



A-489-826

Administrative Review  
10/01/2018 – 09/30/2019

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August 17, 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 Final Results of  
Antidumping Duty Administrative Review and Final determination  
of No Shipments: Hot-Rolled Steel Flat Products from the  
Republic of Turkey; 2018–2019

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty order on hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey) for the period of review (POR), October 1, 2018, through September 30, 2019.

We initiated this review on thirteen companies,<sup>1</sup> including Colakoglu Metalurji, A.S., and Colakoglu Dis Ticaret A.S. (collectively, Colakoglu) which we had collapsed as a single entity in the underlying less-than-fair-value investigation.<sup>2</sup> Based on the final judgment of the U.S. Court of International Trade (CIT) in the litigation associated with the underlying investigation, subject merchandise produced and exported by Colakoglu was excluded from the *Order*.<sup>3</sup>

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 67712 (December 11, 2019).

<sup>2</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016).

<sup>3</sup> See *Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order, Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part*, 85 FR 29399 (May 15, 2020) (Timken Notice); see also *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).



Consequently, Commerce discontinued this review with respect to the subject merchandise produced and exported by Colakoglu, but not produced by Colakoglu and exported by another company, or produced by another company and exported by Colakoglu.<sup>4</sup> Accordingly, these final results cover thirteen companies: sole mandatory respondent Habas, six non-examined companies including Colakoglu, and six no-shipments companies.

We made certain changes to the weighted-average dumping margins published in the *Preliminary Results*,<sup>5</sup> and continue to find that Habas sold the subject merchandise at prices below normal value (NV). 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 for which we received comments from interested parties:

Comment 1: Currency for Habas’ Home Market Sale Prices

Comment 2: Cost Adjustment for High Inflation

## **II. BACKGROUND**

On February 24, 2021, Commerce published the *Preliminary Results* of this administrative review. On March 26, 2021, AK Steel Corporation (a member of the original petitioners for the less-than-fair-value investigation<sup>6</sup>) and Cleveland-Cliffs Steel LLC (collectively, domestic producers) filed a case brief and a request to participate in a hearing if one was to be held.<sup>7</sup> The domestic producers also filed a rebuttal brief on April 2, 2021.<sup>8</sup> Habas filed a case brief on March 26, 2021.<sup>9</sup> No interested party filed a request to have a hearing.

On June 17, 2021, and July 21, 2021, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the time period for issuing these final results until August 20, 2021.<sup>10</sup>

## **III. SCOPE OF THE ORDER**

The products covered by the *Order* are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics

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<sup>4</sup> *Id.*, 85 FR at 29400.

<sup>5</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019*, 86 FR 11227 (February 24, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>6</sup> See *Preliminary Results* PDM at 2.

<sup>7</sup> See Domestic Producers’ Letter, “Hot-Rolled Steel Flat Products from Turkey: Petitioners’ Case Brief,” dated March 26, 2021 (Domestic Producers Case Brief); see also Domestic Producers’ Letter, “Hot-Rolled Steel Flat Products from Turkey: Petitioners’ Request to Participate in Hearing,” dated March 26, 2021.

<sup>8</sup> See Domestic Producers’ Letter, “Hot-Rolled Steel Flat Products from Turkey: Petitioners’ Rebuttal Brief,” dated April 2, 2021 (Domestic Producers Rebuttal Brief).

<sup>9</sup> See Habas’ Letter, “Hot-Rolled Steel Flat Products from Turkey; Habaş Case Brief,” dated March 26, 2021 (Habas Case Brief).

<sup>10</sup> See Memorandum, “Hot-Rolled Steel Flat Products from the Republic of Turkey: Antidumping Duty Administrative Review; 2018–2019, Extension of Deadline for Final Results,” dated June 17, 2021; see also Memorandum, “Hot-Rolled Steel Flat Products from the Republic of Turkey: Antidumping Duty Administrative Review; 2018–2019, Extension of Deadline for Final Results,” dated July 21, 2021.

or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping<sup>11</sup> or countervailing duty<sup>12</sup> orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

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

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

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<sup>11</sup> See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and the Republic of Korea, 65 FR 6585 (February 10, 2000).

<sup>12</sup> See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000).

- 0.30 percent of zirconium.

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;<sup>13</sup>
- Ball bearing steels;<sup>14</sup>
- Tool steels;<sup>15</sup> and

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<sup>13</sup> For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

<sup>14</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>15</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent

- Silico-manganese steels;<sup>16</sup>

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the *Order* may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

#### IV. FINAL DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, we found that six exporters had no shipments of the subject merchandise during the POR: (1) Agir Haddecilik A.S. (Agir); (2) Eregli Demir ve Celik Fabrikalari T.A.S. and (3) Iskenderun Iron & Steel Works Ltd. (a/k/a/ Iskenderun Demir ve Celik A.S.) (collectively, Erdemir Group); (4) Gazi Metal Mamulleri Sanayi ve Ticaret A.S.(Gazi); (5) Seametmetal Sanayi ve Dis Ticaret Limited Sirketi (a/k/a Seametmetal San ve Dis Tic., Seametmetal); and (6) Tosyali Holding (Toscelik Profile and Sheet Ind. Co., Toscelik Profil ve Sac A.S.).

We received no comments that were contrary to our preliminary findings with respect to these companies. Therefore, for the final results we continue to find that above six exporters had no shipments of subject merchandise during the POR.

#### V. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for 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 an investigation, 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

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carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>16</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

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}.”

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis*, or determined entirely on the basis of facts available for Habas. Accordingly, Commerce has determined a weighted-average dumping margin of 24.32 percent for the following companies not individually examined: (1) Cag Celik Demir ve Celik, (2) Habas Industrial and Medical Gases Production Industries Inc., (3) MMK Atakas Metalurji, (4) Ozkan Iron and Steel Ind., (5) Colakoglu Metalurji, A.S. and (6) Colakoglu Dis Ticaret A.S.<sup>17</sup> which is equal to the weighted-average dumping margin calculated for Habas for these final results.

## VI. CHANGES SINCE THE *PRELIMINARY RESULTS*

We revised:<sup>18</sup>

- the cost adjustment for high inflation as discussed in Comment 2; and
- duty drawback adjustment by using the methodology affirmed in *Saha Thai*.<sup>19</sup> Specifically, we added to the U.S. price the full weight-averaged per unit amount of duty uncollected reported in the U.S. sales data, and kept the uncollected amount allocated over total production reported in the cost data.<sup>20</sup>

## VII. DISCUSSION OF THE ISSUES

### Comment 1: Currency for Habas’ Home Market Sale Prices

*Habas’ Case Brief:*

- Habas submits that Commerce’s use of Turkish lira (TL) prices rather than the reported U.S. dollar (USD) prices for its home market (HM) sales was erroneous and “unlawful.” Commerce’s rationale that the HM sales values in TL “are the only sale values that can be directly tied to the audited financial records” is not the legal criterion by which Commerce decides the currency for HM sales. Instead, Commerce looks principally to the currency of the payment and agreement (*i.e.*, the transaction currency), as reflected in the instruction in the antidumping (AD) questionnaire to “{r}eport the sales price, discounts, rebates and all other revenues and expenses in the currencies in which they were earned or incurred...”<sup>21</sup>
- If Commerce’s rationale for using the accounting currency (*i.e.*, TL) rather than the transaction currency (*i.e.*, USD) was correct, then Commerce would use the TL-denominated U.S. sales prices in its margin calculation, because Habas books all of its HM and U.S. sales

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<sup>17</sup> Only for certain hot-rolled flat products produced in Turkey where Colakoglu acted as either the producer or exporter, but not both.

<sup>18</sup> See Memorandum, “Hot-Rolled Steel Flat Products from the Republic of Turkey, Final Margin Calculation Memorandum for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas),” dated concurrently with this memorandum (Final Calculation Memorandum).

<sup>19</sup> See *Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F.3d 1335, 1338 (Fed. Cir. 2011) (*Saha Thai*).

<sup>20</sup> See Final Calculation Memorandum.

<sup>21</sup> See Habas Case Brief at 2 and 16-18.

in the accounting currency (*i.e.*, TL), and the sales reconciliations are also done in the accounting currency.<sup>22</sup>

- The TL prices driven by post-U.S. sale movements in exchange rates caused a massive distortion of the preliminary margin, since the HM sales are matched to the U.S. sale within a month. Therefore, according to *Melamine Chemicals*, the TL price should be disregarded.<sup>23</sup>
- This proceeding has a clear and consistent practice of using transaction currency rather than accounting currency for HM sales, as Commerce did for Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and Colakoglu Metalurji A.S. (Colakoglu) in the *HRS Turkey Investigation*,<sup>24</sup> *HRS Turkey AR1*,<sup>25</sup> and *HRS Turkey AR2*.<sup>26</sup> Habas' commercial practices are not materially different from those companies.<sup>27</sup>
- There is a consistent line of precedents going back at least 20 years in which Commerce used the USD price for HM sales, when contracts, confirmations, and payments were in USD even though the accounting records were in TL, citing *Rebar Turkey AR 1999-2001*,<sup>28</sup> *Stainless Steel Korea Amendment*,<sup>29</sup> *Pipe and Tube Turkey*,<sup>30</sup> *Steel Flanges India*,<sup>31</sup> and *Seamless Pipe Mexico*.<sup>32</sup>

#### *Domestic Producers' Rebuttal Brief:*

- The critical difference between Habas and Colakoglu is that the USD price shown on Habas' invoice "does not control the ultimate amount paid," as demonstrated by the HM market sample sales package.<sup>33</sup>
- Habas failed to provide the requested payment documentation for five invoices in its supplemental responses, which makes it impossible for Commerce to determine whether the payment was controlled by the USD price or TL price. Arguably, the failure to provide the

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<sup>22</sup> *Id.*

<sup>23</sup> See Habas Case Brief at 3 and 11-15 (citing *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924, 933-4 (Fed. Cir. 1984) (*Melamine Chemicals*)).

<sup>24</sup> See *Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016) (*HRS Turkey Investigation*).

<sup>25</sup> See *Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 30694 (June 27, 2019) (*HRS Turkey AR1*).

<sup>26</sup> See *Certain Hot-Rolled Steel Flat Products from Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 68878 (December 17, 2019) (*HRS Turkey AR2*).

<sup>27</sup> See Habas Case Brief at 2-3 and 4-10.

<sup>28</sup> See *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review*, 66 FR 56274 (November 7, 2001) (*Rebar Turkey AR 1999-2001*).

<sup>29</sup> See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279 (August 28, 2001) (*Stainless Steel Korea Amendment*).

<sup>30</sup> See *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*Pipe and Tube Turkey*).

<sup>31</sup> See *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value*, 82 FR 29483 (June 29, 2017) (*Steel Flanges India*).

<sup>32</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 39358 (June 26, 2000) (*Seamless Pipe Mexico*).

<sup>33</sup> See Domestic Producers Rebuttal Brief at 2-5.

specified payment documentation merits the use of facts available with adverse inference pursuant to section 776(a) and (b) of the Act.<sup>34</sup>

- Habas reconciled the U.S. sales to the USD value from its accounting records, but provides no rationale for using the unreconciled USD price of its HM sales.<sup>35</sup>
- Habas argues that using TL price for HM sales is “distortive” because of exchange rate volatility. No similar argument would have been presented had the exchange rate movements been in a direction that was favorable to Habas. This highlights the importance of applying a consistent, neutral approach, as was done in the *Preliminary Results*. In particular, Commerce’s currency conversions were made in accordance with the methodology prescribed by section 773A of the Act and 19 CFR 351.415. Habas cites no legal basis for a departure from that methodology or any precedent for doing so. Commerce should continue, therefore, to apply its established currency conversion methodology.<sup>36</sup>

**Commerce’s Position:** For these final results of administrative review, we are continuing to use the TL-denominated price for Habas’ HM sales as was done in the *Preliminary Results*.

Habas reported that its HM sale prices are: (1) negotiated and ordered in USD,<sup>37</sup> (2) invoiced in TL in accordance with Turkish VAT regulations,<sup>38</sup> and (3) paid in USD.<sup>39</sup> In its HM sales data, Habas reported the USD price, USD sales value (*i.e.*, quantity \* USD price), and the TL sales value.<sup>40</sup> Notably, Habas tied the TL sales value to its audited financial records in its HM sales reconciliation.<sup>41</sup>

Our *Preliminary Results* based normal value on the TL-denominated sales value, reasoning that “the sales values in TL are the only sale values that can be directly tied to the audited financial records.”<sup>42</sup>

Having an accurate sales reconciliation is a prerequisite for calculating an accurate weighted-average dumping margin because it shows whether the respondent accurately and completely reported the universe of its sales of in-scope merchandise.<sup>43</sup> When the sales reconciliations are incomplete and unreliable, Commerce has in the past used facts available with adverse inferences to determine a respondent’s weighted-average dumping margin,<sup>44</sup> which was affirmed by the

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<sup>34</sup> *Id.* at 5-6.

<sup>35</sup> *Id.* at 6-7.

<sup>36</sup> *Id.* at 7.

<sup>37</sup> See Habas Case Brief at 4.

<sup>38</sup> *Id.*; see also Final Calculation Memorandum.

<sup>39</sup> See Habas Case Brief at 4.

<sup>40</sup> See Habas’ Letter, “Hot-Rolled Steel Flat Products from Turkey; §B-C QR,” dated July 13, 2020 (BCQR) at 24.

<sup>41</sup> See Habas BCQR at 6 and Exhibit B-3; see also Habas’ Letter, “Hot-Rolled Steel Flat Products from Turkey; §AC SQR,” dated January 7, 2021 (AC SQR) at 2, Exhibit S2-2 and Exhibit S2-3.

<sup>42</sup> See PDM at 14.

<sup>43</sup> See, e.g., *Stainless Steel Flanges from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 13244 (March 28, 2018), and accompanying PDM at 9, unchanged in *Stainless Steel Flanges from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 26959 (June 11, 2018).

<sup>44</sup> See *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination*, 83 FR 40745 (August 16, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.



U.S. Court of International Trade (CIT) in *Bebitz Flanges*.<sup>45</sup> Because Habas demonstrated that its HM sales were reported accurately and completely in only the TL-denominated sales values, but not the claimed USD sales values, we find that only the TL-denominated sales values are reliable for calculating NV.

Habas contends that Commerce should base NV on the USD price, and alleges that Commerce's normal practice is to use the "transaction currency."<sup>46</sup> However, the term "transaction currency" is not defined by the Act or Commerce's regulation or used in the AD questionnaire.<sup>47</sup> Rather, Commerce's practice has been, as stated, to use the sales value that can be reconciled to the company's audited financial statements.<sup>48</sup>

Habas also notes that its HM sales are incurred in USD,<sup>49</sup> invoiced in TL in accordance with Turkish VAT regulations,<sup>50</sup> and recorded in TL "since all accounting entries must be made in TL."<sup>51</sup> Thus, according to Habas, because the HM sales are incurred in USD, that is the currency that should be used. However, the currency in which the sales are "incurred" is not the sole determining factor.

In *Eregli Demir*,<sup>52</sup> the CIT sustained Commerce's decision to use the TL-denominated costs from the company's accounting records to conduct a threshold analysis of quarterly costs, even though the major inputs in the analysis were purchased using USD, because that is "consistent with the statute that provides for cost calculations on the basis of the exporter's books and records," and the company failed to explain why conducting the analysis in USD would not distort Commerce's calculations. Further, in that case, and similar to the situation here, as further explained below, Commerce explained that the company's reported TL-denominated costs already take into account exchange rate differences because purchases in USD are converted to TL in the month of purchase in the normal course of business.<sup>53</sup>

Finally, Habas argues that if Commerce continues to use TL-denominated prices for HM sales, then the TL-denominated value of its U.S. sales should be used for its dumping margin calculations, because the TL-denominated value of U.S. sales is also tied to the audited financial records.<sup>54</sup> However, Habas overlooks the difference between the two sales reconciliations

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<sup>45</sup> See *Bebitz Flanges Works Private Limited v. United States*, 433 F. Supp. 3d 1309 (CIT 2020) (*Bebitz Flanges*).

<sup>46</sup> See Habas Case Brief at 2.

<sup>47</sup> If the instruction in the AD questionnaire is the reflection of using the transaction currency, then the term would have been defined.

<sup>48</sup> See Commerce's Letter, Antidumping Duty Questionnaire, dated May 15, 2020 ("Please provide a reconciliation of the sales reported in your home market sales databases to the total sales listed in your financial statements (profit and loss/income statement. Your reconciliation must provide supporting documentation (e.g., financial statements, trial balance sheets, relevant excerpts from general ledger, sub-ledger, etc.) for each step in the reconciliation.") (requesting information for reconciliation of sales value).

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.*

<sup>51</sup> See BCQR at 25.

<sup>52</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 308 F. Supp. 3d 1297 (CIT 2018) (*Eregli Demir*) at 1322.

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

<sup>54</sup> See Habas Case Brief at 2 and 17.

provided. The HM sales reconciliation uses only TL-denominated values whereas the U.S. sales reconciliation uses both USD-denominated values and TL-denominated values.<sup>55</sup>

### *Past Cases*

The past cases cited by Habas are not analogous to this administrative review. *HRS Turkey AR2* cited by Habas was not a final determination.<sup>56</sup> In *Rebar Turkey AR 1999-2001*,<sup>57</sup> *Stainless Steel Korea Amendment*,<sup>58</sup> and *HRS Turkey AR1*,<sup>59</sup> the USD-denominated price determined the payments in TL or WON, which are the national currencies of the exporting countries. Specifically, those payments were determined by the USD price/amount shown on the invoice and exchange rates in effect on the payment date. Here, however, the exchange rate in effect on the payment date is unknown to Habas because it does not know the payment date of each invoice, as it reported that “Habas is not able to report the date of the receipt of payment on a transaction-specific basis because its information system does not link payments to invoices.”<sup>60</sup>

The payment document submitted by Habas for a sample HM sale is a bank receipt generated by Habas’ customer’s bank.<sup>61</sup> Since the bank receipt is not from Habas’ bank, we find that the payment document is unlikely maintained in Habas’ books and records. Further, the domestic producers demonstrated that the payment amount apparently has no connection with the USD price and quantity shown on the invoice (*i.e.*, the payment amount does not equal USD price times quantity, or to USD price times quantity plus tax).<sup>62</sup> When we sought additional payment documentation from Habas, it failed to provide the requested information, but rather corrected payment dates for related sales.<sup>63</sup>

Thus, we find that the information on the record supports finding that the USD-denominated price shown on the invoice has no connection with the ultimate payment and thus, the TL-

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<sup>55</sup> See Habas BCQR at 6 and Exhibit B-3 for HM sales reconciliation, and at 45 and Exhibit C-3 for U.S. sales reconciliation; *see also* Habas’ Letter, “Hot-Rolled Steel Flat Products from Turkey; §AC SQR,” dated January 7, 2021 (AC SQR) at 2 and Exhibit S2-2 and Exhibit S2-3.

<sup>56</sup> The second administrative review on Colakoglu was discontinued after the preliminary results. *See Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 85 FR 63098 (October 6, 2020). Because the review was discontinued, it is unknown whether the preliminary results would have been unchanged for the final because preliminary results are subject to change. *See NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995).

<sup>57</sup> *See Rebar Turkey AR 1999-2001* IDM at Comment 4 (“As noted in the preliminary results, Colakoglu and its customers negotiated the prices for the sales in question in U.S. dollars, and these prices did not change once agreement was reached; rather, the buyer merely paid the Turkish-lira equivalent amount at the time of payment. In contrast, the Turkish lira prices shown on the invoices were not the final prices between the parties, but instead represented estimates of what Colakoglu believed would be the final lira amount at the time of payment.”)

<sup>58</sup> *See Stainless Steel Korea Amendment* (“the Korean won amount ultimately paid by the customer was determined by converting the U.S. dollar amount appearing on the invoice into won at the rate of exchange prevailing on the date of payment.”)

<sup>59</sup> *See HRS Turkey AR1* at Comment 2 (“Its USD price controls the ultimate TL amount paid by its HM customers.”)

<sup>60</sup> *See* BCQR at 21.

<sup>61</sup> *See* Habas Case Brief at 4; *see also* Habas’ Letter, “Hot-Rolled Steel Flat Products from Turkey; §A QR,” dated June 29, 2020 (AQR) at Exhibit A-8.

<sup>62</sup> *See* Domestic Producers Case Brief at 5; *see also* AQR at Exhibit A-8.

<sup>63</sup> *See* AC SQR at 3 and Exhibit S2-4.

denominated price on the invoice is the final price. Notably, Habas reported no price adjustments related to currency conversions.<sup>64</sup>

Other precedents cited by Habas are also inapplicable. The issues in *Pipe and Tube Turkey* and *Steel Flanges India* were related to programming codes.<sup>65</sup> The issue in *Seamless Pipe Mexico* was whether to apply a USD-based interest rate.<sup>66</sup>

#### *Section 773A of the Act*

Habas also argues that comparing the USD-denominated price of HM sales to the prices of U.S. sales will better account for TL depreciation after the U.S. sale made on August 2, 2018.<sup>67</sup> However, comparing the USD-denominated prices of HM sales with the prices of U.S. sales is inconsistent with section 773A of the Act, because the USD-denominated prices of HM sales are not based on the exchange rates in effect on the date of sale of the subject merchandise. Section 773A of the Act provides:

(a) IN GENERAL.—In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using **the exchange rate in effect on the date of sale of the subject merchandise**, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

The date of sale of the subject merchandise is August 2, 2018, which is when Habas made its one U.S. sale by means of an EP transaction within the meaning of section 772(a) of the Act.<sup>68</sup> Meanwhile, because there was high inflation within the period of review, NV is based on HM sales made in August 2018.<sup>69</sup> Therefore, our preliminary margin calculation converted the TL-denominated prices of selected August 2018 HM sales to USD-denominated prices using the exchange rate in effect on August 2, 2018 (*i.e.*, 0.21), certified by the Federal Reserve Bank, consistent with section 773A of the Act and 19 CFR 351.415.<sup>70</sup>

Habas claims that using TL-denominated prices for HM sales causes distorted dumping margins driven by an alleged devaluation of TL as shown in the post-U.S. sale movements in exchange rates.<sup>71</sup> However, per section 773A of the Act and Commerce's practice, Commerce only uses exchange rates in effect on the date of sale of the subject merchandise and certified by the

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<sup>64</sup> See BCQR at 25.

<sup>65</sup> See *Welded Pipe and Tube Turkey* at Comment 7; see also *Steel Flanges India* at Comment 4.

<sup>66</sup> See *Seamless Pipe Mexico* Comment 8.

<sup>67</sup> See Habas Case Brief at 11-16.

<sup>68</sup> See Habas' Letter, "Hot-Rolled Steel Flat Products from Turkey; Request for guidance," dated May 18, 2020.

<sup>69</sup> See Commerce's Letter to Habas, dated June 9, 2020.

<sup>70</sup> See Memorandum, "Hot-Rolled Steel Flat Products from the Republic of Turkey, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) Preliminary Margin Calculation Memorandum," dated February 17, 2021 at Attachment II.

<sup>71</sup> See Habas Case Brief at 15 (citing *Melamine Chemicals*).

Federal Reserve. The post-U.S. sale exchange rates identified by Habas are not Federal Reserve rates in effect on the date of sale of the subject merchandise. Habas has not demonstrated that Commerce acted inconsistently with section 773A of the Act; in fact, it is Habas' claim that is inconsistent with this section of the Act.

### *Habas' Exchange Rates*

In its case brief, Habas argued that “we can readily calculate the exchange rate implicit in the data by dividing the TL values by the USD values” from the HM sales data.<sup>72</sup> Our analysis finds that Habas' exchange rates lower the NV.

For example, for a HM sale price of 100 TL made on August 12, 2018, the difference between Habas' exchange rate and the Federal Reserve's exchange rate (*i.e.*, 0.145 vs. 0.20), leads to different USD-denominated prices (*i.e.*, 14.5 USD vs. 20 USD), and results in different NV bases (*i.e.*, 15 USD vs. 21 USD), as demonstrated below.

Habas' USD-denominated price is not based on the exchange rate in effect on the date of sale of the subject merchandise (*i.e.*, 0.21 on 8/2/2018), as required by the statute. Therefore, if we were to base NV on this USD-denominated price, in order to comply with the statute, and because the subject merchandise and its matching foreign like product were sold on different dates, we would convert the USD-denominated price using the Federal Reserve's exchange rate in effect on the date of sale of the matching foreign like product (*i.e.*, 0.20 on 8/12/2018) into a TL-denominated price, which would then be converted into a USD price using the Federal Reserve's exchange rate in effect on the date of sale of the subject merchandise (*i.e.*, 0.21 on 8/2/2018), consistent with the statute:

	Federal Reserve Date of Sale of the Matching Foreign Like Product		Federal Reserve Date of Sale of the Subject Merchandise	
NV_USD Price = 14.5 USD /	0.20	= 75 TL *	0.21	= 15 USD

When basing NV on the TL-denominated price, the TL price is converted into a USD-denominated price using the Federal Reserve's exchange rate in effect on the date of sale of the subject merchandise, consistent with the statute:

		Federal Reserve Date of Sale of the Subject Merchandise	
NV_TL Price = 100 TL	*	0.21	= 21 USD

Essentially, Habas attempted to insert into the margin calculations its own exchange rates which would lower NV. Basing NV on the USD-denominated prices provided by Habas would be applying exchange rates in the margin calculations which are inconsistent with Commerce's practice of using exchange rates published by the Federal Reserve bank that were in effect on the

<sup>72</sup> See Final Calculation Memorandum.

date of sale of the subject merchandise. Thus, we continue to base NV on the TL-denominated price.

## **Comment 2: Cost Adjustment for High Inflation**

### *Domestic Producers' Case Brief:*

- A formatting error caused all monthly inflation indices to have the same value. This error should be corrected by removing the quotation marks around the year/month values, and changing \$PRICE\_INDEX from a character field to a numeric field.<sup>73</sup>
- The high inflation methodology should be applied to only POR costs for which inflation indices were provided.<sup>74</sup>

Habas did not rebut this issue.

**Commerce's Position:** We agree with the domestic producers and have corrected those two errors for the final results.

## **VIII. RECOMMENDATION**

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



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Agree



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Disagree

X



Signed by: CHRISTIAN MARSH

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Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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<sup>73</sup> See Domestic Producers Case Brief at 2.

<sup>74</sup> *Id.* at 3.