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Administrative Review /
New Shipper Review
POR: 4/1/05 - 3/31/06
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DATE: October 31, 2007

TO: Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

THROUGH: James Maeder
Director, Office 2

FROM: The Team

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review and New Shipper Review on Certain Steel Concrete Reinforcing Bars from Turkey – April 1, 2005, through March 31, 2006

Summary

We have analyzed the comments of the interested parties in the 2005-2006 administrative review and new shipper review of the antidumping duty order covering certain steel concrete reinforcing bars (rebar) from Turkey. As a result of our analysis of the comments received from interested parties, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

General Issues

1. Issues Related to the Turkish Government Competition Board's (the Competition Board's) Report
2. Date of Sale for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively "Colakoglu") and Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)
3. Model Matching
4. Methodology for Determining Contemporaneous Sales in the Home Market

Company-Specific Issues

5. General and Administrative (G&A) Expenses for Colakoglu
6. Depreciation Expenses for Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively "Ekinciler")
7. G&A Expenses for Ekinciler
8. Subcontracted Rolling Costs for Habas
9. Affiliation Issue for Kaptan Metal Dis Ticaret ve Nakliyat A.S. and Kaptan Demir Celik Endustrisi ve Ticaret A.S. (collectively "Kaptan")
10. Affiliated-Party Loading Services for Kaptan

Background

On May 4, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review and new shipper review of the antidumping duty order on rebar from Turkey. See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part, 72 FR 25253 (May 4, 2007) (Preliminary Results). On August 31, 2007, the Department also preliminarily concluded that the record does not support a conclusion that the respondents were affiliated or that the respondents did not act to the best of their abilities in responding to the Department's questionnaire. See the August 31, 2007, Memorandum from Shawn Thompson, Irina Itkin, and Brianne Riker to David M. Spooner, entitled "Preliminary Finding on Issues Related to the Turkish Government Competition Board's Reports in Certain Steel Concrete Reinforcing Bars from Turkey" ("Preliminary Finding on Issues Related to the Competition Board's Report"). The period of review (POR) is April 1, 2005, through March 31, 2006.

We invited parties to comment on our preliminary results of these reviews. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results.

Margin Calculations

We calculated export price (EP) and normal value (NV) using the same methodology stated in the preliminary results, except as follows:

- We recalculated Ekinciler's depreciation expenses for certain assets included in Ekinciler's "property, plant, and equipment" category to include the credit which was part of the fixed asset account. See Comment 6; and

- We recalculated Ekinciler's depreciation expense related to assets acquired in 2005 and revised Ekinciler's G&A expense ratio to reflect the revised depreciation expense. See Comment 7.

- We made changes to the final margin calculations for Colakoglu, Diler, and Kroman to take into account our findings at verification. For a detailed discussion of these changes, see the October 31, 2007, memorandum from Brianne Riker to the File entitled, "Calculations Performed for Colakoglu Metalurji A.S./Colakoglu Dis Ticaret for the Final Results in the 2005-2006 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey;" the October 31, 2007, memorandum from LaVonne Clark to Neal M. Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively "Colakoglu");" the October 31, 2007, memorandum from Irina Itkin to the File entitled, "Calculations Performed for Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S. for the Final Results in the 2005-2006 Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey;" and the October 31, 2007, memorandum from Gina K. Lee to Neal M. Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Kroman Celik Sanayii A.S. ("Kroman")."

Discussion of the Issues

General Issues

Comment 1: *Issues Related to the Competition Board's Report*

With the exception of Habas, all of the respondents in these reviews are members of an association in Turkey called the Turkish Iron and Steel Producers Association (TISPA). Moreover, Habas was also a member of TISPA until October 2003. In October 2005, the Competition Board, a Turkish governmental agency, found that the vast majority of TISPA members had violated the country's competition law by engaging in anti-competitive behavior and collusion. In February 2007, the U.S. domestic industry filed the Competition Board's report on the record of this proceeding, and it requested that we rely on this report to conclude that: 1) rebar prices in the home market and to the United States, as well as certain costs in the home market, were not competitively set; 2) the respondents were all affiliated by virtue of their participation in TISPA; and 3) the respondents have impeded the proceeding by not disclosing this information in their questionnaire responses. As a result, the domestic industry requested that the Department reject all responses submitted in this segment of the proceeding and assign a final rate to the four producers participating in the administrative review based on adverse facts available (AFA) pursuant to section 776(b) of the Tariff Act of 1930, as amended (the Act), and rescind the new shipper review for Kroman Celik Sanayii A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively "Kroman") because its affiliation with other rebar producers makes it ineligible to be treated as a new shipper.

We solicited data from the respondents regarding certain issues surrounding the Competition Board's report, and we verified this data for three of the five companies. After analyzing all of the information on the record, we preliminarily concluded that the record does not support a

conclusion that the respondents were affiliated or that the respondents did not act to the best of their abilities in responding to the Department's questionnaire. See the "Preliminary Finding on Issues Related to the Competition Board's Report."

The domestic industry disagrees with this preliminary determination. According to the domestic industry, the Competition Board's report, as well as evidence and facts gathered during this proceeding, demonstrates that the respondents, through TISPA, coordinated scrap purchasing, rebar production, and rebar pricing in the Turkish market to such an extent that the Department should deem them affiliated within the meaning of section 771(33) of the Act. The domestic industry also argues that the coordination among TISPA members distorts the antidumping calculation, rendering the respondents' sales prices and costs in the home market unreliable because they do not reflect market value. Moreover, the domestic industry maintains that, because the respondents did not disclose this collusion, they failed to cooperate to the best of their abilities and should each be assigned a final margin based on AFA.

Nonetheless, the domestic industry argues that, even were the Department to continue to find that the Competition Board's report is not relevant in this POR, it should not revoke the antidumping duty order with respect to Colakoglu and Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler") because these companies have not met the requirements for revocation and, even if they had, the Act and the Department's precedent accord the Department discretion not to revoke companies from an order if it deems that revocation is inappropriate.

Specifically, the domestic industry asserts that, because the Department has broad discretion in determining whether to revoke an order based on the criteria set forth in 19 CFR 351.222(b)(2)(i)-(iii), it is never required to do so. As support for this assertion, the domestic industry cites Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334, 1340 (1999) (Hyundai Electronics), where the Court of International Trade (CIT) found that the Department has the discretion to deny a revocation request even if a respondent satisfies the three criteria outlined in the Department's regulations, and Matsushita Electronic Industrial Co., Ltd. v. United States, 688 F. Supp. 617, 623 (1988), citing Manufacturas Industriales de Nogales, S.A. v. United States, F. Supp. 1562, 1565 (1987) (Manufacturas Industriales), where the CIT stated "{e}ven if there is a history of lack of . . . dumping, this neither restricts Commerce's authority to determine whether such unfair pricing practices will resume, nor divests Commerce of its discretion to determine if revocation should be granted or withheld."

According to the domestic industry, the Department has denied revocation in situations in which the margins from prior reviews were tainted or unreliable (e.g., where the Department found that respondent engaged in activities to circumvent the order) or it could not conclude that dumping would not be likely upon revocation due to either the respondents' behavior or market conditions. As support for this assertion, the domestic industry cites Hyundai Electronics, 53 F. Supp. 2d at 1340, where the CIT found that the Department reasonably exercised its discretion not to revoke a respondent after examining how the respondent reacted to downturns in the market as an

indicator of whether the respondent was likely to resume dumping, Sanyo Electric Co. v. United States, 15 CIT 609, 611-12 (1991), where the CIT found that the Department's determination not to revoke a respondent after concluding that market conditions in the United States would encourage dumping was reasonable, Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55574 (Sept. 15, 2004), and accompanying Issues and Decision Memorandum at Comment 9 (Hand Tools from the PRC), where the Department examined the respondent's relationship with its sale agent with respect to its request for revocation, and Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part: Certain Corrosion- Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada, 66 FR 3543 (Jan. 1, 2001) and accompanying Issues and Decision Memorandum at Comment 1 (Steel Flat Products and Plate from Canada), where the Department did not revoke a respondent due to a pending anti-circumvention investigation.

In any event, the domestic industry contends that it is the respondent's burden to provide evidence to demonstrate that the Department should revoke the order with respect to it. See Toshiba Corp. v. United States, 15 CIT 597, 603 (1991) (Toshiba), citing Manufacturas Industriales, 666 F. Supp. at 1565 (where the CIT stated that the respondent's "failure to come forward with any real evidence . . . justifies the ITA's refusal to lift the order"). The domestic industry contends that the respondents have failed to provide sufficient evidence in this case because, at a minimum, two of their three consecutive de minimis margins were tainted based on evidence contained in the Competition Board's report[1] and neither company has demonstrated that dumping is not likely to resume once the antidumping duty order is revoked.

Regarding the former assertion, the domestic industry notes that the Competition Board report pertains to the two previous review periods in which Colakoglu and Diler received de minimis margins.[2] The domestic industry further notes that, because the Department did not collect additional information regarding TISPA's activities for the 2003-2004 and 2004-2005 review periods, as it did for the 2005-2006 period, there is no data on the record of these reviews to discount the evidence contained in the Competition Board's report. According to the domestic industry, the Competition Board's report demonstrates that Colakoglu and Diler not only

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[1] The domestic industry contends that it is irrelevant that the Competition Board's investigation involves an antitrust matter because its findings, as well as evidence on the record, demonstrate that there are serious concerns with respect to the validity of the data relied upon in previous reviews.

[2] The domestic industry asserts that, even though the Department stated in its preliminary finding that the Competition Board's report covers the period 1995 through 2000, the report actually covers the period 1995 through 2005.

attended TISPA meetings in which price-, production-, and cost-fixing was discussed, but they also subsequently changed their production and prices in accordance with these discussions.

The domestic industry contends that the Department should find the Competition Board's report more reliable than the respondents' own statements on this matter because Colakoglu and Diler officials made statements at verification that are contradicted by evidence on the record. For example, the domestic industry notes that officials at both companies claimed that they did not share cost and price information with other rebar producers. However, the domestic industry contends that the Competition Board's report demonstrates that Colakoglu and Diler officials routinely attended meetings in which information was shared in order to plan collusive pricing and production strategies and shows that Colakoglu's price and scrap purchase lists were found in Diler's possession. See the domestic industry's February 21, 2007, submission at page 85 of Attachment 1. Further, despite Diler's claims that documents quoted in the Competition Board's report were from conversations with government officials that occurred twenty years prior, the domestic industry asserts that the Competition Board's report contains excerpts from documents dated between 1995 and 2004 and do not appear to involve government officials. See the July 5, 2007, Memorandum to the File from Irina Itkin and Nichole Zink, entitled "Verification of the Sales Response of Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./Diler Dis Ticaret A.S. (Diler) in the Antidumping Administrative Review of Certain Concrete Steel Reinforcing Bars (Rebar) from Turkey" (Diler sales verification report) at page 8. Moreover, the domestic industry contends that Diler's claimed lack of awareness regarding TISPA meetings and activities is not credible given that a Diler company official was the chairman of TISPA during the period 2000 to 2006.

Finally, the domestic industry argues that, absent a basis to conclude that a particular respondent is not likely to resume dumping once the antidumping duty order is revoked, the Department should not revoke the order with respect to that company. As support for its position, the domestic industry cites Hand Tools from the PRC at Comment 9 and Steel Flat Products and Plate from Canada at Comment 1, where the Department determined not to revoke certain respondents when there was an ongoing investigation of misconduct because such an investigation raises a doubt with respect to the respondent's likelihood of resuming dumping in the future. Similarly, the domestic industry contends that here the Department should determine that the respondents are likely to resume dumping because: 1) the Competition Board found that they engaged in behavior aimed at disrupting markets and manipulating prices; 2) they did not provide any evidence to persuade the Department that they will not resume dumping; and 3) Colakoglu's and Diler's misleading statements at verification undermines their pledge that they will not resume dumping.

Based on the above arguments, the domestic industry argues that the Department should reconsider its preliminary decision and base the respondent's final margins on AFA due to their failure to act to the best of their abilities, or, at a minimum, it should not revoke the antidumping duty order with respect to Colakoglu and Diler.

The respondents agree with the Department's preliminary determination with respect to the Competition Board's report and assert that the Department should sustain its findings for purposes of the final results. The respondents argue that the domestic industry has: 1) not offered any new arguments to persuade the Department to reverse its preliminary finding; 2) failed to cite any specific part of the Department's preliminary finding with which it disagrees or any specific information on the record that supports its arguments; and 3) not provided any reference to the statute, the Department's regulations, judicial precedent, or administrative practice to support its position. According to the respondents, the facts and arguments they previously submitted demonstrate that the Competition Board's report does not undermine their antidumping duty calculations in this review or previous ones.

Moreover, Habas and Kroman argue that the domestic industry's arguments should be disregarded because they fail to meet the requirements set forth in 19 CFR 351.209(c) (which are echoed in Antidumping Duties; Countervailing Duties: Final rule, 62 FR 27296, 27348-9 (May 19, 1997) (Preamble)); these requirements limit information in case briefs to comments on the preliminary results and/or arguments that continue to be relevant to the final results of review. According to these respondents, the domestic industry failed to present any arguments that continue to be relevant, and instead merely incorporated wholesale claims previously submitted. In addition, these respondents assert that the domestic industry failed to indicate any specific disagreement with the Department's preliminary determination, and thus, failed to exhaust its administrative remedies, as required by the courts. As support for these arguments, Habas and Kroman cites 28 USC 2637(d), which states that "the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies." See also Novosteel, S.A. v. United States, 284 F.3d 1261, 1273 (Fed. Cir. 2001), citing Sandvik Steel Co. v. United States, 164 F.3d 596, 599 (Fed. Cir.1998) (where the U.S. Court of Appeals for the Federal Circuit determined that a party waived an issue by not properly presenting the issue in its initial brief); Timken v. United States, 20 CIT 1115, 1118-19 (CIT 1996) (where the CIT found that a party must explain its rationale with specificity); and Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (Mar. 20, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Steel from Korea) (where the Department stated "{w}ith respect to the model-match arguments contained in {the respondent's} case brief, we find that {the respondent} has not provided any new argument or information on this issue . . . {the respondent's} case brief simply restates the arguments and analysis it previously submitted").

As to the issue of revocation, Colakoglu and Diler disagree that their de minimis margins in previous reviews are tainted or that there is uncertainty over their future behavior.[3] According to

[3] As an initial matter, Diler argues that the domestic industry inappropriately included arguments regarding the relationship between the Competition Board's report and prior reviews in its case brief, given that the Department has separated these issues and did not request comments regarding reopening closed segments. Nonetheless, Diler contends that, to the extent

these respondents, the Department conducted its own inquiry related to the Competition Board's report and concluded the following: 1) there is no evidence of affiliation among the respondents, nor are their prices or costs unreliable; 2) TISPA has no authority to enter into or enforce sales or production agreements and, thus, the respondents could not influence or control world scrap prices; and 3) the respondents were under no obligation to report the antitrust investigation by the Competition Board and, thus, there was no basis to find that they withheld information material to the Department's analysis. While the respondents acknowledge that the Department's findings relate to the present POR, they contend that they equally can be applied to past administrative reviews because there is no evidence to demonstrate that TISPA's structure or authority, or the respondents' practices with respect to scrap purchasing, changed in any way between the PORs.

Moreover, Colakoglu and Diler contend that the Competition Board's report in and of itself is unreliable, because it contains flaws and deficiencies that are contradicted by evidence on the record. These companies note that they have both appealed the Competition Board's decision to the Turkish Court of Appeals, based in part on their contention that the Competition Board did not undertake a rigorous analysis. For example, Colakoglu notes that its finished product prices moved in conjunction with world scrap prices, as opposed to other rebar producers' prices, and it disputes the relevance of the Competition Board's finding that certain price increases were directly attributable to a March 2001 TISPA meeting, given that the price increases corresponded with a severe financial crisis in Turkey which caused rebar producers to raise their prices to cover foreign currency losses. Thus, Colakoglu and Diler contend that the existence of the Competition Board report does not undermine their margins in either this or any prior review, and as such it has no bearing on their revocation requests. Moreover, Colakoglu and Diler contend that the domestic industry has provided no additional evidence to demonstrate that the de minimis margins they received in the 2003-2004 and 2004-2005 administrative reviews are tainted.

In addition, Colakoglu and Diler disagree with the domestic industry's assertion that they made false claims at verification with respect to the Competition Board's report. Specifically, Colakoglu asserts that it has fully cooperated with all aspects of the review process, submitted massive amounts of data, participated in sales and cost verifications, and acted in good faith throughout the proceeding. Colakoglu contends that, in contrast, it is the domestic industry that has made unsubstantiated claims in this review. Moreover, Diler argues that the Department has found that all respondents have acted in good faith and did not make misrepresentations to the Department regarding their involvement in TISPA, as noted in the Department's preliminary finding. At the public hearing held in this case, Colakoglu and Diler further objected to the domestic industry's allegations. Specifically, Colakoglu stated the domestic industry "lob{bed} attacks on {its} truthfulness" and "{i}n no uncertain terms, the petitioners have asserted that {Colakoglu officials} lied to Commerce verifiers." However, Colakoglu contends that it "has demonstrated its credibility through years of cooperation with the Department, always submitting

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that the Department considers these arguments appropriate in this segment of the proceeding, Diler disagrees with them.

whatever the Department wanted {or} requested and subjecting itself to vigorous verifications by the Department and always passing those verifications." See the October 10, 2007, hearing transcript at page 82. Further, Diler stated that the domestic industry's allegations are "patently untrue" and "{t}he mere fact that {Diler} had disagreements with conclusions in the Competition Board report is hardly surprising or a basis for an accusation of lying." Diler further claimed that certain statements regarding the Competition Board's report made by Diler company officials were the result of a misunderstanding or mis-communication of the topic at verification. See the October 10, 2007, hearing transcript at page 70.

Colakoglu and Diler argue that, contingent upon receiving de minimis margins in the final results, they will have clearly met the three criteria for revocation pursuant to 19 CFR 351.222(b)(2)(i)(A)-(C) (i.e., they have sold the merchandise at not less than NV for a period of at least three consecutive years; they agree in writing to its immediate reinstatement in the order, if the Secretary concludes, that subsequent to the revocation, they sold the subject merchandise at less than NV; and the continued application of the antidumping duty order is not otherwise necessary to offset dumping). Regarding the first requirement under 19 CFR 351.222(b)(2)(i)(A), these respondents note that the Department relies upon margins established in prior segments, except under extraordinary circumstances which are not present here. See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review, 71 FR 11590 (Mar. 8, 2006) (LNPPs from Japan) (where the Department found compelling evidence of fraud on the part of a respondent, which undermined the integrity of the Department's analysis).

Regarding the requirement under 19 CFR 351.222(b)(2)(i)(C) that the dumping order be unnecessary to offset dumping, Colakoglu and Diler also disagree that the Competition Board's finding is indicative of future dumping activity. Colakoglu cites the preamble to the proposed regulation regarding revocation to support its argument that this prong of the revocation analysis is predictive in nature and requires a prospective analysis. See Proposed Regulation Concerning the Revocation of Antidumping Duty Orders, 64 FR 29818, 29819 (June 3, 1999) (where the Department stated "the revised standard provides the appropriate degree of predictive assurance required in a prospective analysis"). Given that the Department preliminarily found no evidence that the respondents engaged in anti-competitive practices in this administrative review, Colakoglu maintains that the Competition Board's report has no bearing on Colakoglu's proclivity to dump in the future. Similarly, Diler contends that it has received a de minimis margin in every review of which it has been a part. Because the Department has never found that Diler made sales below normal value, Diler contends that there is no basis to believe it would do so in the future.

In any event, Colakoglu and Diler argue that the domestic industry misinterpreted the Department's regulations with respect to the discretion accorded to the Department over revocation. Specifically, these respondents contend that, while the previous revocation regulation indicated the Department "may" revoke a particular respondent from the order, the current regulation requires the Department to revoke a company that satisfies the three revocaton

criteria. According to Colakoglu, the Department's amended regulations permit the Department to "only retain an antidumping or countervailing duty order if there is positive evidence on the record indicating the continued necessity of such order to offset dumping or subsidization." See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51239 (Sept. 22, 1999) (Amended Regulation Concerning Revocation). Therefore, the respondents argue that the Department's revocation analysis should be limited to the three criteria outlined in 19 CFR 351.222, and assuming that they have met those criteria, the Department must revoke the order with respect to them.

Moreover, Colakoglu disagrees with the domestic industry's assertion that the burden of providing evidence that revocation is warranted lies with the respondent. Specifically, Colakoglu notes that the Amended Regulation Concerning Revocation, 64 FR at 51238, states that "while the burden of producing evidence shifts among the parties, the Department does not impose a burden of proof on any party."

Finally, Colakoglu and Diler disagree that the cases cited by the domestic industry are relevant. Specifically, the respondents note that, unlike here, the respondent in Hand Tools from the PRC did not qualify for revocation because it did not receive three consecutive de minimis margins, while the Department denied revocation for a respondent in Steel Flat Products and Plate from Canada until certain circumvention issues were resolved. Regarding the latter case, Colakoglu and Diler contend that circumvention has direct bearing on whether a respondent's margins are reliable, whereas, for the reasons noted above, the Competition Board's report does not. As for Hyundai Electronics and Toshiba, Colakoglu notes that these cases were subject to the previous revocation regulation, which had different requirements from the current one. Moreover, Diler maintains that the facts in Hyundai Electronics are distinct from its own experience, because in that case the CIT sustained the Department's finding not to revoke the respondent because the respondent had previously been found to have sold products in the United States at less than fair value.

Further, Diler asserts that the domestic industry ignored cases decided since the adoption of the current revocation regulation where the Department granted revocation over the objection of the petitioner. Indeed, Diler notes that in this very proceeding, the Department granted revocation to one producer over the domestic industry's objections; in that segment, the Department noted that the revocation regulation creates a presumption in favor of revocation if the required criteria have been met which can only be rebutted if the petitioner provides substantial evidence that maintaining the antidumping duty order is necessary to offset future dumping. See Certain Steel Concrete Reinforcing Bars from Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part, 70 FR 67665 (Nov. 8, 2005), and accompanying Issues and Decision Memorandum at Comment 18 (2003-2004 Rebar from Turkey Final Results). See also Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 28659 (May 17, 2006), and accompanying Issues and Decision Memorandum at Comment

1; Stainless Steel Wire Rod from India: Final Results of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 40319 (July 13, 2005), and accompanying Issues and Decision Memorandum at Comment 8; Stainless Steel Flanges from India: Notice of Final Results of Antidumping Duty Administrative Review and Revocation in Part, 70 FR 39997 (July 12, 2005); Certain Pasta from Italy: Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order and Determination to Revoke in Part, 70 FR 6832, 6833 (Feb. 9, 2005), and accompanying Issues and Decision Memorandum at Comment 20; Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order in Part, 69 FR 61341, 61342 (Oct. 18, 2004); and Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke the Order in Part, 67 FR 69719 (Nov. 19, 2002), and accompanying Issues and Decision Memorandum at Comment 3.

Thus, Colakoglu and Diler contend that the Department should revoke the antidumping duty order with respect to their U.S. exports of subject merchandise.

Department's Position:

We disagree with the domestic industry that, based on the Competition Board's report, we should apply a rate based on AFA to all respondents due to unreliable costs or prices or unreported affiliations and not revoke Colakoglu and Diler from the antidumping duty order. As noted in our preliminary finding regarding this issue, we did not rely on the evidence or conclusions in the Competition Board's report as the basis for any finding in these reviews. Instead, we investigated the domestic industry's allegations within the confines of antidumping duty law and regulations. In evaluating the evidence on the record, we examined three overall factors: 1) the activities of TISPA during the POR and each member's role in it; 2) the pricing behavior of the respondents in these proceedings vis-a-vis each other; and 3) the cost data reported by the respondents, especially with respect to their scrap purchases in the context of domestic and international scrap price movements.

The domestic industry neither provided any new arguments with respect to the information on the record pertaining to the Competition Board's report or the respondents' reported costs, prices, and affiliations that were not already addressed in our preliminary findings, nor commented on specific sections of our preliminary findings with which it disagreed. Rather, the domestic industry merely reiterated its previous arguments in stating its opposition to our preliminary finding and cited various specific sections of the Competition Board's report. Therefore, absent any new argument for us to consider with respect to our preliminary conclusions, we continue to find the following: 1) there is no basis to conclude that the respondents are affiliated, and a collapsing analysis is neither warranted nor necessary; 2) there is no basis to conclude that the sales and cost data in these reviews are distorted by non-market considerations and, thus, it is appropriate to rely on this data for purposes of the final results; 3) Kroman is entitled to a new shipper review because it has met the requirements set forth under 19 CFR 351.214(b); and 4) the use of AFA, pursuant to sections 776(a) and (b) of the Act, is not warranted for any of the

respondents in the 2005-2006 administrative review or new shipper review with regard to this issue because the respondents provided all requested information and have cooperated fully in these segments of the proceeding. See "Preliminary Finding on Issues Related to the Competition Board's Report" at pages 24 through 38 for a detailed discussion of these findings. See also Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061, 52063 (Sept. 12, 2007) and Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055, 52058 (Sept. 12, 2007) (Shrimp from India) (where, in both instances, the Department did not reverse its preliminary decisions regarding collapsing because there was "no additional information that would compel us to reverse our preliminary finding"); Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 72 FR 43598, 42599 (Aug. 6, 2007) and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082, 65083 (Nov. 7, 2006) (2004-2005 Rebar from Turkey Final) (where, in both instances, the Department did not reverse its preliminary successor-in-interest determinations because no party provided any additional information to compel it to reverse its preliminary findings); and Steel from Korea at Comment 1 (where the Department did not revise the model-matching hierarchy because the respondent relied on previously submitted arguments without offering any new arguments in its case brief to compel the Department to reverse its preliminary finding).

Regarding the domestic industry's argument that we should not revoke Colakoglu and Diler from the antidumping duty order, we disagree. The framework for determining whether a producer or exporter is eligible for revocation is set forth in 19 CFR 351.222(b). According to subsection (2)(i) of this provision,

> In determining whether to revoke an antidumping duty order in part, the Secretary will consider:
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> (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;
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> (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and
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> (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

See 19 CFR 351.222(b)(2)(i).

We have determined that all of the criteria under 19 CFR 351.222 have been met with respect to Colakoglu's and Diler's revocation requests. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our final margin calculations show that Colakoglu and Diler sold rebar in the United States at not less than NV during the current review period, and these companies also sold rebar here at not less than NV in the two previous administrative reviews in which they were involved (i.e., their dumping margins were zero or de minimis). See 2004-2005 Rebar from Turkey Final, 71 FR at 65084 and 2003-2004 Rebar from Turkey Final, 70 FR at 67667. Moreover, they shipped subject merchandise to the United States in commercial quantities in each of those years, as required by 19 CFR 351.222(e)(ii). See the April 30, 2007, memoranda from Brianne Riker to the File entitled, "Analysis of Commercial Quantities for Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.'s Request for Revocation" and "Analysis of Commercial Quantities for Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S.'s Request for Revocation" for a detailed analysis of these respondents' commercial quantities. Further, each company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV.[4] Finally, as discussed below, we find that the continued application of the order is not otherwise necessary to offset dumping. Therefore, we determine that Colakoglu and Diler qualify for revocation of the antidumping duty order with respect to their exports of rebar to the United States, pursuant to 19 CFR 351.222(b)(2).

While the Department has the discretion to deny revocation in instances where it deems the continued application of the order to be warranted, we find no basis for exercising such discretion here. We find neither of the domestic industry's main arguments – that: 1) the Department cannot take the any margins calculated for Colakoglu or Diler at face value because the underlying data was tainted and 2) Colakoglu and Diler are likely to resume dumping because they have a history of engaging in illegal trade practices – to be persuasive.

Regarding the first point, as noted above, there is no basis to conclude that Colakoglu's and Diler's sales and cost data submitted in the current review are distorted by non-market considerations. Similarly, we disagree that there is evidence on the record of this proceeding which invalidates the two previous de minimis margins calculated for these respondents. Although the domestic industry claims that the Competition Board's report provides evidence that Colakoglu and Diler conspired to fix prices, we disagree that the existence of this report alone provides sufficient reason for the Department to question the margins calculated in the previous reviews. Indeed, while the Competition Board's report indicates that the members of

[4] Because the Department has not previously determined that Diler sold subject merchandise at less than normal value (i.e., the Department calculated de minimis margins in all segments in which Diler has participated), it was unnecessary for Diler to agree to reinstatement of the order. Nonetheless, Diler provided a statement indicating its agreement to reinstatement in the order should the Department deem it necessary.

TISPA gathered to discuss pricing and production issues in the steel industry, it provides no evidence that the respondents acted on these discussions by altering their prices or costs in any way, nor does it establish that the respondents were affiliated with each other to such a degree that they had the potential to manipulate prices or production in Turkey.

The Department's consistent and long-standing practice is to consider any final determination made by the agency to be valid and reliable unless or until it formally reconsiders it. See, e.g., Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 69 FR 55409 (Sept. 14, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department found that, despite ongoing litigation for previous administrative review, the respondent's de minimis margins were "valid and reliable" until such time that the CIT concluded otherwise). Although the domestic industry alleged that the respondents misrepresented or omitted certain facts, it failed to provide any concrete evidence to support its allegations. Absent such evidence, we consider Colakoglu's and Diler's de minimis margins to be valid and reliable, in accordance with our practice. We note that the domestic industry presented identical arguments in a separate request that the Department reconsider its past determinations in the context of changed circumstance reviews. Because the domestic industry similarly failed to provide compelling evidence indicating that any respondent in any prior segment of this proceeding provided false or misleading information in response to any inquiries pertaining to any antitrust investigations or findings or participation in trade associations, we also declined to initiate reviews to reopen those segments, consistent with our practice. For further discussion, see the October 17, 2007, Memorandum from Shawn Thompson and Irina Itkin to Stephen Claeys entitled, "Whether to Initiate the Changed Circumstances Reviews Requested in Certain Steel Concrete Reinforcing Bars from Turkey" (Changed Circumstances Reviews Memo).

We also disagree with the domestic industry's claims that Colakoglu and Diler made false statements at verification, and that as a consequence, the Department must conclude that their past de minimis margins are tainted. Specifically, the domestic industry alleged that: 1) despite a claim to the contrary, the Competition Board's report demonstrates that Colakoglu and Diler officials routinely attended meetings in which information was shared in order to plan collusive pricing and production strategies; and 2) shows that Colakoglu's price and scrap purchase lists were found in Diler's possession. Regarding the first point, the domestic industry included in its case brief various citations from the Competition Board's report regarding minutes of TISPA meetings which took place in 2003 and claims that these citations demonstrate that Colakoglu and Diler colluded to set prices and costs for rebar. As discussed in the "Preliminary Finding on Issues Related to the Competition Board's Report," we investigated whether there was evidence in the current POR that the respondents participated in collusive behavior. Because our examination of this issue at verification was limited to TISPA activities during this period, we disagree with the domestic industry that the Competition Board's report provides evidence that the respondents have been dishonest.

Moreover, regarding the second point, while the Competition Board's report at page 85 does state that Colakoglu's scrap consumption rate and price lists were found at Diler, the relevant quote is so general as to be virtually useless. Specifically, this quote states:

> {i}n this context, the competitors' annual scrap consumption rates was captured at Diler, Kroman's price list was captured at Kaptan, Colakoglu's price list was captured at ICDAS, Kardemir's price list was captured at Isdemir, Isdemir's and Kroman's price lists were captured at Kardemir, Izmir Iron and Steel's and Kardemir's price lists were captured at Colakoglu, Kroman's and Colakgolu's price lists were captured at Diler, Colakgolu's scrap purchase price list was captured at Isdemir."

See Attachment 1 at page 85, footnote 16, of the domestic industry's February 21, 2007, submission.

Conspicuous by its absence in this quote are the context of these lists, the time period that they covered, and the products that they included. Further, given that we did not specifically request information regarding these lists at verification from Colakoglu or Diler, we cannot conclude that, based on the record evidence, Diler made false statements at verification. Finally, regarding the domestic industry's reference to certain statements made by Diler company officials at verification, at the public hearing for this case, Diler explained "at best, there was a misunderstanding or mis-communication as to what the topic was and that the executive was not referring to the Competition Board Report but was referring to TISPA itself and its operations." See the October 10, 2007, hearing transcript at page 70. We find this explanation plausible and consistent with information elsewhere on the record.

We also disagree with the domestic industry's argument that Diler's claimed lack of awareness regarding alleged collusive activities at TISPA meetings and activities is not credible, given that a Diler company official was the chairman of TISPA during the period 2000 to 2006. As noted above, we found no evidence that Diler or any other respondent in these reviews colluded to set prices or costs during the POR. See, e.g., the Diler sales verification report at pages 6 through 8 and "Preliminary Finding on Issues Related to the Competition Board's Report" at pages 25 through 32.

We also disagree with the domestic industry's assertion that, based on the Competition Board's report, the Department should conclude that Colakoglu and Diler are likely to resume dumping once the antidumping duty order is revoked with respect to them. As discussed above, based on our analysis of the evidence on the record, we have no basis to conclude that Colakoglu or Diler engaged in behavior, as alleged by the domestic industry, aimed at manipulating or distorting the market. Specifically, we have found that there is no evidence that during the POR: 1) the respondents' home market prices and costs are unuseable because of a PMS, fictitious market or sales outside the ordinary course of trade); 2) the respondents' U.S. market prices are not bona fide; or 3) that the respondents coordinated to influence scrap prices in order to distort the market. See pages 4 and 29 through 32 of the "Preliminary Finding on Issues Related to the

Competition Board's Report." Therefore, considering our finding that the data provided by the respondents in the current review is reliable, the domestic industry's argument that the existence of Competition Board's report is indicative of the respondent's future behavior with respect to dumping is unavailing.

Regarding the domestic industry's assertion the Colakoglu and Diler must provide evidence to persuade the Department that they will not resume dumping in the future, we also disagree. The Amended Regulation Concerning Revocation states:

> {T}he Department intends to presume that an order is not necessary in the absence of additional evidence. We believe that such a presumption is consistent with prior Department practice as well as U.S. obligations under Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement . . . {A} decision to maintain an order must be substantiated by positive evidence . . . {A} thorough analysis of all relevant information requires a system in which there is a shifting burden of production such that the parties in the best position to provide relevant information are compelled to do so. All parties may be in a position to provide information concerning trends in prices and costs, currency movements, and other market and economic factors that may be relevant to the likelihood of future dumping. If no party provides information addressing these issues, we rest with the presumption that an order is not necessary in the absence of dumping . . . While the burden of producing evidence shifts among the parties, we emphasize that the Department does not impose a burden of proof on any party. The Department must weigh all of the evidence on the record and determine whether the continued application of the order is necessary to offset dumping.

See Amended Regulation Concerning Revocation, 64 FR at 51238.

Therefore, in accordance with the Amended Regulation Concerning Revocation, contrary to the domestic industry's assertion, the burden to provide evidence to support revocation (or no revocation) did not fall solely on Colakoglu and Diler, but rather on all parties that wish to provide information. As discussed above, we disagree with the domestic industry that Colakoglu and Diler made misleading statements at verification and, therefore, we do not find that their assertions that they will not resume dumping in the future are undermined.

Finally, we find the domestic industry's reliance on Hand Tools from the PRC and Steel Flat Products and Plate from Canada to be misplaced. In Hand Tools from the PRC, although the Department investigated the fact that the respondent acted as a sales agent for another company with respect to its revocation request, the Department ultimately denied the company revocation because it did not receive a de minimis margin in that review. See Hand Tools from the PRC at Comment 9. Moreover, in Steel Flat Products and Plate from Canada, the Department denied a company's revocation request because it was subject to an ongoing anti-circumvention inquiry; in that case the Department stated "until the anti-circumvention investigation has been

completed, it is not possible for the Department to determine that MRM will not sell merchandise to the United States at less than normal value in the future . . . {t}herefore, until the Department can be satisfied either that MRM has not circumvented the order or that, if it did, its sales of circumventing merchandise are not dumped, we cannot determine whether MRM has satisfied the first two prongs of our three- prong revocation test." See Steel Flat Products and Plate from Canada at Comment 1. Unlike in that case, here neither company is subject to an anti-circumvention inquiry. Moreover, as noted above, we have declined to initiate changed circumstances reviews to investigate the domestic industry's allegations, based on a finding that there is insufficient evidence of wrongdoing on the part of the respondents in the context of prior segments of this proceeding. Thus we have no basis to conclude that Colakoglu or Diler will likely resume dumping if the order is revoked.

In summary, we find that the domestic industry's arguments are based on speculation and there is no evidence on the record to support these allegations. It is well established that mere speculation does not constitute substantial evidence, and that the latter is the standard for substantiating an agency finding. See, e.g., Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) at 471-472; Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69 FR 20592 (Apr. 16, 2004) accompanying Issues and Decision Memorandum at Comment 4. Thus, based on the above reasons, we have revoked the antidumping duty order with respect to sales of rebar to the United States produced and exported by Colakoglu and Diler because we find that these companies have met the requirements for revocation pursuant to 19 CFR 351.222(b).

Comment 2: *Date of Sale for Colakoglu and Habas*

For purposes of the preliminary results, we determined that invoice date was the appropriate U.S. date of sale for Colakoglu and Habas because we previously found that the material terms of sale (i.e., price and quantity) were changeable after the contract date for these respondents and there were no changes in the sales process, customers, types of contracts, etc., between the previous administrative review and the current POR for them. Colakoglu and Habas argue that the Department should amend the margin calculations for the final results to use contract date as their U.S. date of sale, in accordance with 19 CFR 351.401(i), because this date best reflects the date upon which the material terms of sale were established, and the use of other dates is not supported by the evidence on the record.

According to Colakoglu and Habas, it is the Department's practice to treat each review as a unique segment of the proceeding and to make determinations based on the record evidence of each review. As support for this assertion, Colakoglu and Habas cite Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Finals Results and Rescission of Antidumping Duty Administrative Review, 72 FR 4486 (Jan. 31, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (SSSSC from Korea), where the Department stated that each record of a proceeding is separate and distinct, Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 74900 (Dec. 13,

2006), and accompanying Issues and Decision Memorandum at Comment 2, where the Department stated that its practice is to "consider each segment of a proceeding separately . . . the determination of the appropriate date of sale is factual in nature and therefore is based upon the evidence on the record of the particular segment of the proceeding," and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 FR 53127 (Sept. 9, 2003), and accompanying Issues and Decision Memorandum at Comment 6, where the Department stated that "each segment of the proceeding stands on its own."

As a result, Colakoglu and Habas argue that the Department may not make a decision in this case based solely on the facts gathered in a previous segment of the proceeding, but rather it must analyze the facts of the current record. Specifically, these respondents assert that the Department's finding that the material terms of sale changed between the contract and invoice date for their U.S. sales in the previous review are not relevant in the current review. Colakoglu asserts that, even if the Department continues to consider the date of sale determination from the previous review to be relevant, it should also consider the circumstances behind any differences in the material terms of sale between contract and invoice date. Colakoglu argues that, in doing so, the Department would realize that it is not Colakoglu's practice to change its material terms of sale after the contract date. At the public hearing for this case, Colakoglu further explained that the Department "fail{ed} to recognize that the changes identified in the last review were not consistent with the sales process {and} rather were due to circumstances beyond the control of either Colakoglu or its customer." See the October 10, 2007, hearing transcript at page 40. Habas also notes that the current litigation regarding the Department's determination to use invoice date as its U.S. date of sale in the 2003-2004 review underscores the idea that the appropriate date of sale should be determined by the facts of each segment.

According to Colakoglu and Habas, the contracts and invoices provided to the Department (which cover all reported U.S. sales) demonstrate that there were no changes to price or quantity between the contract and invoice dates (or for Colakoglu, the sales confirmation date, if that date precedes the date of the formal contract). Thus, Colakoglu and Habas argue that, because they have demonstrated that there were no changes to the material terms of sale between the contract and invoice dates for their U.S. sales, the Department should use contract date as the U.S. date of sale for them in accordance with its practice. See e.g., Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 72 FR 6522 (Feb. 2, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Steel Plate from Romania) (where the Department found that customer order acknowledgment date best reflected the date upon which the material terms of sale were established).

Further, Colakoglu contends that, when the Department finds no evidence that the documentation pertaining to an earlier date (e.g., contract, order acknowledgment, etc.) is susceptible to modification, it is the Department's practice to find that the material terms of sale were established on the earlier date. See e.g., Certain Hot-Rolled Carbon Steel Flat Products from

Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (Apr. 11, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (Steel Flat Products from Romania) (where the Department found that customer order acknowledgment date was the appropriate date of sale because there was "no evidence on the record indicating that the customer order acknowledgment date is susceptible to change or modification . . ."). Colakoglu and Habas argue that, in accordance with this practice, there is no evidence on the record of the current review demonstrating that the material terms of sale are susceptible to change after the contract date.

Habas contends that, in this review, the Department not only improperly changed its standard test for determining date of sale, but also inconsistently applied this standard across respondent companies. Habas claims regarding the first point that, while the Department's date of sale determination in 2004-2005 review involved examining whether a respondent's contract were "subject to change," in the current reviews the Department examined whether the contracts were "changeable." See Preliminary Results, 72 FR at 25256 and Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 26455, 26458 (May 5, 2006) (2004-2005 Rebar from Turkey Prelim). According to Habas, this difference in terminology reflects a marked shift in practice from the previous review because the phrase "subject to change" indicates that something is capable of change, while the word "changeable" indicates that something is apt to change. However, Habas contends that, regardless of the terminology used by the Department, Habas' contracts were neither "subject to change" nor "changeable," as evidenced by the fact that they did not, in fact, change in this review period. In any event, Habas argues that, in reality, any contract can be changed if both parties agree to the change. Therefore, according to Habas, the Department should examine whether there is evidence that the parties are bound by the contractual terms. Habas notes that, for example, it provided evidence that its contracts were followed by letters of credit that were "irrevocable," thus, making the contract binding on both parties. Thus, Habas argues that, based on the record, the Department cannot infer that the material terms of sale for its U.S. sales were not established at the contract date.

Regarding the second point, the respondents argue that the Department's preliminary decision to use invoice date as the U.S. date of sale for them is undermined by the fact that the Department used contract date as the U.S. date of sale for the respondent in the concurrent new shipper review (i.e., Kroman) based on no evidence of changes between contract and invoice date. Habas asserts that, when determining the appropriate U.S. date of sale for Kroman, the Department examined whether the material terms of sale did, in fact, change, and not whether they were subject to change. Therefore, Habas contends that the Department should conduct a similar analysis with regard to its U.S. date of sale.

Finally, Colakoglu and Habas assert that the Department's determination to use invoice date as the U.S. date of sale is contrary to the requirements set forth in the statute and the Department's regulations. Specifically, Colakoglu contends that, because section 773(a) of the Act requires the Department to make a fair comparison between EP and NV, the Department must compare U.S.

and home market sales having prices and other material terms of sale established within the same temporal period. Colakoglu argues that the Department has found that comparing U.S. and home market prices that were established months apart does not yield a fair comparison. For example, Colakoglu cites Steel Plate from Romania at Comment 1, citing Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 18, 1998) (Steel Pipe from Korea), where the Department found that using invoice date as the date of sale when the terms of sale were established at the contract date would lead to "comparing home market sales to U.S. sales whose material terms of sales were set months earlier." In the instant case, Colakoglu maintains that the evidence on the record demonstrates that there is a significant lag time between the contract and invoice dates for its U.S. sales and, therefore, using invoice date as the date of sale leads to inappropriate comparisons between U.S. and home market sales.

Habas contends that the Department's rationale for presuming that invoice date is the appropriate date of sale in most cases is articulated in the Preamble. Habas states that the Department expressed concerns in the preamble that, even if the material terms of sale were agreed to prior to invoicing, this date is not necessarily the date upon which they are truly established for a variety of reasons (e.g., the buyer and seller can continue to negotiate until a sale is invoiced, customers can change their minds and sellers are often responsive to those changes, the contract date has little relevance because the terms are truly fixed when payment is exchanged, etc.). See Preamble, 62 FR 27349. However, Habas argues that the information it provided regarding its contracts and negotiation process has addressed all of these concerns and, thus, the Department should accept its contract dates as U.S. date of sale.

The domestic industry agrees with the Department's preliminary determination, asserting that the Department's regulations at 19 CFR 351.401(i) establish a clear preference for using invoice date. Regarding use of an alternate date as the date of sale, the domestic industry contends that 19 CFR 351.401(i) provides that the Department may use an alternate date only if it is satisfied that a different date better reflects the date on which the respondent establishes the material terms of sale. However, the domestic industry also notes that the Preamble states that "absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice." See Preamble, 62 FR 27349. Further, the domestic industry argues that the CIT has held that the Department should only deviate from using invoice date as the date of sale in "unusual" situations and the Department is not required to use an alternate date even if the terms of sale were not subject to change between that date and the invoice date. As support for its position, the domestic industry cites Thai Pineapple Canning Industry Corp., Ltd. and Mitsubishi International Corp. v. United States, 24 CIT 107, 109 (2000) (Thai Pineapple), where the CIT stated "Commerce does not cite industry practice or a lag between invoice and shipment, or any other unusual situation, indicating a date other than invoice date should be used," and Hornos Electricos de Venezuela, S.A. (Hevensa) v. United States, 27 CIT 285 F. Supp. 2d 1353, 1367 (2003) (Hevensa), where the CIT held that "even if the material terms of sale are not subject to change, the Department has the authority to nonetheless use invoice date as the date of sale; discretion in this instance means

that the Department may use a date of sale other than invoice date, but is not required to do so." See also Allied Tube and Conduit Corp. v. United States, 25 CIT 23, 25, 132 F. Supp. 2d 1087, 1090 (2001) (Allied Tube).

The domestic industry further contends that there are three prerequisites for determining that a date other than invoice date is appropriate as the date of sale. First, the domestic industry asserts that the Department must be able to review a respondent's complete U.S. sales documentation. See Oil Country Tubular Goods From Korea; Final Results of Antidumping Duty Administrative Review, 65 FR 13364 (Mar. 13, 2000), and accompanying Issues and Decision Memorandum at Comment 1 (OCTG from Korea) (where the Department stated "{a}bsent complete sales documentation supporting a respondent's argument for a change in sale date methodology, and demonstrating a shift in their standard business practices, the Department cannot conclude that invoice date is no longer the appropriate date of sale because we cannot determine whether or not there were changes in the material terms of sale not included in the sample"). Second, the domestic industry argues that, based on the complete sales documentation, the Department must be able to determine that there were no changes to the material terms of sale after the alternate date. See Allied Tube, F. Supp. 2d at 1090 (where the CIT stated "{a}s elaborated by Department practice, a date other than invoice date better reflects the date when material terms of sale are established if the party shows that the material terms of sale undergo no meaningful change . . . between the proposed date and the invoice date"). Third, the domestic industry maintains that, based on the complete sales documentation, the Department must be able to determine that the material terms of sale were not subject to change after the alternate date. See Hevensa, F. Supp. 2d at 1367 (where the CIT stated "{o}nly if the material terms are not subject to change between the proposed date and the invoice date, or the agency provides a rational explanation as to why the alternate date better reflects the date when material terms are established, may the Department exercise its discretion to rely on a date other than invoice date for the date of sale").[5] In the instant case, the domestic industry argues that, despite their obligation to do so, Colakoglu and Habas have failed to demonstrate that the above prerequisites have been met. See Allied Tube, F. Supp. 2d at 1090 (where the CIT stated "{t}he party seeking to establish a date of sale other than the invoice date bears the burden of producing sufficient evidence to satisfy the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale").

Although the domestic industry agrees that each review is a separate segment, it argues that this fact does not obligate the Department not to consider past determinations or methodologies that have been developed over many years of reviewing the same company. For example, the domestic industry argues that, in OCTG from Korea, the Department considered facts from prior

[5] The domestic industry also cites: 2003-2004 Rebar from Turkey Final Results at Comment 6; OCTG from Korea at Comment 1; and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12933-35 (Mar. 16, 1999).

reviews when making a date-of-sale determination.[6] In that case, the Department explained that caution is required in changing a long-standing date-of-sale determination for particular companies to avoid double-counting or omitting sales. The Department further found in OCTG from Korea that, because it had determined to use invoice date as the date of the sale in previous reviews, it would not use contract date unless the respondent provided full sales documentation and demonstrated that the material terms of sale did not change or were not subject to change. Based on this precedent, the domestic industry argues that the Department is justified in using invoice date as U.S. date of sale because there is no evidence on the record to contradict the Department's previous determination that material terms of sale in Colakoglu's and Habas' contracts were subject to change.

In addition, the domestic industry disagrees with Colakoglu's assertion that there is a significant lag time between the contract and invoice dates which results in inappropriate comparisons of U.S. and home market sales. Rather, the domestic industry contends that, based on its analysis of the information provided by Colakoglu, the average lag time between contract date and invoice date is not as significant as Colakoglu asserts. Moreover, the domestic industry argues that, while in certain cases the Department has determined a significant lag time to be a relevant factor in its date-of-sale determination, it has also found that invoice date can still be the appropriate date of sale even where lag time does exist. The domestic industry cites Steel Pipe from Korea, 63 FR at 32835-36, where the Department found that contract date was the appropriate date of sale because a significant lag period existed between invoice and contract date due to the made-to-order nature of the merchandise, and Certain Stainless Steel Wire Rod From India; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 38976, 38979 (July 21, 1997), where the Department found that, because the lag time between the respondent's purchase order and invoice date was not exceptionally long, invoice date was the appropriate date of sale.

Regarding Habas, the domestic industry contends that this respondent submitted one full U.S. sales trace, as well as the invoices and contracts related to the remainder of its U.S. sales. According to the domestic industry, while Habas stated that these documents showed that there were no changes to the material terms of sale between contract and invoice date, it did not actually demonstrate that its material terms of sale were not subject to change but rather merely argued that, because there is no evidence on the record to demonstrate that its material terms of

[6] The domestic industry also notes that, in general, the Department routinely references facts from prior proceedings in administrative review determinations. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (Feb. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 3 (PET Film from India) and Low Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review, 71 FR 52318 (Sept. 5, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (Uranium from France).

sale were subject to change, the Department cannot infer that the terms did, in fact, change.[7] The domestic industry also notes that Habas attempted to demonstrate that its material terms of sale in its contracts are not subject to change by stating that there are "irrevocable" letters of credit issued for each U.S. sale; however, the domestic industry argues that this point is irrelevant because a letter of credit may be amended or revoked at any time if agreed upon by the bank and beneficiary. Thus, the domestic industry contends that if Habas and its customer agreed to change the material terms of sale, they would not be prevented from doing so because they could either amend or revoke the original letter of credit.

Moreover, the domestic industry contends that Habas' argument that any contract can be changed if both parties agree to the change is misplaced, given that both the Department and the CIT held that the use of an alternate date as date of sale should apply only to unusual circumstances for that precise reason. According to the domestic industry, the Department has acknowledged that contracts, no matter how they are phrased, are by and large subject to change and it would be highly unusual for the terms of a contract not to be subject to change. See Preamble, 62 FR at 27348; see also Thai Pineapple, 24 CIT at 109.

Finally, the domestic industry disagrees with Colakoglu's and Habas' contention that the Department's decision to use invoice date as the U.S. date of sale for them is undermined by the fact that it used contract date for Kroman. Specifically, the domestic industry notes that Kroman has not participated in any prior reviews and in the current review there were no changes to the material terms of sale between the contract and invoice date for its U.S. sale; thus, the Department has not found the material terms of sale stated in Kroman's U.S. sales contracts to be subject to change. According to the domestic industry, because Colakoglu and Habas have participated in past reviews in which the Department determined that the material terms of sale stated in their U.S. sales contracts changed between contract and invoice date and there have been no changes to their sales or contracting processes, it is clear that, unlike with Kroman, the material terms of sale are subject to change.

Finally, the domestic industry disagrees that Habas' reliance on the current litigation regarding its U.S. date of sale in the 2003-2004 review is germane because the CIT has not yet ruled on this issue.

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[7] The domestic industry also asserts that Habas' argument regarding the difference between the terminology "subject to change" and "changeable" is irrelevant because Habas stated that, regardless of the terminology used by the Department, its contracts were neither "subject to change" nor "changeable."

Department's Position:

We disagree with Colakoglu and Habas that contract date is the appropriate date of sale for their U.S. sales during the POR. The Department's regulations at 19 CFR 351.401(i) establish the date of sale as the date on which the material terms of sale (i.e., price and quantity) are established. Specifically, 19 CFR 351.401(i) states:

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

The CIT has held that the Department has the discretion over when to use invoice date, or an alternate date, as date of sale. For example, in Hevensa, the CIT stated, "even if the material terms of sale are not subject to change, Commerce has the authority to nonetheless use the invoice date as the date of sale; discretion in this instance means that Commerce may use a date of sale other than invoice date, but it is not required to do so." See Hevensa, 285 F. Supp. 2d at 1367. The CIT in that case went on to say:

> Commerce correctly applied the regulatory presumption in favor of invoice date in this instance. "{T}he party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer established the material terms of sale.'" (citation omitted).

See id. See also Thai Pineapple, 24 CIT at 109 (where the CIT found that the Department should only abandon the use of invoice date in "unusual" instances).

In the Preamble, the Department explains the exception to using the invoice date as the presumptive date of sale, as follows:

> If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

See Preamble, 62 FR at 27349.

In the instant case, Colakgolu and Habas sold rebar pursuant to formal sales agreements with their U.S. customers. After considering Colakgolu's and Habas' arguments, we continue to find that contract date does not best represent the date upon which the "material terms of sale are finally established" within the meaning of 19 CFR 351.401(i). This finding is made after many years of experience in dealing with these respondents and is based on our determination in the previous administrative review that the material terms of sale were changeable after the contract date for these respondents. Because neither respondent reported a change in the selling practices during the current POR and the relevant legal terminology of the respondents' contracts has not changed between PORs, we find that contract date is not an appropriate date as date of sale because this date does not reflect when the material terms of sale were established.

In the 2003-2004 and 2004-2005 reviews, Colakoglu and Habas requested that the Department use contract date as their U.S. date of sale. However, in those reviews we determined that the earlier of shipment or invoice date was the appropriate U.S. date of sale for Colakoglu and Habas because we found that there were changes to their material terms of sale after contract date. See 2004-2005 Rebar from Turkey Prelim, 71 FR at 26458, unchanged in 2004-2005 Rebar from Turkey Final and Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Notice of Intent To Revoke in Part, 70 FR 23990, 23992 (May 6, 2005), unchanged in 2003-2004 Rebar from Turkey Final Results at Comment 6. We find unpersuasive Colakoglu's argument that the Department should take into account the reasons for the changes to its contracts in the last review, which Colakoglu claims were attributable to circumstances beyond the control of either itself or its customer. Colakoglu neither pointed to any specific evidence on the record of the current or previous reviews to support this assertion, nor did it provide evidence that its selling practices in the previous review were unrepresentative of its selling practices in general. Indeed, Colakoglu stated at the public hearing for this case that the Department "is correct that there has been no change to sales process" between the previous and current reviews. See the October 10, 2007, hearing transcript at page 40. Similarly, we disagree with Habas that litigation involving Habas' U.S. date of sale in the 2003-2004 review is cause to change our position here, given that the matter is currently pending before the CIT. Therefore, we continue to that it is appropriate to use the earlier of shipment or invoice date as Colakoglu's and Habas' U.S. date of sale in the instant review, consistent with the date-of-sale methodology established in the previous review.

We disagree with Colakoglu and Habas that the Department may not consider findings made in previous segments of this proceeding. While we agree with these respondents that each review is a separate segment, the Department is not precluded from taking into account past determinations in those segments. Indeed, the Department has a well-established practice of relying on findings made in prior segments of a particular proceeding. See, e.g., PET Film from India at Comment 3; Uranium from France at Comment 1; Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico, 59 FR 28844 (June 3, 1994) (where the Department determined that is was appropriate to examine whether a

respondent's sales were outside the ordinary course of trade based on "such a finding in a previous review"); and Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159, 15164 (Mar. 31, 1994) (where the Department determined to use constructed value rather than a third-country market based on "factors detailed in our determinations from previous reviews").

Moreover, regarding the consideration of past date-of-sale determinations, the Department stated the following in OCTG from Korea:

> {T}o avoid manipulation or double-counting or omitting sales, the Department must be particularly cautious about changing a long-standing date-of-sale determination . . . The date of sale determination should not be changed from review to review without evidence of changes in a company's business or marketing practices. This is because changes to the material terms of sale between contract date and invoice date found in prior periods tend to indicate that such terms were subject to change in the current POR, even if, in fact, they did not change. Nothing submitted by respondent suggests there was a change in their approach to selling, third-country customers, market, or any other aspects of their standard business practices, which appear to routinely allow for changes to the material terms of sale, as established in the sales contract, during the time period between contract date and invoice date.

See OCTG from Korea at Comment 1.

In addition, in SSSSC from Korea, the Department stated the following:

> In this case, we note that the Department has previously used invoice date as {the respondent's} home market date of sale in prior segments of this proceeding . . . In addition, we note that evidence on the record demonstrates that {the respondent's} selling practices have not changed in the home market since the prior review . . . Therefore, pursuant to the Department's regulations and practice, we continue to find that the terms of sale for DMC's home market sales were generally set at the invoice date.

See SSSSC from Korea at Comment 5.

Based on the Department's practice articulated in OCTG from Korea and SSSSC from Korea, we continue to find that it is appropriate to take into account our date of sale determination from the previous administrative review with respect to Colakoglu and Habas.

We also disagree with Colakoglu and Habas that our decision to use invoice date as U.S. date of sale in the current POR was based solely on the facts gathered in a previous administrative review. Because the Department had previously determined that the material terms of sale of

their U.S. contracts were subject to change, we analyzed whether there were changes in either respondent's sales process, customers, types of contracts, etc., between the previous administrative review and the current POR that would affect our date of sale determination. As a result of this analysis, we found no changes in their selling practices. Thus, we found no reason to reverse the date of sale determination made in the prior segment.

Further, we find Colakoglu's reliance on Steel Flat Products from Romania to be misplaced. Colakoglu argues that this case stands for the proposition that, if there is no evidence on the record that a proposed date of sale is susceptible to modification, it is the Department's practice to find that the material terms of sale were established on that date. However, in the instant case, we have found that there is evidence that Colakoglu's and Habas' material terms of sale are susceptible to change after the contract date based on our date of sale determination in the previous review. In this regard, we disagree with Habas' argument that the difference between the terminology "subject to change" and "changeable" is meaningful. While this terminology is different, there is no meaningful distinction because contracts that are changeable are also subject to change. We also disagree with Habas' argument that the fact that its letters of credit are "irrevocable" indicates that the terms of sale in its contracts are not susceptible to change. In the Department's experience, we have found that a letter of credit may be amended or revoked if agreed upon by the bank and beneficiary. Thus, if Habas and its customer agreed to change the material terms of sale, they would not be prevented from doing so because they could either amend or revoke the original letter of credit. As evidence of the truth of this statement, in the previous review we found that certain respondents amended their letters of credit for various U.S. sales. See 2004-2005 Rebar from Turkey Prelim, 71 FR at 26458.

Moreover, we disagree with Colakoglu's and Habas' claim that the Department made inconsistent date of sale determinations across respondents. The facts surrounding our date of sale determination for Kroman are distinguishable from those for Colakgolu and Habas. Specifically, we note that Kroman, unlike Colakoglu and Habas, has not participated previously in this proceeding and, thus, we have not made any prior determinations regarding whether its material terms of sale are set as of its contract date. Thus, we used contract date as Kroman's U.S. date of sale because we determined that there were no changes to the material terms of sale between the contract and invoice date for its single U.S. sale and we have not previously found that the material terms of sale are subject to change.

Finally, we disagree with Colakoglu that lag time between its contract and invoice dates is relevant to our date of sale determination. As noted above, the Preamble states "{i}f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." In this case, we are not satisfied that the material terms of sale were established at a date prior to the invoice date because Colakoglu's and Habas' contracts are subject to change. Therefore, contract date is not an appropriate date to consider as date of sale regardless of the lag time between these two dates.

Further, we disagree with Habas that it has demonstrated that its sales and negotiation process addresses all of the concerns laid out in the Preamble regarding the presumption that contract date is not an appropriate date of sale. As discussed above, because we continue to find it appropriate to consider the fact that we previously determined that its contracts are susceptible to change, then we also find that Habas has not demonstrated that its material terms of sale are truly "established" in the minds of the buyer and seller, as explained in the Preamble.

Therefore, for the foregoing reasons, we have continued to use the earlier of shipment or invoice date as the U.S. date of sale for Colakoglu and Habas for purposes of the final results.

Comment 3: *Model Matching*

In performing our calculations for the preliminary results, we compared sales of products sold in the United States to the sales of the most similar products in Turkey, determined by reference to the following characteristics: form, grade, size, and industry standard specification. Regarding grade and specification, we developed a methodology for assigning product characteristic codes consistently across respondent companies based on the yield strength (for grade) and relative comparability of the specifications (for specification). Although the domestic industry agrees with the Department's stated intention of assigning product characteristics consistently across respondents, it argues that the Department's methodology ultimately resulted in arbitrary and unsupported product matches.

According to the domestic industry, the Department's practice is to base the model matching criteria only on those physical characteristics that are meaningful or significant. As support for this position, the domestic industry cites Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (Mar. 15, 2005), and accompanying Issues and Decision Memorandum at Comment 2 (citing New World Pasta Co. v. United States, 316 F. Supp. 2d 1338, 1352 (CIT 2004); Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico, 64 FR 14872, 14875 (Mar. 29, 1999); Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 63 FR 18879, 18881 (Apr. 16, 1998); and Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta from Italy, 67 FR 300, 302 (Jan. 3, 2002).

The domestic industry argues that, despite this practice, the Department's methodology for assigning the specification code in the Preliminary Results does not appear to reflect meaningful or significant characteristics, or it does not do so in a rational way. For example, the domestic industry notes that, under the Department's matching hierarchy, products produced to ASTM specification A615 are assigned codes which make them most similar to products produced to Turkish specification TSE 708 III-a; however, the domestic industry claims that this match does not appear to be accurate, because rebar produced to Turkish specification TSE 708 Grade IV-a

is chemically identical to ASTM A615 Grade 40 products. Indeed, the domestic industry maintains that the only difference between ASTM A615 Grade 40 and TSE 708 Grade IV-a is yield strength, which is already accounted for in the grade field. The domestic industry cites additional examples where the Department's coding appears to be arbitrary, including one where it claims that the Department deemed certain in-scope specifications (i.e., DIN 488 and ASTM 708) to be more dissimilar to subject merchandise than one allegedly out-of-scope product (i.e., ASTM A510).

According to the domestic industry, the Department's explanation for its matching methodology consisted of two sentences, which it contends is clearly inadequate. For example, the domestic industry notes that the Department indicated that its hierarchy was "based on the relative comparability of the specifications," but it explained neither how it determined that the specifications were comparable, nor how the resulting matches were accurate. The domestic industry contends that the Department is required to provide it an adequate explanation, and this explanation must clearly demonstrate that the Department's methodology is neither arbitrary nor based on speculation.[8] To this end, the domestic industry requested that the Department provide a clear and detailed explanation of how it determined the relative comparability of specifications prior to the final results and allow the parties an additional opportunity to submit comments on the appropriateness of this methodology. The Department did not grant this request for reasons discussed below in the Department's position to this comment.

Two of the respondents maintain that the domestic industry's concerns do not apply to them. Habas asserts that all of its home market sales are of a single grade and specification, while Kroman states that its one U.S. sale matched to the same grade and specification in the home market. Three additional respondents (i.e., Colakoglu, Diler, and Ekinciler) contend that the Department's methodology is appropriate and, thus, an additional comment period is not warranted. The remaining respondent, Kaptan, did not comment on this issue.

Specifically, Colakoglu and Ekinciler note that they provided information in their December 2006 submissions which clearly demonstrates that rebar produced to Turkish standard TSE 708 III-a is the closest match to ASTM A615 in both Grades 40 and 60. The respondents point out that the domestic industry chose not to rebut any of the facts or comments contained in these submissions, nor did it provide any evidence in its case brief to contradict the respondents' claims. Rather, they contend that the domestic industry's argument demonstrates a "reckless

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[8] As support for its position, the domestic industry cites NTN Bearing Corp. of America v. United States, 747 F. Supp. 726, 736 (CIT 1990), where the CIT affirmed the Department's choice of methodology when it provided "clear, reasonable explanations for the methodology to be implemented," and Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989), aff'd 901 F.2d 1089 (Fed. Cir. 1990), where the CIT dismissed the domestic industry's argument that the respondent could have hidden less-than-fair-value sales by improperly labeling them as export sales because it was "mere speculation."

disregard of the facts" because the evidence on the record shows significant chemical differences between specifications TSE 708 IV-a and ASTM A615 Grade 40, including differences in carbon, sulfur, nitrogen, carbon equivalent restrictions, as well as differences in tensile strength and tensile strength to yield strength ratio requirements.

The respondents assert that, of these differences, two are particularly important. First, the carbon equivalent restriction defines the difference between weldable and non-weldable products. According to the respondents, Turkish TSE 708 IV-a products are weldable, while ASTM A615 Grade 40 products are not. Colakoglu and Ekinciler contend that this fact is relevant because, during the POR, they did not sell any products which were suitable for welding. Moreover, the respondents note that the yield strength requirement of the Turkish product is almost twice as much as that of the ASTM product. Colakoglu and Ekinciler assert that this fact is similarly relevant, because the difference in yield strength is the highest difference in yield or tensile strengths among all the grades reported in Colakoglu's and Ekinciler's sales listings. Therefore, the respondents maintain that the Department should continue to apply the same model matching hierarchy in the final results.

Department's Position:

In the preliminary results, we compared each respondent's products sold in the U.S. and home markets that were identical with respect to the following characteristics: form, grade, size, and industry standard specification. Where there were no home market sales of foreign like product that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority. In its case brief, the domestic industry questioned how the Department determined that products were most similar with respect to two of these characteristics, grade and specification.

Regarding grade, the Department's questionnaire instructs respondents to report the grade of rebar (i.e., grade numbers 40, 60, etc.) and to provide an explanation of the classification for any given grade. In their initial questionnaire responses, the respondents reported the grade and specification codes in accordance with the instructions in the questionnaire, accompanied by charts showing the chemical composition of certain products. Because the questionnaire did not provide specific guidance on how to report much of this data, this resulted in the inconsistent reporting of codes across respondents. Therefore, the domestic industry requested that the Department solicit additional information from the respondents which would permit it to create a consistent model matching hierarchy. Based on these comments, we requested that Colakoglu, Diler, Ekinciler, and Kroman provide the specifications and grades of rebar sold in their home markets, as well as a chart (with narrative explanation) showing the similarity of each home market product to each product sold in the United States based on the physical requirements and

chemical composition of the rebar.[9] We also requested that the respondents explain the differences with respect to grade between the products sold in the home and U.S. markets.

In response to this request, the respondents provided the current specification standards for the rebar sold in their home markets, and each indicated that Turkish specification TSE 708 Grade III-a was the most similar match to its rebar sold in the U.S. market (i.e., ASTM A615 Grades 40 and/or 60). Moreover, each respondent ranked its remaining home market products in terms of similarity to its U.S. products and provided a detailed explanation supporting these matches, including (for Colakoglu) a discussion of the carbon content of each product which defines the difference between weldable and non-weldable products, as well as the yield strength requirement of each product.

After analyzing the information on the record with respect to this issue, we developed a matching hierarchy which consistently assigned grade and specification codes for all products reported in the respondents' sales databases. In developing this system, we took into account the minimum specified yield strength for each grade, as well as the relative comparability for specification. Based on this analysis, we determined that TSE 708 Grade I-a is the most similar match for ASTM A615 Grade 40 because of the similarity in grade (minimum yield strength), while TSE Grade III-a, DIN 488, and ASTM A706 were equally similar to ASTM A615 Grade 60 because of the equivalency of grade (minimum yield strength).[10] Of these latter products, we determined that TSE 708 Grade III-a was the most comparable specification to ASTM A615 Grade 60, given that both TSE 708 Grade III-a and ASTM A615 Grade 60 are not designed for welding.[11] For a complete ranking of products within this matching hierarchy, see the April 30, 2007, Memorandum to the File from Brianne Riker entitled "Product Characteristic Coding for the

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[9] We note that Habas and Kaptan only sold rebar produced to one specification and grade (i.e., Turkish standard TSE 708 Grade III-a) in their home markets. Therefore, it was unnecessary to request additional information from these respondents.

[10] We note that the grade code's position ahead of the specification code in the matching hierarchy defines the most similar matches when there are no other products with exactly the same grade code.

[11] For example, the ASTM A615 specification warns users that "{w}elding of the material in this specification should be approached with caution since no specific provisions have been included to enhance its weldability." See Colakoglu's July 25, 2006, section A response at exhibit A-19 at 1.3. In contrast, ASTM A706 states that "{t}his specification limits chemical composition...and carbon equivalent...to enhance the weldability of the material." See Diler's December 21, 2006, supplemental response at exhibit A-23-C at 1.5. In addition, while information on the record suggests that DIN 488 products do not have a carbon equivalency, each of the grades within DIN 488 are designated for welding by various welding processes. See Diler's September 15, 2006, response at Exhibit B-17, Table 1.

Preliminary Results in the 2005-2006 Antidumping Duty Administrative and New Shipper Reviews on Certain Steel Concrete Reinforcing Bars from Turkey."

As noted above, the data used to perform our analysis were submitted well in advance of the preliminary results, as was each of the respondent's proposed matches. The domestic industry did not comment on this information prior to the submission of its case brief, nor did it suggest alternate matches. Because the record contains ample documentation regarding the technical specifications of each product, we disagree with the domestic industry that the record is unclear or that additional time was needed to comment on this issue.

As to the specifics of the domestic industry's arguments, we disagree that the codes assigned for yield strength and specification were not assigned in a meaningful way. In the preliminary results, the Department disclosed its methodology for uniformly assigning the grade and specification codes consistently across respondents. Rather than providing an alternative matching methodology, the domestic industry merely questioned certain of the code assignments made by the Department in the preliminary results. After considering these arguments, we continue to find that the hierarchy followed in our preliminary results is appropriate.

Regarding the domestic industry's claim that TSE 708 Grade IV-a is chemically identical to ASTM A615 Grade 40 (and should be coded as such), we disagree. The technical specifications of these products reveal differences in carbon, sulfur, nitrogen, carbon equivalent restrictions, as well as differences in tensile strength and tensile strength to yield strength ratio requirements. Most importantly, the carbon equivalent restriction defines the difference between weldable and non-weldable products, with the carbon equivalent restriction of Turkish TSE 708 Grade IV-a indicating that it is a product designed for welding. In contrast, ASTM A615 Grade 40 does not have a maximum carbon equivalent restriction and, as noted above, contains specific warnings with respect to welding. See Colakoglu's July 25, 2006, section A response at exhibit A-19 at 1.3. Therefore, contrary to the domestic industry's claim that the only difference between these products is yield strength, and that difference has already been accounted for in the grade code field, we find that products produced to the specification TSE 708 Grade IV-a are not as similar to ASTM A615 Grade 40 as those produced to TSE 708 Grade III-a because of the differences in weldability. Similarly, products produced to specifications DIN 488 and ASTM A706 are designed for welding, and thus we find that they are also less similar, with respect to specification, to ASTM A615 than both TSE 708 Grade I-a and TSE 708 Grade III-a.

Finally, we disagree with the domestic industry's claim that the Department's code assignments result in certain in-scope specifications being less similar to each other than to an allegedly out-of-scope product (i.e., ASTM A510). We have reviewed the technical specifications for ASTM A510 and find that we are not able to conclude that all merchandise produced to this specification would be outside the scope of the order. Moreover, we note that one of the respondents designated a few sales of this product in its home market as foreign like product and reported these sales in its home market sales listing. Therefore, we disagree that our inclusion of this specification in the matching hierarchy indicates that this hierarchy is arbitrary, or that its

results are meaningless. Thus, for the foregoing reasons, we have continued to use this hierarchy for purposes of the final results.

Comment 4: *Methodology for Determining Contemporaneous Sales in the Home Market*

In the preliminary results we compared U.S. sales of subject merchandise to contemporaneous sales of rebar in Turkey. We determined which sales were contemporaneous following the guidance set forth in 19 CFR 351.414(e)(2), which instructs the Department to compare each U.S. sale to comparison market sales made within the six month "window" surrounding the sale. This regulation also sets forth a methodology for determining which sales within the window are the most contemporaneous.

The domestic industry contends that certain aspects of the methodology set forth in 19 CFR 351.414(e)(2) are illogical and cause distortive results. Thus, the domestic industry argues that the Department should change its methodology for the final results to use an allegedly more logical and supportable approach for determining the appropriate normal value for U.S. sales. The domestic industry claims that using a non-distortive approach is especially important in this segment of the proceeding, given that Colakoglu and Diler have requested that the Department revoke the order with respect to their shipments of subject merchandise here.

According to the domestic industry, the Department has never explained why home market sales made prior to the U.S. sale are more contemporaneous than ones made an equal or lesser time after the U.S. sale, and indeed it cannot, given that there is no rational explanation for such a methodology. Therefore, the domestic industry argues that, in instances where the Department is unable to compare sales of the most similar products in the same month, it should compare products sold in the United States to sales of the most similar product in Turkey in the month closest to the U.S. sale, irrespective of whether that month is before or after the month in which the U.S. sale was made. In cases where there were sales of the most similar product in both the month before and after the month of the U.S. sale, the domestic industry contends that the Department should use proximity to the U.S. sale as a "tie breaker" (i.e., the Department should look to the month prior to the U.S. sale if the date of sale is in the first half of the month, and the month after the U.S. sale if the date of sale in the second half of the month). The domestic industry provides suggested programming language for this methodology at Exhibit 3 of its August 23, 2007, case brief.

The respondents contend that the Department's methodology of looking back 90 days before looking forward 60 days is reasonable because it reflects the concept that respondents should quote their U.S. prices based on present and known (i.e., recent past) conditions, rather than based on unknown (i.e., future) conditions. They argue that the Department should continue to implement this well-established practice for the final results.

In addition, Diler contends that the domestic industry's argument should be rejected because the Department's contemporaneity rule is codified in the Department's regulations at 19 CFR 351.414(e)(2), which states that the method of selecting contemporaneous months shall "normally" be applied and the Department is bound by its regulations.[12] According to Diler, the Department has consistently applied the contemporaneity rule in virtually every administrative review since the mid 1980s and has rejected requests to depart from the methodology. In particular, Diler cites the Final Results of Antidumping Duty Administrative Review; Stainless Steel Hollow Products from Sweden, 57 FR 21389, 21392 (May 20, 1992) (Stainless Steel Hollow Products from Sweden), where the Department rejected the respondent's request to depart from the 90/60 day rule to minimize distortions resulting from metal price fluctuations, Final Results of Antidumping Duty Administrative Review; Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand, 56 FR 58355, 58359 (Nov. 19, 1991) (Pipes and Tubes from Thailand), where the Department declined to depart from its normal practice of applying the 90/60 day rule, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31714 (July 11, 1991) (AFBs from Germany), where the Department rejected a request to depart from its 90/60 rule to find matches for two unmatched sales outside the 90/60 day window, and Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results, 55 FR 47093, 47098 (Nov. 9, 1990) (Color Television Receivers from Taiwan), where the Department reversed its preliminary determination to look outside the 90/60 day window for model matches.

In fact, Diler maintains that there are only two circumstances where the Department has found it appropriate to depart from its 90/60 day rule, neither of which are present here. Specifically, Diler notes that in Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067, 69068 (Dec. 31, 1996), the Department departed from the 90/60 day rule because Turkey's economy experienced hyperinflation, while in Final Results of Antidumping Duty Administrative Review; Certain Valves and Connections, of Brass for Use in Fire Protection Systems, from Italy, 56 FR 5388, 5389 (Feb. 11, 1991), the Department established the contemporaneous period using the date of a change in list prices. Diler argues that the domestic industry has provided no basis for departing from its regulations in these reviews.

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[12] As support for this assertion, Diler cites the following Supreme Court cases: Fort Stewart Schools v. Fed. Labor Relations Auth., 495 U.S. 641, 654 (1990); United States v. Nixon, 418 U.S. 683, 696 (1974); United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); Service v. Dulles, 354 U.S. 363, 388 (1957); and Vitarellli v. Seaton, 359 U.S. 535, 540 (1959). Further, Diler cites the following U.S. Court of Appeals for the Federal Circuit cases: Torrington Co. v. United States, 82 F.3d 1039, 1049 (Fed. Cir. 1996); Saddler v. Dep't. of the Army, 68 F.3d 1357, 1358 (Fed. Cir. 1995); and Voge v. United States, 844 F.2d 776, 779 (Fed. Cir. 1988).

According to Diler, the domestic industry's argument is a results-driven one and, thus, it is not unlike arguments previously rejected by the Department. For example, Diler argues that in Pipes and Tubes from Thailand, 56 FR at 58359, the Department rejected a request by the domestic industry to depart from the 90/60 day rule because "certain instances where use of constructed value would have resulted in a smaller differential between United States price and foreign market value." Thus the respondents contend that the Department should continue to make contemporaneous comparisons in this review following the methodology employed in the preliminary results.

Finally, Habas argues that the domestic industry has not shown that this issue has any impact on Habas' margin calculations. In fact, Habas argues that, because each of its U.S. sales matches to a comparison market sale in the same month, this issue is irrelevant to Habas' margin calculation.

Department's Position:

We disagree with the domestic industry that it is appropriate to deviate from our regulations and standard practice in conducting an administrative review and new shipper review in this case. The Department's regulations at 19 CFR 351.414(e)(2) state:

> Normally the Secretary will select as the contemporaneous month the first of the following which applies:
>
> (i) The month during which the particular U.S. sale under consideration was made;
>
> (ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product;
>
> (iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

In these reviews, we followed the Department's regulations and practice when determining normal value for each U.S. transaction. The fact that the Department has followed this regulation in virtually all reviews has ensured consistency and transparency in the Department's methodology across cases. For example, in Pipes and Tubes from Thailand, the Department stated:

> While it may be true, as the Coalition contends, that for certain transactions, comparing purchase price with constructed value rather than with sales of similar, contemporaneous merchandise in the home market would have yielded lower dumping margins, the fact that different methodologies yield different results is not per se a reason for the

> Department to depart from its normal practice, which is based on neutral, objective, and predictable criteria not specific to any particular case.

See Pipes and Tubes from Thailand, 56 FR at 58359.

In these reviews, the domestic industry has not provided a case-specific reason for the Department to deviate from its regulations, but rather has questioned the underlying theory behind the regulation itself. While the domestic industry has alleged that the Department's methodology is distortive, it failed to provide any analysis to support its statement. Given that the respondents' selling practices have not changed in this review, we find no reason to depart from our normal practice.

Finally, we disagree with the domestic industry that Colakoglu's and Diler's eligibility for revocation is relevant here. As noted above, the fact that different methodologies yield different results is not *per se* a reason for the Department to depart from its regulations and its normal practice, which is based on neutral, objective, and predictable criteria not specific to any particular case. Therefore, in accordance with the Department's regulations at 19 CFR 351.414(e)(2), as well as the Department's long-standing practice, we are continuing to apply the normal 90/60 day methodology for the final results. See e.g., Stainless Steel Hollow Products from Sweden, 57 FR at 21932, Pipes and Tubes from Thailand, 56 FR at 58359, AFBs from Germany, 56 FR at 31714, and Color Television Receivers from Taiwan, 55 FR at 47098.

Company-Specific Issues

Comment 5: *G&A Expenses for Colakoglu*

Colakoglu argues that the Department should allow its claimed offset to G&A expenses for certain insurance proceeds received during the POR that relate to losses incurred prior to the POR. According to Colakoglu, in previous cases the Department has allowed such an offset where such proceeds were paid on claims made prior to the period of investigation or POR. As support for its position, Colakoglu cites Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review, 68 FR 47543 (Aug. 11, 2003), and accompanying Issues and Decision Memorandum at Comment 5 (Bar from India), Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (Apr. 2, 2002), and accompanying Issues and Decision Memorandum at Comment 14 (Silicomanganese from India), and Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8932 (Feb. 23, 1998) (SRAMs from Taiwan). Moreover, Colakoglu asserts that the exclusion of the insurance offset would ignore the commercial reality of the insurance process where reimbursements are rarely received during the same period in which the loss occurs. Colakoglu contends that a practice which requires the period of the reimbursement to match the period of loss would result in a biased treatment of insurance (i.e., the Department would always include the loss and would typically ignore the offsetting reimbursement).

Therefore, Colakoglu suggests three alternative methods of treating its insurance premiums, losses, and reimbursements: 1) include only losses in the cost of production (COP) (i.e. eliminate all insurance premiums and reimbursements); 2) include premiums paid, losses incurred, and all reimbursements received during the POR; or 3) exclude from COP the costs of any losses during the POR in which insurance claims have been made and exclude actual reimbursements.

The domestic industry asserts that, if the Department believes that Colakoglu has failed to demonstrate that the insurance proceeds in question are properly attributable to the POR, then it should deny Colakoglu's claimed offset without further analysis. In addition, the domestic industry argues that Colakoglu's reliance on Bar from India, Silicomanganese from India, and SRAMs from Taiwan is misplaced. Regarding Bar from India, the domestic industry contends that the issue at hand was whether the respondent's claimed offset was timely made as a minor correction at the start of verification or whether it represented new factual information. Further, regarding Silicomanganese from India, the domestic industry asserts that the Department addressed the issue of whether insurance proceeds and losses should be reported as G&A or extraordinary events. Finally, regarding SRAMs from Taiwan, according to the domestic industry, the Department did not address the issue of insurance proceeds, but rather addressed the Department's treatment of unrecovered losses.

Department's Position:

For purposes of the final results, we have disallowed Colakoglu's claimed offset to G&A expenses for insurance proceeds received during the POR that relate to losses incurred and recognized prior to the POR. The Department normally allows an offset for insurance reimbursements up to the amount of the related losses incurred during the same reporting period. See, e.g., Final Results of the Antidumping Duty Administrative Review of Certain Softwood Lumber Products From Canada, 70 FR 73437 (Dec.12, 2005), and accompanying Issues and Decision Memorandum at Comment 40 (Lumber from Canada) (where the Department found that it was inappropriate to allow insurance proceeds received during the POR that related to losses incurred in prior years to offset the COP of the POR) and Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (Sept. 5, 2003), and accompanying Issues and Decision Memorandum at Comment 19 (where the Department found that crop insurance proceeds received outside the POR were not related to the COP for the POR). In the instant case, we found at verification that the claimed insurance proceeds received during the POR were related to losses incurred and expensed prior to the POR. See the July 19, 2007, Memorandum to the File from LaVonne L. Clark entitled, "Verification of the Cost of Response of Colakoglu Metalurji A.S. ("Colakoglu") in the Administrative Review of Certain Steel Concrete Reinforcing Bars from Turkey," at pages 2 and 50. Therefore, consistent with the Department's practice, we have disallowed Colakoglu's claimed offset for these proceeds.

We agree with the domestic industry that Colakoglu's reliance on Bar from India, Silicomanganese from India, and SRAMs from Taiwan is misplaced. Specifically, in Bar from India, the Department allowed the insurance proceeds in question as an offset in the calculation of the respondent's G&A expense rate. However, due to the insignificant value of those offsets, the Department elected not to test the related expenses to ensure that the related expenses were, in fact, incurred during the same period. We note that Colakoglu incorrectly assumes that, because the Department did not test the related expenses, those expenses must have been incurred in a prior period. Further, we note that in Silicomanganese from India, the Department addressed the issue of insurance payments that were categorized as extraordinary expenses, rather than the timing of such proceeds. Finally, in SRAMs from Taiwan, the Department determined that any unrecovered losses (i.e., losses less insurance proceeds) associated with a fire at the respondent's facility incurred during the POR should be included in the respondent's G&A rate calculation, and that such an incident was not an extraordinary event. Thus, the cases cited by Colakoglu are inapposite because they do not relate to the issue in the instant case (i.e., the matching of costs incurred as a result of the insured event with insurance proceeds received).

Finally, with regard to Colakoglu's proposed alternative methods of treating insurance premiums, losses, and reimbursements, we disagree that these methods are appropriate. Insurance premiums are normal and recurring costs that relate to the general operations of the company as a whole. As such, consistent with the Department's established practice, any premiums expensed during the period on which the G&A expense rate is based should be included in the calculation of the G&A expense rate. See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Japan: Final Results Antidumping Duty Administrative Review, 66 FR 11555 (Feb. 26, 2001), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department found that G&A expenses should include all expenses incurred during a company's standard reporting period). Losses are normally recorded in a company's books and records when those losses are known and measurable. In the instant case, the losses occurred in 2004 and, as such, would have been recorded in Colakoglu's books and records in fiscal year 2004. Losses, other than those losses appropriately classified as extraordinary losses, are also considered expenses that relate to the general operations of the company as a whole. As such, these losses are included in the calculation of a respondent's G&A expense rate.

As a conservative approach, insurance proceeds are normally recorded by a company under generally accepted accounting principles (GAAP) only when those proceeds are actually received. Those proceeds may or may not be received in the same period in which the related losses were incurred. In those instances where the insurance proceeds are received in the same period in which the losses are incurred, the Department normally offsets the losses incurred with the proceeds received. See, e.g., SRAMs from Taiwan. However, in those cases where reimbursements are received in a period subsequent to the losses, the Department excludes the reimbursements from the calculation of the G&A expense rate for the subsequent period. See, e.g., Lumber from Canada. We note that, in the instant case, insurance proceeds were received

years after the insured event. Therefore, we do not consider it appropriate to allow a mismatching of proceeds received after the period in which the insured event occurred.

Comment 6: *Depreciation Expenses for Ekinciler*

For purposes of the preliminary results, the Department adjusted Ekinciler's fixed overhead expense to include depreciation on certain assets included in the "plant, property and equipment" category that Ekinciler did not amortize in its normal books and records. Ekinciler argues that the Department should not calculate depreciation on these non-depreciable assets because that statute requires the Department to calculate a respondent's COP based on its financial records that are prepared in accordance with GAAP. Ekinciler states that section 773(f)(1)(A) of the Act articulates that costs shall normally be calculated:

> based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

See also Asociacion Colombiana de Exportadores de Flores v. United States, 717 F. Supp. 834, 841 (CIT 1989) (where the CIT affirmed the Department's use of a company's expenses as they are recorded in the company's financial statements, as long as the statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's financial position or actual costs).

Ekinciler also notes that the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 (1994) at 834 states that it is appropriate for the Department to adjust depreciation expenses:

> in determining whether a company's records reasonably reflect costs, . . . {where} a firm's financial statements reflect an extremely large amount of depreciation for the first year of an asset's life, or . . . {where} there is no depreciation expense reflected for assets that have been idle.

According to Ekinciler, in the instant case, the Department's adjustment does not comport with its obligations under the statute and the SAA because the Department did not make any finding that Ekinciler's treatment of the expenses in its financial statements was inconsistent with Turkish GAAP or demonstrate that Turkish GAAP requires or allows depreciation of such

expenses when they are unrelated to the construction of assets. Ekinciler contends that, because its records are maintained consistent with Turkish GAAP, it is reasonable to conclude that the assets in question are not depreciable. Ekinciler argues that it did not depreciate the asset in question in its normal books and records because Turkish GAAP does not allow such assets to be depreciated, except in cases in which the expenses are related to the construction of assets.

At the public hearing for this case, Ekinciler also stated that "the only possible relevant reason {the asset in question} might be capitalized" would be if it were related to the construction of a fixed asset. See the October 10, 2007, hearing transcript at pages 105 and 106. Further, Ekinciler asserts that, because the expenses that were capitalized were incurred in a prior period and do not relate to the construction of assets, they should not be depreciated. As support for this claim, Ekinciler cites Micron Technology, Inc. v. United States, Court No. 96-06-01529, 1999 WL 412808 (CIT 1999) at 5-6, where the CIT stated "{m}any past expenses, including past production costs, might not be captured in any given review . . . {t}he object of the cost of production exercise is not to capture all past expenses, but rather those expenses that reasonably and accurately reflect a respondent's actual production costs for a period of review." Ekinciler further explained at the public hearing that the expense in question "was a period expense in the period incurred {that} should have been treated in Ekinciler's books as a period expense in the period incurred, which was a year before the POR, multiple years before the POR." Ekinciler also stated that "{a}s a period expense . . . it would have been expensed in that period {and} it would not have been capitalized." See the October 10, 2007, hearing transcript at page 101. According to Ekinciler, the expense should only be deducted as a period expense in the years incurred, because, while Turkish law allows a company to capitalize such expenses since the result would be an increase in the tax paid, it does not permit a party to claim depreciation on the capitalized amounts in subsequent years.

Moreover, Ekinciler claims that the asset is not a tangible fixed asset which benefits future periods, and as such it neither is subject to depreciation or revaluation nor has been revalued or depreciated since the asset was booked.

Furthermore, Ekinciler argues that, not only does the the Department's decision to impute depreciation expense on non-depreciable assets contradict the statute and the SAA, it is not supported by evidence on the record. Ekinciler argues that in the preliminary results, the Department neither explained its rationale for making this adjustment, nor distinguished between the assets in question from the other items in the asset schedule for which no depreciation was taken. Ekinciler contends that the Department depreciated the assets in question solely on the basis that they were included in the "plant, property and equipment" category. However, Ekinciler asserts that there are other items in this category with no depreciation expenses recorded because their useful lives had extinguished. Ekinciler argues that the Department did not distinguish these items from assets in question in order to justify creating a depreciation expense for the assets in question.

Alternatively, Ekinciler argues that if the Department does calculate depreciation on the assets in question, it should revise its amortization calculation to include a credit that is reflected in Ekinciler's fixed asset account. Ekinciler contends that the Department did not explain why it excluded this credit from the calculation, request additional information on it, or distinguish it from other similar credits that were excluded. Ekinciler notes that the credit was part of the account balance of the non-depreciable asset and was correctly included in the calculation of the amortization of the assets in question in the final determination in the 2004-2005 administrative review. See 2004-2005 Rebar from Turkey Final Results at Comment 11.

The domestic industry argues that, consistent with the methodology used in the 2004-2005 administrative review, the Department was correct in depreciating the assets included in the "plant, property and equipment" category of Ekinciler's fixed asset ledger. The domestic industry contends that it is a fundamental accounting principle that assets related to plant, property, and equipment should be depreciated. The domestic industry cites Wiley GAAP 2002: Interpretation and Application of Generally Accepted Accounting Principles 2002, Patrick R. Delaney, Barry J. Epstein, Ralph Nach, and Susan Weiss Budak: John Wiley & Sons, Inc. (2001), page 350 (Wiley GAAP 2002) which states:

> {P}roperty, plant, and equipment (also variously referred to as plant assets, or fixed assets, or as PP&E) is the term most often used to denote tangible property to be used in a productive capacity that will benefit the enterprise for a period greater than one year. In accordance with one of the more important basic accounting concepts, the matching principle, the cost of fixed assets is allocated to the periods benefitted, through depreciation. Whatever the method of depreciation chosen, it must result in the systematic and rational allocation of the costs of the asset (less its residual value over the asset's expected life).

See also IAS 2002: Interpretation and Application of International Accounting Standards (Wiley & Sons, Inc., New York, 2002) at pages 287 and 292.

The domestic industry argues that, while Ekinciler claims to have provided documents including a listing of account activity and journal vouchers to support its contention that the assets are non-depreciable, Ekinciler did not explain how the documents tie together. According to the domestic industry, it is not possible to draw any reasonable connection between the documents in question or to conclude that the assets were not related to the building, maintenance, or improvement of a fixed asset. Further, the domestic industry argues that there is no evidence on the record to indicate that the assets were mis-classified as "plant, property and equipment," nor has Ekinciler argued that the assets were mis-classified. Therefore, according to the domestic industry, the assets in question should continue to be depreciated in accordance with the Department's treatment in the 2004-2005 administrative review.

Moreover, the domestic industry argues that the Department should not include a credit in its depreciation calculation that Ekinciler claims is reflected in its fixed asset account. The domestic industry disagrees with Ekinciler's assertion that this credit is not distinguishable from other items that the Department did not exclude. Specifically, the domestic industry contends that the description of the item is unique and does not appear within the account detail for any other line item. Thus, the domestic industry asserts that this line item must be distinct from the other line items that the Department excluded from the calculation. Finally, according to the domestic industry, the party seeking a favorable adjustment bears the burden of demonstrating that the adjustment if justified. See NTN Bearing Corp. of America v. United States, 835 F. Supp. 646, 652 (CIT 1993) (where the CIT stated "it is the respondent who bears the burden of establishing that it is entitled to an adjustment by supplying the agency with adequate information upon which to base the decision) and Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 7 (where the Department stated "{i}t is a longstanding Department practice that, when a respondent makes a claim for a favorable adjustment, it must demonstrate that it is entitled to that adjustment"). According to the domestic industry, Ekinciler has not demonstrated that the offset is justified in the instant case.

Department's Position:

The Department disagrees with Ekinciler that it would be reasonable, for purposes of its antidumping calculations, not to account for depreciation expenses for the asset listed under the "plant, property and equipment" category in Ekinciler's books and records.

As a preliminary matter, although we refer to U.S. GAAP for guidance in cases where we are determining whether the reported costs are reasonable, the statute mandates that the Department normally calculates costs based on the records of the producer in accordance with the foreign country's GAAP. Nonetheless, Ekinciler has argued that not accounting for the amortization of the "capitalized expenses" at issue would be consistent with U.S. GAAP or international financial reporting standards (IFRS). We disagree with this assessment of the record.

At the administrative hearing, Ekinciler's counsel stated that this "asset" was "in essence" not an "asset" at all, and in its brief, Ekinciler elects to call the listed asset simply an "item." At the hearing, Ekinciler indicated that the capitalized expenses "would not be appropriately capitalized under U.S. or International GAAP," and depreciation should not be applied to them if they relate to an event that did not involve the construction or purchase of an asset. See the October 10, 2007, hearing transcript at pages 101 and 102.

Ekinciler has argued that the capitalized expenses at issue in this case relate to a proprietary event occurring five years ago that did not involve either of these scenarios. However, as the domestic industry has pointed out, there is no link between the documents placed on the record and Ekinciler's claim. Accordingly, we are not confident that the capitalized expenses specifically

relate to the alleged event. While Ekinciler has provided copies of journal entries and loan documents in its section D responses, there is no way to link the documents to the "asset" listed in Ekinciler's financial statement.

Nonetheless, presuming that Ekincilier's claim is true that the capitalized expenses at issue in this case relate to an event occurring five years ago, as Ekinciler stated during the hearing, had Ekinciler kept its books and records consistent with U.S. GAAP and IFRS, Ekinciler would have fully recognized those expenditures as an expense in the year the event took place, rather than capitalizing them and treating them as an asset in its books and records. See the October 10, 2007, hearing transcript at page 101. The fact that these expenses were not reflected in Ekinciler's books and records in this manner, but instead were capitalized and recorded as an asset, without accounting for depreciation on an annual basis for five years, results in a situation simply not addressed by U.S. GAAP or the IFRS. Accordingly, we disagree with Ekinciler that not recognizing depreciation expenses on these items would be consistent with those principles and standards.

For purposes of the Department's immediate calculations, in any case, no matter how Ekinciler treated these costs five years ago, the Department must now determine how to treat these capitalized expenses during the current period of review. Ekinciler opted to treat these expenses as an asset. We disagree with Ekinciler that the cost recorded in the plant, machinery, and equipment asset account and excluded from Ekinciler's reported depreciation expense calculation should be indefinitely suspended and not amortized (i.e., it would not be appropriate for the cost of the asset to remain on the balance sheet indefinitely and not systematically be expensed over the asset's useful life).

In accordance with 773(f)(1)(A) of the Act, the Department will normally calculate costs based on the records of the producer, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In the instant case, Ekinciler maintains and depreciates its fixed assets in accordance with Turkish tax laws, which are equivalent to Turkish GAAP. However, for the asset account in question, Ekinciler capitalized the costs incurred but failed to allocate the costs over their capitalized useful life (i.e., record depreciation expense). Depreciation is defined as a systematic and rational allocation of the cost of the fixed asset over the asset's expected useful life. See Wiley GAAP 2002 at page 350. Ekinciler's depreciation methodology used in its normal books and records, where it does not recognize an amortized portion of the cost every year, is neither systematic nor a rational allocation of the asset's costs. Thus, for the final results, we have determined that Ekinciler's depreciation methodology used in its normal books and records does not reasonably reflect the costs associated with the production and sale of the merchandise.

Ekinciler's fixed asset ledger segregates assets by the typical categories for land, fixtures, vehicles, plant and machinery, buildings, fixed general, and construction in progress. As discussed above, an asset's entire cost is depreciated over its expected useful life because it

benefits future periods. The cost of a plant asset is the purchase price, applicable taxes, purchase commissions, and all other amounts paid to acquire the asset and ready it for its intended use. As noted, based on Ekinciler's normal books and records, it is inherent that an asset recorded in the plant, machinery, and equipment category is related to those types of fixed assets and accordingly should be depreciated.

In the instant case, while Ekinciler claims that it could have, or should have, deducted the expenses in the year incurred, the fact remains that it did not do so. Instead, the expenses were capitalized in its normal books and records and identified as an asset, which, although perhaps not consistent with U.S. or International GAAP, as claimed by Ekinciler, is not unreasonable, in and of itself. See the October 10, 2007, hearing transcript at page102. However, it is unreasonable for Ekinciler to ignore the expense forever and as a result artificially inflate its balance sheet. In other words, it is unreasonable for Ekinciler to continue to record the asset in its financial statements and indefinitely suspend recording the corresponding depreciation expense associated with the asset. More importantly, we find that Ekinciler's failure to recognize an allocated portion of these capitalized expenses during the POR is contrary to the requirements of section 773(f)(1)(A) of the Act, because Ekinciler's reported costs do not "reasonably reflect the costs associated with the production the merchandise."

Therefore, for the final results, we have calculated a depreciation expense for the plant asset and included this expense in the reported COM. For a detailed discussion of the proprietary plant asset and how the Department calculated the depreciation expense related to the POR, see the October 31, 2007, memorandum from Laurens van Houten to Neal Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results."

Finally, we agree with Ekinciler that the credit included in Ekinciler's fixed asset account should be included in the calculation of depreciation expense. The petitioners assertion that this credit is distinguishable from the other line items in the asset account is misplaced. We believe the credit line item is not distinguishable and have included the net affect of the depreciation expense on the entire capitalized amount in the asset account in question. It would not be appropriate to only include the capitalized expense items recorded in this account. The credit is part of the account balance and therefore, we have included the credit in the calculation of depreciation expense for the final results.

Comment 7: *G&A Expense for Ekinciler*

For purposes of the preliminary results, the Department recalculated Ekinciler's fiscal year-end 2005 depreciation expenses for assets with remaining useful lives, based on the stated depreciation rates reported in Ekinciler's general assets ledger, and included the additional depreciation expense in the calculation of its G&A expense. Ekinciler argues that the Department incorrectly adjusted its G&A expense when it recalculated its depreciation expense. Specifically, Ekinciler argues that the Department calculated a full year of depreciation expenses for each asset, even in instances when Ekinciler did not own the asset for the entire year.

Ekinciler contends that the depreciation expenses recorded for those assets is correctly based on the stated depreciation rates (i.e., the month of acquisition) and calculated in accordance with Turkish GAAP.

The domestic industry did not comment on this issue.

Department's Position:

We agree with Ekinciler that we incorrectly calculated the depreciation expenses for those assets in question by calculating depreciation expenses for an entire year for those assets, even though Ekinciler did not own them for the entire year. Ekinciler depreciated all of its assets acquired during 2005 based on the month of acquisition in its normal books and records. Therefore, for purposes of the final results, we have recalculated Ekinciler's depreciation expenses. For those assets acquired in 2005, we calculated the monthly depreciation expenses and multiplied this monthly amount by the number of months Ekinciler owned the assets during 2005. For all assets that Ekinciler acquired before 2005, we have continued to calculate depreciation expenses based on the stated rates in the general asset ledger.

Comment 8: *Subcontracted Rolling Costs for Habas*

During the POR, Habas had a payment arrangement with a subcontractor in which Habas paid the subcontractor with billets rather than cash for rolling billets into rebar. Habas valued these transactions using the cost of producing these billets, rather than the value for those billets reflected on the subcontractor's invoice to Habas. In its reported costs, Habas included an offset adjustment to subcontractor costs, which the Department rejected prior to the preliminary results. The Department instructed Habas to submit cost data that excluded this adjustment and restated the subcontractor costs to invoice value, which was used for purposes of the preliminary results.

For purposes of the final results, Habas argues that the Department should accept its original reported costs including the offset adjustment and not use the subcontractor costs restated to invoice value. According to Habas, the transactions in question are "exchange transactions," which are defined by the Accounting Principles Board (APB) Opinion No. 29, entitled "Accounting for Nonmonetary Transactions" (APB 29), dated May 1973, as a "reciprocal transfer between an enterprise and another entity that results in the enterprises acquiring assets or services or satisfying liabilities by surrendering other assets or services or incurring other obligation." See Habas' January 16, 2007, supplemental D response at Exhibit SSD-67(a). Habas states that APB 29 stipulates that if an exchange transaction does not culminate in an earning process, then the transaction should be accounted for based on the recorded amount (i.e., the actual cost) rather than based on an estimate of fair value. Moreover, according to Habas, the Financial Accounting Standards Board (FASB) later clarified APB 29 by stating "in situations in which one inventory transaction is legally contingent upon performance of another inventory transaction with the same counter-party, the two transactions are deemed to have been entered into in contemplation of one another and would be considered a single exchange transaction

subject to Opinion 29." See Habas' January 16, 2007, supplemental response at Exhibit SSD-67(b). Therefore, Habas contends that its transactions with the subcontractor clearly fit into the type of transaction (i.e., mutually contingent inventory transactions) discussed by the FASB and, therefore, should not be accounted for at fair market value, but rather at the actual record costs of the billets that were transferred in exchange for the processing services.

Further, according to Habas, the manner in which it records its payments in billets via back-to-back non-monetary transactions of billets for rebar processing is in accordance with Turkish tax law, but contrary to U.S. GAAP. Specifically, Habas argues that the Department's instruction to state the cost of the subcontracting at invoice value rather than at actual cost (i.e., the COM of the billets) violates U.S. GAAP. Habas asserts that when a methodology used by a respondent in the ordinary course of business is contrary to U.S. GAAP, then U.S. GAAP prevails and the Department should restate the expenses to be in accordance with U.S. GAAP. See 2004-2005 Rebar from Turkey Final at Comment 4 (where the Department departed from home country GAAP because it did not reasonably reflect the cost to produce the merchandise under consideration). Thus, Habas asserts that the Department should use the costs it originally submitted, which included the actual cost of the subcontracting services with an offset adjustment.

The domestic industry agrees with the Department's treatment of Habas' subcontracted rolling expenses in the preliminary results. The domestic industry argues that, while Habas claims that U.S. GAAP is relevant to the issue at hand, it did not demonstrate why the Department should follow U.S. GAAP with respect to valuing subcontracted rolling. The domestic industry asserts that Habas is incorrect to imply that a difference in U.S. and home country GAAP necessitates an adjustment to its costs because it is the Department's practice to calculate a respondent's costs according to its normal books and records, relying on the home country GAAP, unless it is unreasonable. In the instant case, the domestic industry asserts that, in accordance with Turkish tax law (the equivalent to Turkish GAAP), Habas was required to record the subcontracted rolling transactions at fair market value rather than actual cost. According to the domestic industry, Habas did not provide any evidence that the requirements of the Turkish tax law are unreasonable. In addition, the domestic industry notes that in the previous administrative review of this proceeding, the Department relied on the invoice value recorded in Habas' normal books and records for the same type of subcontracting transactions because it determined that the invoice value of the billets exchanged represented the cost of the billet plus lost profits from a forgone sale. Therefore, the domestic industry contends that the Department should continue to value the billets at invoice value because this is reasonable and in accordance with Turkish tax law.

Moreover, the domestic industry argues that, even if the Department were to take into account U.S. GAAP as the basis for valuing the subcontracted rolling transactions, it has been misinterpreted by Habas. Specifically, the domestic industry contends that the section of APB 29 referenced by Habas is no longer relevant, as it was revised by the FASB in December 2004. See FASB Statement No. 153, "Exchanges of Productive Assets, an Amendment of APB Opinion

No. 29," December 2004 (FASB Statement No. 153). According to the domestic industry, this revision to APB 29 removed the exception that permits the use of book value in non-monetary exchanges and now requires that all non-monetary transactions be recorded at fair market value. Nonetheless, the domestic industry contends that Habas' reference to APB 29 and its subsequent clarification would have only been relevant if there was an exchange of inventories between the parties. In the instant case, the domestic industry asserts that Habas provided the subcontractor with an unfinished product and received a service in return. Therefore, the domestic industry argues that there is no inventory exchange between the two entities and, therefore, book value treatment is not appropriate. Further, even if the transactions between Habas and the subcontractor were exchanges of inventories, the domestic industry asserts that the clarification to APB 29 requires that the party wishing to apply book value to make specific showings regarding the legal rights of the counter-parties to the exchange, the simultaneity of the exchange, the market value of the exchange, and the certainty that the exchange will take place. The domestic industry contends that Habas did not address any of these factors.

Finally, the domestic industry contends that, even if Habas' contentions relying upon U.S. GAAP and ABP 29 and its clarification were true, Habas' arguments would largely be moot because of the relative timing of the accounting opinions upon which it relies. Specifically, the domestic industry contends that APB 29 was revised in December 2004 and the revision applied to fiscal periods after June 15, 2005. See FASB Statement No. 153. Therefore, this revision covered a majority of the POR. By contrast, the clarification of APB relied upon by Habas did not come into effect until the fiscal period after March 16, 2006, which was at the very end of the POR. See the September 2005 "EITF Roundup" Newsletter at http://www.iasplus.com/usa/eitf05sep.pdf. Thus, according to the domestic industry, to the extent that the revision of APB 29 applies to Habas' transactions with its subcontractor, then the transactions should not be revalued at their actual cost. Further, the domestic industry asserts that, even if the clarification to APB 29 applied in the instant case, it would only apply to Habas' transactions that occurred between March 15 and 31, 2006. The domestic industry asserts that the Department should not change its methodology with respect to Habas' subcontracted rolling expenses, but if it does, then it should only make changes in accordance with the accounting standards applicable to the transactions between March 15 and 31, 2006.[13]

Department's Position:

We disagree with Habas that the Department should allow its claimed subcontracting cost adjustment. The Department disallowed the same adjustment in the previous review of this proceeding and we continue to consider the adjustment inappropriate. The adjustment that Habas is claiming is not recorded in its normal books and records. In its accounting records, Habas records the cost of the rolling services as the invoiced amount from the subcontractor. The cost of

[13] Regarding this point, the domestic industry further notes that Habas has not provided the Department with information specific enough to make such adjustments based on the effective date of each accounting standard.

the processing services to Habas that should be included in the reported costs is the amount invoiced by the subcontractor which represents the value of the billets. Had Habas not given the billets to the subcontractor it could have sold the billets on the open market, and the sales price would have included some profit. Therefore, the economic value that Habas gave up for processing services included the COM of the payment billets as well as profit associated with these billets.

With regard to Habas' argument that the Department first compares the normal books and records to U.S. GAAP and then to the GAAP of the producing country, we disagree. Section 773(f)(1)(A) of the Act requires the Department to use the producer's normal accounting records if they are kept in accordance with GAAP of the exporting country and they reasonably reflect the costs associated with the production and sale of the merchandise under consideration. Although Habas cites to 2004-2005 Rebar from Turkey Final in support of its argument, we disagree that the facts are the same here. In 2004-2005 Rebar from Turkey Final, the Department departed from Turkish GAAP with regards to depreciation expenses, stating:

> {A}lthough the depreciation expense reported by Colakoglu was based on its accounting records prepared in accordance with the Turkish GAAP, we consider it unreasonable to revalue fully depreciated buildings (i.e., these assets have no useful lives per Colakoglu's books) and to recognize a gain on such revaluation, while not recognizing depreciation expense on the revaluation. Depreciation is a systematic and a rational allocation of the cost of fixed assets over the asset's expected useful life. Fixed assets with expired useful lives should be fully depreciated and have zero net book values.

See 2004-2005 Rebar from Turkey Final at Comment 4

In 2004-2005 Rebar from Turkey Final, we departed from home country GAAP because it did not reasonably reflect the cost to produce the merchandise under consideration. In contrast, here Habas has not demonstrated that the company's normal valuation method of the subcontracting costs distorts the cost of producing rebar. Thus, for purposes of the final results we have not adjusted Habas's COP by its proposed adjustment to the subcontracting costs.

Comment 9: *Affiliation Issue for Kaptan*

Prior to the preliminary results, the domestic industry alleged that Kaptan may be affiliated with three Turkish companies that either produce or sell subject merchandise via a familial relationship, pursuant to section 771(33) of the Act. These companies are Cebitas Demir Celik Endustrisi A.S. (Cebitas), Mak-Yol Insaat Sanayi Turizm ve Ticaret A.S. (Mak-Yol), and the Alce Group of Companies. Kaptan denied this allegation, stating that: 1) it had completely disclosed its affiliations in its response to section A of the questionnaire; 2) its shareholders are not relatives of the shareholders of the other companies, despite their having the same last name; and 3) the last name of the shareholders, Cebi, is a particularly common name in Turkey. Based

on the information provided by Kaptan, we accepted Kaptan's reported affiliations for the preliminary results.

The domestic industry continues to allege that Kaptan has failed to disclose its affiliation with two of the three companies noted above (i.e., Cebitas and Mak-Yol). Therefore, the domestic industry argues that the Department should find that Kaptan has impeded the proceeding and base the final margin for it on AFA.

According to the domestic industry, under sections 771(33)(A) and (F) of the Act, companies or corporate groups under the control of a single family are considered affiliates. The domestic industry states that the family relationships listed in the Act are exemplary, rather than exhaustive, noting that the Department has expanded covered relationships to include nephew-uncle, aunt-niece, and cousin-cousin affiliations and the CIT has upheld this interpretation (see Ferro Union, Inv. v. United States, 44 F. Supp. 2d 1310, 1325 (CIT 1999)). As support for this assertion, the domestic industry cites Saccharin From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 45657, 45660 (Aug. 8, 2005), unchanged in Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (Feb. 13, 2006) (where the Department treated two companies as affiliated parties because their owners were cousins). Further, the domestic industry argues that a foreign government's determination that two companies are not affiliated under local law has no bearing on how companies are treated for purposes of U.S. antidumping law. See Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 68 FR 2499 (Jan. 17, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department treated two companies as affiliated, despite the Korean government's determination that they were unrelated).

The domestic industry argues that evidence presented in its February 8, 2007, submission demonstrates that Kaptan is affiliated through the Cebi family with Cebitas and Mak-Yol. Specifically, the domestic industry notes that it submitted excerpts from the Cebi family website which incorporates the logos of both Cebitas and Kaptan. Further, the domestic industry contends that the names of shareholders listed as having participated in the "First Board Meeting" of the family association on this website match the shareholder names for Cebitas and Kaptan listed in the Competition Board's report (see Comment 1, above for further discussion of the Competition Board's report). Based on this evidence, the domestic industry argues that Kaptan has impeded the proceeding because the Department was unable to explore the relationship between Kaptan, Cebitas, and Mak-Yol and, therefore, was prevented from making any necessary adjustments to inter-company transactions, conducting an arm's-length analysis, or applying the major or minor input tests. Therefore, the domestic industry argues that the Department should assign a margin to Kaptan based on AFA for the final results.

Kaptan contends that the Department should ignore or reject the domestic industry's arguments because it did not have a meaningful opportunity to respond to the information submitted by the domestic industry. Specifically, Kaptan argues that the domestic industry's argument relies solely on a single quotation taken from an attachment to a 420-page filing by the domestic industry (which was largely untranslated) regarding the cost response of another respondent, Habas. According to Kaptan, because the domestic industry never included or cited this information in any submission related to Kaptan, Kaptan was unaware that the domestic industry had provided it to the Department. Kaptan contends that it is unreasonable and unfair for the Department to expect it to read every line of every submission filed in this administrative review, especially when a submission is explicitly labeled as pertaining solely to another respondent. However, Kaptan notes that, even if it were expected to read all submissions, it would have been prevented from reading the narrative associated with the attachment in question because its own name was bracketed as business proprietary information protected under administrative protective order. Thus, Kaptan argues that, even had it reviewed the public version of the submission in question, it would not have known that it was the subject of discussion.

Consequently, Kaptan argues that, because it was not aware that the information with respect to it was on the record, it did not respond to it or seek to submit rebuttal factual information, as is its right pursuant to 19 CFR 351.301(c)(1). According to Kaptan, these circumstances resulted in a violation of Kaptan's right to due process in this review. As support for this position, Kaptan cites: Armstrong v. Manzo, 380 U.S. 545, 552 (1965), where the CIT stated "{t}he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner," Lois Jeans & Jackets v. United States, F. Supp. 1523, 1527-28 (1983), where the CIT stated that lack of notice and opportunity to comment are so fundamentally prejudicial as to constitute due process violation, Buttny v. Smiley, 281 F. Supp. 280 (Colo. 1968), where the U.S. District Court stated that the test of whether a party has been afforded procedural due process is one of fundamental fairness in light of the total circumstances, and Planned Investments, Inc. v. United States, 881 F.2d 340, 344 (6th Cir. 1989), where the CIT stated "notice must meet the general 'fairness' requirement of due process."

Moreover, Kaptan argues that the record demonstrates that the Cebi "family association" described by the domestic industry was actually a convention for people with the surname "Cebi" and does not provide evidence that the individuals on the boards of Cebitas, Kaptan, and Mak-Yol are from the same family or are otherwise in a position to control or influence the decisions of one another. According to Kaptan, the quotation relied upon by the domestic industry is the following from an unidentified speaker: "I thank my elder relatives . . . Sn. Saffet Cebi, . . . Sn. Yasar Kaptan Cebi, Sn. Halis Cebi . . . for giving me all the help to prepare me for these meetings." Kaptan acknowledges that these individuals lead the boards of Mak-Yol, Kaptan, and Cebitas, respectively, but argues that this reference to "elder relatives" by an unknown speaker does not present compelling evidence that Kaptan is affiliated with Cebitas and Mak-Yol. According to Kaptan, even if the unidentified speaker were related to all three individuals named in the quotation, this fact does not necessarily mean that all three named individuals themselves are related.

Further, Kaptan contends that other portions of the untranslated material submitted by the domestic industry indicate that all Cebis may not come from the same lineage and at least 10 independent family lines of Cebis exist. Moreover, Kaptan disagrees with the domestic industry's characterization of the event in question as a quaint family gathering. Rather, Kaptan argues that the correct translation indicates instead that the gathering was very large, took place in a conference room which seats 3500 people, and was televised. Kaptan asserts that the Cebi "family" is nothing more than an association of people with the Cebi surname, similar to a modern-day Scottish clan, with many thousands of people around the world that may share a surname and perhaps a perceived or stipulated common ancestor, but with no evidence of common heritage or actual familial relationships.

Habas and Kroman argue that the none of the parties at issue here has ever been involved with them in any way, nor has the domestic industry asserted that there is any connection between these parties and Habas or Kroman. Therefore, Habas and Kroman argue that this issue is irrelevant with respect to them.

Department's Position:

In this administrative review, Kaptan provided a list of its affiliated parties in response to section A of the Department's questionnaire submitted in July 2006. Further, Kaptan provided a list of inputs and services received from affiliated parties in its September 2006 section D response. Subsequent to Kaptan's response, in October 2006, the domestic industry alleged that Kaptan was affiliated with additional companies based on the fact that its shareholders have the same surname (i.e., Cebi) as certain shareholders of other companies. Also in October 2006, Kaptan responded to these comments and stated that it was not affiliated with any parties other than those identified in its section A response. In this submission, Kaptan explained that Cebi is a very common surname in Turkey and that not all persons with that name are related.

The domestic industry next raised this issue nearly a year later in its August 23, 2007, case brief, this time relying on quotations taken from Attachment 2 to a submission made on February 8, 2007, entitled "Comments on Habas' January 16, 2007 Supplemental Section D Response." Although this submission was timely filed with respect to Habas, we are not considering the information contained within Attachment 2 for the final results with regard to Kaptan for the reasons noted below. Consequently, we have also not addressed Kaptan's rebuttal comments regarding this issue.

The Department accepted the February 8, 2007, submission from the domestic industry because the arguments contained in that submission with regard to Habas were timely and responsive, in accordance with 19 CFR 351.301. However, we note that the reference to Kaptan appears for the first and only time on page 372 out of a total of 480 pages in this submission. Although the Department considers the reference to Kaptan in this submission to be new factual information (see below), we did not reject the domestic industry's submission at that time because the

arguments made by the domestic industry did not appear to pertain to Kaptan and its responses to questionnaires in this administrative review.

The domestic industry now claims, for the first time, that it submitted information relevant to Kaptan on February 8, 2007. There are various issues with respect to this claim. First, the submission in question does not meet the Department's procedural requirements set forth in 19 CFR 351.303(e) because the pages contained in Attachment 2 of this submission (which consists of 460 pages) are largely untranslated. Therefore, the Department is unable to fully understand the contents of this submission, and similarly there is no way that Kaptan's counsel could have responded adequately to the domestic industry's claims. Second, certain information contained in that submission constitutes new factual information with regard to Kaptan, and this information was untimely filed under both 19 CFR 351.301(b)(2) and 19 CFR 351.301(c)(1). The deadlines established under these subsections of the regulations for the submission of new factual information in this administrative review were September 17, 2006 (in general), and November 10, 2006 (for rebuttal of factual information submitted by Kaptan related to the topic of affiliation). Because of these issues, we are not considering the information provided by the domestic industry regarding Kaptan, on page 372 of its February 8, 2007, Habas submission, for purposes of the final results.

Furthermore, it is the responsibility of all interested parties filing arguments and supporting facts on the administrative record to clearly indicate to both the Department and other interested parties the issue to which the arguments or facts pertain. In this case, it was not clear that the February 8, 2007, submission, which the domestic industry labeled as pertaining only to Habas, was intended to reply to information also submitted by other respondents, including Kaptan. In particular, we note that the single reference to Kaptan was on the next-to-last page of the 14 pages of narrative contained in this submission, the rest of which pertained solely to Habas. Also significant, we note that the domestic industry bracketed Kaptan's name in the narrative portion of this response, thus not releasing it publicly, hindering Kaptan's ability to determine that the submission pertained to it.

We have examined the remaining evidence on the record with respect to Kaptan's affiliations. Based on this evidence, we find no indication that Kaptan has not appropriately reported its affiliations to the Department. Pursuant to section 776(a)(1) of the Act, the Department can resort to facts otherwise available if the necessary information is not available on the record. Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information by the deadlines for such information or in the form and manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant review, Kaptan did not withhold requested information, fail to provide requested information by the deadlines or in the form and manner requested, significantly impede the proceeding, or provide information which cannot be verified. Thus, we find that the application of facts available pursuant to section 776(a)(2) of the Act is not warranted. Therefore, we have relied on Kaptan's information for purposes of the final results.

Comment 10: *Affiliated-Party Loading Services for Kaptan*

Kaptan reported loading expenses associated with its U.S. sale which were provided by an affiliated party. Despite a request by the Department that it demonstrate that the reported loading expenses represent an arm's-length transaction, Kaptan was unable to do so. Therefore, for purposes of the preliminary results, we used the affiliated party's cost of loading services rather than the transfer price between Kaptan and the affiliate. Kaptan argues that the Department should amend its margin calculations for the final results to use the transfer price reported by Kaptan because the use of the affiliate's cost is not supported by the requirements set forth in the Act or by the factual record.

According to Kaptan, the Act requires the Department to rely on the cost records of the respondent if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production of the merchandise. Further, Kaptan states that the Act provides that "transactions... between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in the sales of merchandise under consideration in the market under consideration." See sections 773(f)(1)(A) and 773(f)(2) of the Act. Kaptan states that it recorded the invoice for loading expenses from its affiliate in its accounting system and reported this invoiced amount in the U.S. sales listing. In addition, Kaptan argues that it complied with the Department's established practice of comparing an affiliated-party price to a price from an unaffiliated party by providing a comparable invoice for loading charges from an unaffiliated party.[14] Kaptan argues that this comparison demonstrates that the charge by the affiliated party for loading services is an arm's-length transaction.

Therefore, Kaptan argues that it is unnecessary and inappropriate for the Department to use the affiliate's cost of loading services in its calculations here because determining the cost of such a minor service is extremely burdensome since service providers do not normally calculate amounts at such a level of detail in the normal course of business and the reported cost should, at best, be considered an estimate because it is impossible to calculate the actual cost of the small service based on the affiliate's books and records.

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[14] Kaptan cites 2004-2005 Rebar from Turkey Final Results at Comment 8 as support for the proposition that an affiliated-party price should first be compared with an unaffiliated-party price, prior to resorting to the cost of the service.

In any event, Kaptan argues that, should the Department deem it appropriate to compare the transfer price to the affiliate's COP, it should use its established methodology of examining the overall profitability of the service provider,[15] rather than the sale-specific estimates provided by Kaptan. Based on this methodology, Kaptan contends that the affiliated-party price is at arm's length because the affiliate was profitable.

The domestic industry argues that the Department's preliminary decision to use Kaptan's affiliate's cost of loading services was justified and in accordance with the Department's authority under section 773(f)(2) of the Act. The domestic industry asserts that in this review Kaptan provided copies of one invoice for loading services from its affiliate to an unaffiliated customer and two invoices from unaffiliated service providers to Kaptan for loading services. The domestic industry argues that this information did not sufficiently demonstrate the arm's-length nature of the affiliated-party price because the invoice to an unaffiliated party did not indicate the product being loaded and Kaptan failed to provide the market price for loading services. Thus, the domestic industry contends that the Department was unable to determine whether the invoices provided by Kaptan reflected normal market prices or that they related to comparable merchandise.

According to the domestic industry, the Department accepts a transfer price between a respondent and its affiliated suppliers only if it is satisfied that the price is a market price, and that it exceeds the supplier's costs. As support for this assertion, the domestic industry cites Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review, 71 FR 60476, 60477 (Oct. 13, 2006), where the Department made no adjustment to the affiliated-party price because it found that the transfer price was higher than the market price and the affiliated supplier's COP. In the absence of such evidence, the domestic industry argues that the Department will value the transaction based on cost alone, rather than simply accepting the transfer price as valid. According to the domestic industry, the Department was justified in using an analysis based on cost because the record lacks sufficient information to demonstrate that the transfer price between Kaptan and its affiliate was a market price.

The domestic industry disagrees that the Department should analyze whether Kaptan's affiliate is profitable before using its cost, noting that the Department has rejected profitability analyses (whether conducted as to individual sales, or the overall profitability of an affiliated company) as a method of determining that sales are at arm's length. As support for its position, the domestic industry cites Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 51375, 51377 (Oct. 9, 2001), unchanged in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review, 67 FR 2192 (Jan. 16, 2002) (LNPPs from Germany), where the Department rejected the respondent's attempt to demonstrate that affiliated-party commissions were at arm's length using a regression analysis based on the estimated profitability of each sale, and Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329, 24349 (May 6, 1999)

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[15] See id. at Comment 8.

(Hot-Rolled Steel from Japan), where the Department rejected a comparative return on asset analysis as a demonstration that transactions between affiliates occurred at market prices. Thus, the domestic industry contends that the Department should continue to use the affiliate's loading costs for purposes of the final results.

Department's Position:

In its July 25, 2006, response to section C of the Department's questionnaire at page C-22, Kaptan explained that loading expenses related to its U.S. sale were provided by affiliated port operator, Martas Marmara Ereglisi Liman Tesisleri A.S. (Martas), and it provided the relevant invoice from Martas to Kaptan in Exhibit SC-6 of this response. In a supplemental questionnaire, we requested that Kaptan demonstrate that the loading fee charged by Martas was incurred at an arm's-length price. In response, Kaptan provided an invoice for loading services from an unaffiliated port operator to Kaptan during the POR. See Exhibit SC-6 of Kaptan's September 15, 2006, supplemental response. Contrary to the domestic industry's claim, Kaptan provided only one invoice from an unaffiliated party, and this invoice included an amount for loading services. However, when we compared the price charged by Martas to the price from the unaffiliated party, we noted that these amounts were significantly different.

Therefore, we again requested that Kaptan provide an invoice from Martas to an unaffiliated party in order to demonstrate that the reported amount was incurred at arm's length. Kaptan responded on January 18, 2007, that Martas does not often provide loading services at its port to unaffiliated parties and that it was unable to find an invoice from Martas to an unaffiliated party during the POR. See page S2-2 of Kaptan's January 18, 2007, supplemental response. Kaptan further explained that, although Martas had issued invoices to unaffiliated parties outside the POR, these related to the loading of chemical products which requires different equipment and operation and, thus, was not directly comparable to the transaction in question. In this explanation, Kaptan again stated that the invoice it provided in Exhibit C-6 of its July 25, 2006, response was comparable to the invoice from Martas for loading services related to the reported U.S. sale. Specifically, Kaptan stated that, although the charges from the unaffiliated party to Kaptan cover a broader range of services compared to Martas' loading services, because the invoice from the unaffiliated port operator shows a lower price than that charged by Martas, it had demonstrated that the price from Martas is at arm's length. See page S2-2 of Kaptan's January 18, 2007, supplemental response.

Despite Kaptan's explanations, we continued to find that Kaptan had not demonstrated the arm's-length nature of the charge from Martas for loading services because the difference between Martas' charge and the charge from the unaffiliated party was significant. Therefore, per the Department's request, Kaptan provided the rebar-specific cost of loading services incurred by Martas and the Department used this amount in its margin calculations for the preliminary results. See Kaptan's April 10, 2007, submission at Attachment 3.

We agree with Kaptan that the Department's practice with regard to services provided by affiliates is to first compare an affiliated-party price to one from an unaffiliated party. If the Department finds that these prices are within the same range, then we will use the affiliated party price because we are satisfied that the transaction between affiliated parties is arm's length in

nature. For example, in Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18428 (Apr. 15, 1997) (Cold-Rolled Steel from Korea), the Department stated:

> {I}t has been the Department's practice to accept the payment made by a respondent for a service as the basis for a reported adjustment so long as it can be demonstrated to be at arm's length. If this cannot be demonstrated, we require the respondent to calculate a cost build-up based on suppliers' accounting records.

See also Shrimp from India at Comment 8. As noted above, Kaptan failed to demonstrate that the amount it paid to Martas for loading services was at arm's length. Therefore, we used Martas' cost of providing loading services, in accordance with our practice.

We disagree with Kaptan that it is the Department's practice to examine the profitability of an affiliated party in order to rely on the price charged by that party. See LNPPs from Germany, 66 FR at 51377 and Hot-Rolled Steel from Japan, 64 FR at 24349. In any event, a profitability analysis in this case would only be valid if there were a reasonable expectation that the general profit experience of the company was representative of the profit experience related to loading of rebar. However, upon comparison of Martas' cost of loading rebar to the price it charged Kaptan for this service, we find that the profit rate of Martas in general is not necessarily representative of the profit rate for rebar loading. Because the data underlying this conclusion is proprietary in nature, we are not able to discuss it here. For further discussion, see the October 31, 2007, memorandum to the File from Irina Itkin, entitled "Affiliated-Party Loading Services for Kaptan Demir Celik Endustrisi ve Ticaret A.S./Kaptan Metal Dis Ticaret ve Nakliyat A.S. in the 2005-2006 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey."

Finally, we find Kaptan's argument that providing Martas' cost of loading in this review was burdensome to be irrelevant in light of the evidence on the record. As noted above, because Kaptan failed to demonstrate that the price charged by Martas to Kaptan for loading services was at arm's length, we requested that Kaptan provide Martas' cost of loading, in accordance with the Department's practice. Kaptan complied with this request. Therefore, since the affiliate's cost of loading is on the record of this review, and for the additional reasons noted above, we are continuing to use it for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree____ Disagree____

Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

(Date)