrative and logistical selling activities for sales to Medtrade, including processing purchase orders, packing, and arranging for delivery to the U.S. port.<sup>107</sup> Therefore, we preliminarily determine there is one LOT for the U.S. market for Colakoglu.

Finally, we compared the U.S. LOT to the home market LOT. Colakoglu's selling functions chart for its home market and U.S. sales indicates that Colakoglu Metal performed the same selling functions in both markets, and for each selling function, the level of intensity for the home market is higher than the level of intensity for the U.S. market.<sup>108</sup> However, Colakoglu did not provide evidence to support these claims. Despite our request in question A.3.a.ii of the

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<sup>101</sup> *See* Kaptan Demir's November 4, 2020 AQR at A-14 and Exhibit A-6; *see also* Kaptan Demir December 1, 2021 BQR at B-29; and Kaptan Demir's December 1, 2021 CQR at C-27.

<sup>102</sup> Kaptan Demir's selling functions chart is business proprietary in nature. *See* Kaptan Demir's November 4, 2020 AQR at A-14 and Exhibit A-6; *see also* Kaptan's Preliminary Calculation Memorandum for a further discussion.

<sup>103</sup> *See* Colakoglu Metal's November 4, 2020 AQR at A-17 through A-20 and Exhibit A-7.

<sup>104</sup> *See* Colakoglu Metal's November 4, 2020 AQR at A-17 through A-20 and Exhibit A-7.

<sup>105</sup> *See* Colakoglu Metal's November 4, 2020 AQR at A-17 through A-20 and Exhibit A-7.

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

<sup>107</sup> *See* Colakoglu's Metal's November 4, 2020 AQR at A-19.

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

initial questionnaire for documentation demonstrating performance of selling activities and how the activities are relevant to the LOT analysis, Colakoglu provided no documentation demonstrating that it performed activities listed in the selling functions chart.<sup>109</sup> In response to question A.3.a.iv, which requests a quantitative analysis to show how the expenses assigned to home market sales and CEP sales impact price comparability, Colakoglu did not provide the requested quantitative analysis.<sup>110</sup> In response to question A.3.a.v., which asks for information demonstrating how indirect selling expenses vary by the different levels of trade claimed, Colakoglu did not demonstrate how indirect selling expenses vary by the home market LOT and CEP LOT. In response to a second request for this information, Colakoglu again did not provide the requested documentation and analyses.<sup>111</sup>

Because Colakoglu did not provide the requested documentation analyses to demonstrate these stated differences in its selling activity intensities in home market compared to sales to Medtrade, we preliminarily find no basis to determine that home market sales are at a more advanced LOT than the LOT of the CEP sales. Thus, in accordance with 19 CFR 351.412(f), a CEP offset is not warranted.

#### 5. Affiliated Party Transactions and the Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>112</sup> Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade.<sup>113</sup>

During the POR, Kaptan and Colakoglu each made sales of rebar in the home market to affiliated parties.<sup>114</sup> Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same LOT, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts, and rebates, and selling expenses that relate directly to the sale at issue. Although Commerce's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with Commerce's practice, where

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<sup>109</sup> *Id.* at A-17 through A-20 and Exhibit A-7.

<sup>110</sup> *Id.*

<sup>111</sup> See Colakoglu Metal's February 17, 2021 A-CSQR at S-2 through S-5.

<sup>112</sup> See 19 CFR 351.403(c).

<sup>113</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

<sup>114</sup> See Kaptan Demir's December 1, 2020 BQR at B-5; see also Colakoglu Metal's December 1, 2020 BCQR at B-4.

the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we preliminarily determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>115</sup> With respect to sales to affiliated resellers that failed the arm's-length test, we used the reported downstream sales of these affiliates in our calculations for the preliminary results.<sup>116</sup>

## I. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request CV and COP information from respondent companies in all antidumping duty proceedings.<sup>117</sup> Accordingly, Commerce requested this information from Kaptan and Colakoglu.

### 1. Cost-Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the COM recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.<sup>118</sup>

### 2. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.<sup>119</sup> In the instant case, record evidence shows that Kaptan and Colakoglu did not experience significant cost changes (*i.e.*, changes that exceeded 25 percent over the 12 month period) between the high and low quarterly COM during the POR.<sup>120</sup>

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<sup>115</sup> See section 771(15) of the Act; and 19 CFR 351.102(b).

<sup>116</sup> See Kaptan Demir's Preliminary Analysis Memorandum; *see also* Colakoglu Metal's Preliminary Analysis Memorandum.

<sup>117</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015); *see also* *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

<sup>118</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC from Mexico*), and accompanying IDM at Comment 6; *see also* *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*), and accompanying IDM at Comment 4.

<sup>119</sup> See *SSPC from Belgium* IDM at Comment 4.

<sup>120</sup> See Colakoglu Preliminary Analysis Memorandum; *see also* Kaptan's Preliminary Analysis Memorandum.

### 3. Calculation of Cost of Production

We calculated the COP for Kaptan and the COP for Colakoglu based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses and interest expenses, in accordance with section 773(b)(3) of the Act.<sup>121</sup> We relied on the COP data submitted by Kaptan and the COP data submitted on the record by Colakoglu except for the following adjustments. For Kaptan, we analyzed scrap purchases from affiliated parties in accordance with sections 773(f)(2) of the Act, *i.e.*, the transactions regarded rule. Where necessary, we adjusted Kaptan's purchase costs to reflect higher market prices. In addition, we revised Kaptan's financial expense by disallowing certain income items related to bad debt expenses and investments.<sup>122</sup> For Colakoglu, we adjusted the numerator of the SG&A ratio reported by Colakoglu to include certain extraordinary expenses that were recognized and recorded as current expenses during the fiscal year.<sup>123</sup> We also excluded exempted duty costs associated with scrap imports from the denominator of Colakoglu's SG&A expense ratio calculation.<sup>124</sup>

### 4. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs for the POR to the per-unit home market sales prices of the foreign like product to determine whether the sales by the respondent were made at prices below the COPs. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable billing adjustments, discounts and rebates, movement charges, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

### 5. Results of the COP Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time," Commerce may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP and where "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such

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<sup>121</sup> See Kaptan's Preliminary Analysis Memorandum; *see also* Colakoglu's Preliminary Analysis Memorandum.

<sup>122</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Kaptan Demir Celik Endustrisi ve Ticaret A.S.," dated concurrently with this memorandum.

<sup>123</sup> These expenses are business proprietary and therefore cannot be included in this memorandum. See Colakoglu's Preliminary Analysis Memorandum for further information.

<sup>124</sup> *Id.*



sales.”<sup>125</sup> Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.<sup>126</sup>

## VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

## IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

7/30/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>125</sup> See section 773(b)(2)(C)(ii) of the Act.

<sup>126</sup> See section 773(b)(2)(D) of the Act.