

DATE: November 3, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Certain Steel Concrete Reinforcing Bars
from Turkey – April 1, 2006, through March 31, 2007

Summary

We have analyzed the comments of the interested parties in the 2006-2007 administrative 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 and on findings at verification, 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:

1. Unreported Home Market Sales for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)
2. Cost Calculation Period for Ekinciler Demir ve Celik Sanayi A.S./Ekinciler Dis Ticaret A.S. (collectively, “Ekinciler”)
3. Depreciation Expenses for Ekinciler

Background

On May 5, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative 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 Notice of Intent to Revoke in Part, 73 FR 24535 (May 5, 2008) (Preliminary Results). The period of review (POR) is April 1, 2006, through March 31, 2007.

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

Margin Calculations

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

1. We based our margin calculations for both respondents on sales databases submitted at our request after verification. See the June 4, 2008, memoranda to the file from Irina Itkin, Senior Analyst, entitled “Requested Changes to the Ekinciler Demir ve Celik Sanayi A.S./Ekinciler Dis Ticaret A.S. (Ekinciler) Sales Databases in the 2006-2007 Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey” and “Requested Changes to the Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) Sales Databases in the 2006-2007 Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey”; and
2. We revised the 2005/2006 depreciation expense calculation for Ekinciler related to certain capitalized assets. Specifically, we based these expenses on the annual depreciation methodology required by Turkish law, and used in Ekinciler’s normal books and records, rather than computing them over 60 equal monthly periods beginning in the month of acquisition. See Comment 3.

Discussion of the Issues

Comment 1: Unreported Home Market Sales for Habas

At verification, we found that Habas had not reported certain home market shipments of rebar during the POR which related to a sales agreement concluded in January 2006 (i.e., three months before the POR began). Habas presented as evidence of this agreement a lone invoice issued to its customer at the time that the agreement was reached, covering merchandise to be delivered over a number of months. The total quantity shown on the invoice was 13,000 metric tons, which represents less than five percent of total home market sales.

Habas argues that these shipments were properly excluded from the company’s home market sales listing because the date of sale for these transactions was the date of the invoice, which was outside the POR. Nonetheless, Habas contends that, should the Department disagree with this statement, Habas’ failure to report these sales was, at worst, a harmless error because these shipments were not only outside the ordinary course of trade, but they also were priced approximately the same as Habas’ other home market sales during the POR (and thus their inclusion in the Department’s analysis would have a negligible impact on NV).

Regarding the first argument, Habas claims that the invoice date constitutes the appropriate date of sale for two reasons: 1) the Department’s regulations at 19 CFR 351.401(i) direct the

Department “normally” to use the date of invoice as the date of sale; and 2) the sale in question was made pursuant to a requirements contract, with the invoice representing the first evidence of Habas’ agreement with its customer over the terms of sale. Habas asserts that, under the agreement, Habas was required to supply the total quantity of rebar required by the customer for a particular road construction project at “the prevailing market price during the month,” with any price differences accounted for by billing adjustments made at shipment. Habas claims that this agreement rendered price changes outside the control of the parties because the prevailing market price was measurable by an objective and independent methodology. Habas contends that, given these facts, treating the date of invoice as date of sale would be consistent with the Department’s practice. In support of this claim, Habas cites: 1) Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand, 69 FR 34122 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 2 (PE Bags from Thailand), where the Department used contract date as the date of sale because a price-adjustment mechanism in the contract was set according to factors outside the parties’ control; and 2) the Department’s decision on remand in Habas v. United States, Court No. 05-00613, Slip Op. 07-167 (Nov. 15, 2007) (Habas), where the Department found that the existence of billing adjustments specified in a contract did not invalidate the contract (and thus that the contract date constituted the appropriate date of sale).

Regarding the second argument, Habas maintains that the shipments in question were outside the ordinary course of trade because they went through an atypical sales channel and were made under terms of sale which were not typical of Habas’ other home market transactions. Specifically, Habas asserts that, for usual home market sales, the company supplies small quantities of merchandise held in inventory on a spot basis, with invoices issued and booked to the company’s domestic sales revenue account within several days of shipment. However, Habas maintains that, for the shipments at issue, the quantity of the transaction was nearly 100 times the size of a usual home market sale; moreover, Habas notes that the company issued the initial invoice prior to shipment and recorded it in an “Other Products” account in its accounting system. Finally, Habas asserts that this was the first and only sale that the company made to this customer. Thus, Habas contends that the conditions and practices surrounding this sale were abnormal in the trade for a “reasonable period of time prior to the exportation of the subject merchandise,” a prerequisite to finding sales to be outside the ordinary course of trade under section 771(15) of the Tariff Act of 1930, as amended (the Act).

Habas contends that, if the Department does not agree with either of the preceding arguments, the Department still should not include the shipments at issue in its final analysis. Specifically, Habas contends that the Department has the authority to disregard unreported sales, especially in instances where the impact of including missed sales in the Department’s analysis would be immaterial to the outcome of the case. As support for this assertion, Habas cites Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (“DRAMs”) From Taiwan, 64 FR 56308, 56318 (Oct. 19, 1999) (DRAMs from Taiwan), where the Department found that the quantity and value of the unreported sales were insignificant and the inclusion of them in the home market database would lower the weighted-average dumping margin. According to Habas, its omission of transactions from its home market sales listing was inadvertent, attributable to the fact that they

were recorded in a separate revenue account. Moreover, Habas claims that, as in DRAMs from Taiwan, the quantity and value of the omitted sales were insignificant, while their inclusion in the Department's analysis would have no material impact on the outcome given that overall the unit values of the transactions at issue were within a tenth of the unit values of the reported sales. In any event, Habas asserts that, under 19 CFR 351.413, the Department has the authority to disregard insignificant adjustments to NV. Thus, Habas argues that it would be appropriate to disregard these sales transactions here.

Habas disagrees with the domestic industry's contention (see below) that Habas may have failed to report additional home market sales, given that the Department found no discrepancies in its sales reconciliation at verification. Habas similarly disagrees with the domestic industry's claim (see below) that these shipments would have been matched to U.S. sales if they had been reported, given that Habas did not sell two of the six products at issue in the United States. Moreover, Habas asserts that, for three of the remaining four products, the inclusion of these sales in the Department's analysis would have affected home market price by only a few hundredths of a percentage point, while for the fourth, the quantity of exports to the United States was so small that, even were the unreported sale made at triple its actual price, it would not have created a positive dumping margin. Finally, Habas contends that the domestic industry's reliance on Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Final Results of Administrative Reviews, 65 FR 6136 (Feb. 8, 2000) (Non-Alloy Pipe from Mexico) (see below) is misplaced because, unlike here: 1) that case was decided under pre-Uruguay Round law; 2) the respondent in that case failed verification; 3) the respondent failed to report a significant volume of home market sales; and 4) the Department discovered the reporting error at verification, rather than respondent's disclosure of it.

The domestic industry disagrees with Habas' assessment that these shipments were properly not reported because they were made pursuant to a requirements contract established on the date of invoice. According to the domestic industry, the Department found at verification that the invoice formally set neither the quantity nor the value of the sale, because Habas did not deliver the full quantity of merchandise ordered, and it adjusted the price every month according to the "prevailing market conditions." Moreover, the domestic industry contends that the facts here are quite different from those in PE Bags from Thailand because, in that case, the terms and conditions between the parties were set by internet reverse auction which substantially bound them to certain material terms including shipping locations, payment terms, packaging, and price (with changes to this latter term pegged to a publicly available source). The domestic industry notes that Habas' invoice included no details on shipping locations, payment terms, packaging, or mechanism for price changes (publicly available or otherwise). Further, the domestic industry contends that the facts here are also different from those in Habas, because in that case, unlike here, the billing adjustments were stipulated in the contract. Thus, the domestic industry contends that the appropriate date of sale for these shipments is the date of shipment, because the material terms of sale were not established until this date.

The domestic industry maintains that, if the Department were to determine that the date of sale for the transactions at issue occurred prior to the POR, then it necessarily follows that Habas failed to report sales that occurred during the previous administrative review. According to the

domestic industry, if these shipments are not included here, then Habas will have successfully removed a very large sale from the Department's review. The domestic industry argues that this result should not be countenanced, particularly given that Habas is seeking revocation from the dumping order.

Second, the domestic industry also disagrees that the transactions at issue are outside the ordinary course of trade. According to the domestic industry, the Department generally examines the following four factors when determining whether a sale is outside the ordinary course of trade, none of which is present here: 1) whether the merchandise differs from the respondent's sales generally; 2) whether the volume or type and number of customers distinguishes the sale from other home market sales; 3) whether price and profit differentials distinguish the sale; and 4) whether the sale consisted of production overruns or seconds. The domestic industry notes that the shipments at issue are of first-quality rebar sold to a customer similar to Habas' other home market customers who used the merchandise for a similar purpose and who paid a similar price. The domestic industry claims that Habas failed completely to address these four factors or to explain from a legal perspective why the shipments were outside the ordinary course of trade. Thus, the domestic industry contends that the Department must reject Habas' argument.

Finally, the domestic industry disagrees that including these unreported sales in the Department's analysis would be immaterial to the outcome of this case. The domestic industry argues that the Department may not simply ignore Habas' reporting failures, especially as Habas has requested revocation from the antidumping duty order based on the results of this review. The domestic industry contends that the Department has a history of treating a respondent's failure to report home market sales as a failure to cooperate, particularly where (like here) unreported sales account for a significant portion of total home market sales and/or they potentially affect matches with U.S. sales. As support for this assertion, the domestic industry cites Non-Alloy Pipe from Mexico. Therefore, the domestic industry argues that the Department should base Habas' final overall margin on adverse facts available (AFA). As AFA, the domestic industry requests that the Department apply the highest margin on any sale calculated for the other respondent in this review, Ekinciler, to Habas. Finally, the domestic industry contends that, because the record in this review is deficient, the Department should find that it cannot make a conclusion on likelihood of future dumping under 19 CFR 351.222(b)(2)(ii), and thus it should not revoke subject merchandise produced and exported to the United States by Habas from the order.

Department's Position:

We have examined the facts on the record with respect to these sales, and we disagree with Habas that the appropriate date of sale for them was prior to POR or that they were made outside the ordinary course of trade. However, while we find that these sales are properly subject to this segment of the proceeding, we disagree with the domestic industry that Habas' failure to report them warrants an adverse inference. We do not find that the company failed to act to the best of its ability in this administrative review, which is a prerequisite for the application of AFA under section 776(b) of the Act.

At the start of verification, Habas explained that it had discovered certain unreported shipments of rebar in the home market which related to an invoice issued prior to the POR. Habas described the circumstances surrounding these shipments as follows:

Company officials stated that the sale at issue was the only one to the particular customer in question, who is a contractor that won a contract to build a road in Antalya, Turkey. According to company officials, as a condition of the contract, the contractor had to show a guaranteed supply of rebar to use in his construction, and thus he asked Habas to issue him an invoice for this quantity. Company officials stated that, while there was no guarantee of the final price, there was an agreement to supply the total quantity, with the price adjusted to Habas' daily price at the time that Habas cashed the customer's checks.

See the June 2, 2008, memorandum to the file from Irina Itkin, Senior Analyst, and Henry Almond, Analyst, entitled "Verification of the Sales Response of Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) in the Antidumping Duty Administrative Review on Certain Concrete Steel Reinforcing Bars (Rebar) from Turkey" (Habas Sales Verification Report) at page 17.

Based on this description, we disagree with Habas that the invoice represents evidence that a requirements contract existed between the parties. While it does show an initial quantity and value, by Habas' own admission the price was not guaranteed, nor even set, until the time at which Habas cashed the customer's check. Moreover, Habas presented no documentation demonstrating how this future price was established; rather, it merely stated at verification that the company "adjusted the price according to the prevailing market price during the month of shipment." *Id.* Indeed, despite a claim to the contrary made for the first time in its case brief, the record contains no evidence at all that the price was set by factors outside the control of the parties.

This fact pattern stands in stark contrast to the facts in PE Bags from Thailand, cited by Habas to support its position that the price does not need to be explicitly stated in order for a requirements contract to exist. In that case, the Department stated:

The fact that the contracts in question include a condition that allowed for price-adjustment mechanisms to account for changes in the price of resin does not invalidate the use of contract date. The Department has accepted contract date as the date of sale where periodic price-adjustment mechanisms were set in the contract according to factors outside the parties' control. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14880 (March 29, 1999). In this situation, the parties set the price adjustment according to a publicly published index tracking the price of resin, which is an oil by-product and therefore subject to unpredictable market fluctuations.

See PE Bags from Thailand at Comment 2.

We find that PE Bags from Thailand does not apply here, because, unlike in that case, the record does not establish that Habas had: 1) a written contract with its customer; and 2) a formal mechanism in place to establish the price outside of the control of the parties. Similarly, we also find that the Department's analysis in Habas cannot apply in this case because the contract in dispute in the litigation contained a specific provision related to the mechanism for price changes, as well as the amount by which the price could change.

Further, we also find that the quantity of the shipments in question was not established on the date of the invoice. At verification, Habas acknowledged that the customer did not take delivery of the volume of rebar ordered in January 2006, choosing instead to pay the total value originally agreed upon and accepting a reduced quantity. See the Habas Sales Verification Report at page 18. Thus, we find that the date of the invoice does not represent the date on which the material terms of sale were established for these shipments, and as a result we find that the invoice date does not constitute the appropriate date of sale. Rather, because the price and quantity were not known until shipment, we find that sale occurred at shipment.

Regarding Habas' argument that these transactions were outside the ordinary course of trade, we also disagree that the record supports such a conclusion. Section 771(15) of the Act defines the "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The Statement of Administrative Action (SAA) provides several examples of types of sales which could be considered as outside the ordinary course of trade:

Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market. Examples of such sales or transactions include merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale. As under existing law, amended section 771(15) does not establish an exhaustive list, but the Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.

See SAA at 834.

Consistent with this guidance, the Department has explained in prior cases that its purpose in determining whether a sale is outside the ordinary course of trade is to prevent dumping margins from being based on unrepresentative sales. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy, 65 FR 81830 (Dec. 27, 2000), and accompanying Issues and Decision Memorandum at Comment 3; and Notice of Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR

29553, 29562-63 (June 5, 1995). The Court of International Trade (CIT) has upheld this interpretation of the SAA by ruling that: 1) the Department is not required to exclude infrequent small quantity sales at high prices because the Department should consider the totality of the circumstances; and 2) for sales to truly be outside the ordinary course of trade, they should possess unique or unusual characteristics that make them unrepresentative. See, e.g., NSK Ltd. v. United States, 462 F.Supp.2d 1254, 1260 (CIT 2006); NTN Corp. v. United States, 306 F.Supp.2d 1319, 1347 (CIT 2004). In addition, the CIT stated in Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States, 932 F.Supp. 1488, 1498 (CIT 1996), that the “mere identification of certain sales as samples, zero price and infrequent small quantity sales, without further explanation . . . was insufficient to establish that the sales were made outside the ordinary course of trade.” The CIT has also held that “Commerce’s decision to require additional evidence demonstrating that sales with higher profits were outside of the ordinary course of trade was consistent with the statutory scheme and a reasonable construction of the provision at issue.” See Mitsubishi Heavy Industries, Inc. v. United States, 15 F. Supp. 2d 807, 830 (CIT 1998).

As correctly noted by the domestic industry, the products involved in these transactions were within the mainstream of Habas’ products sold in the home market, and the customer was an end user, similar to many of Habas’ other customers. Moreover, we confirmed at verification that the prices at which Habas sold the merchandise were comparable to the prices for its reported home market sales. See the Habas Sales Verification Report at page 18. Finally, Habas did not argue, and the record does not show, that these products were of a lower quality than Habas’ other products, nor that there was anything unusual about their production. Thus, we also do not find that the sales at issue were outside the ordinary course of trade.

Nonetheless, while we find that these sales should have been reported during this segment of the proceeding, we agree with Habas that their inclusion in our analysis would not have a material impact on the outcome of this review. At verification, we obtained worksheets showing the quantity of the unreported shipments, broken out by product, for both January 2007 (*i.e.*, the month in which comparisons would be made to U.S. sales) and the POR as a whole. We found that, for the majority of products, the per-unit prices were very similar to the per-unit prices reported for the same products in the home market sales listing, with some prices slightly less and others slightly more. See the Habas Sales Verification Report at verification exhibit 7. When the unreported average prices for the unreported sales are compared to the average prices for the above-cost sales computed in the final results, it is clear that the exclusion of these sales from our analysis does not change the ultimate result in this review (*i.e.*, the weighted-average dumping margin remains zero). For the analysis underlying this conclusion, see the November 3, 2008, memorandum to the file from Elizabeth Eastwood, Senior Analyst, entitled, “Analysis of Habas’ Unreported Home Market Sales in the 2006-2007 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey.”

Finally, we note that Habas itself discovered that it had not reported these sales during its preparation for verification, and it informed the Department of its omission at the earliest possible opportunity (*i.e.*, on the first day of verification). Moreover, Habas proffered a reasonable explanation as to why it had not reported these transactions (*i.e.*, they were recorded in a different revenue account in the company’s accounting system and tracked differently in its

management reports), and it was able to substantiate this explanation to our satisfaction at verification. Further, based on extensive testing procedures performed at verification, we are confident that Habas identified the complete universe of unreported transactions that fell under this scenario. See the Habas Sales Verification Report at pages 8-11. Therefore, we disagree with the domestic industry's implication that Habas' failure to report these sales was an intentional attempt to mislead the Department in order to obtain a more favorable result.

The Department has, in the past, disregarded sales inadvertently omitted from the home market database when such reported sales were of insignificant quantity and value. As a result, we have accepted Habas' home market sales database as reported for purposes of the final results, consistent with our practice. See, e.g., DRAMs from Taiwan, 64 FR at 56318; Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria, 60 FR 33553 (June 28, 1995); and Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut to Length Carbon Steel Plate from France, 58 FR 37125 (July 8, 1993).

Regarding the domestic industry's argument that Habas' failure to report these sales renders the company ineligible for revocation, we disagree. As noted in the explanation of the final rule governing our revocation regulation, the Department is directed to presume that, in situations where there has been an absence of dumping for three consecutive years, "an order is not necessary in the absence of additional evidence." See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (Sept. 22, 1999), published upon adopting 19 CFR 351.222(b) (Revocation Regulation). Specifically, the preamble states:

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. If the petitioner comes forward with information demonstrating that the maintenance of the order is necessary, that initial presumption is rebutted, and the burden of production shifts to the respondents. . . . The Department must weigh all the evidence on the record and determine whether the continued application of the order is necessary to offset dumping (or subsidization). Each revocation determination must be based upon substantial, positive evidence and be otherwise in accordance with law.

Id.

Given this presumption, our practice has been to require substantial evidence showing that continued application of the antidumping duty order is otherwise necessary to offset dumping. See, e.g., Final Results of Antidumping Administrative Review: Brass Sheet and Strip from Germany, 61 FR 49727, 49730 (Sept. 23, 1996), where the Department found a likelihood for future dumping based on multiple factors (e.g., a drop in demand for the merchandise in the home market, the respondent's severe decreases in shipments to the United States, and difficulty

of competing for sales in both markets in light of a strengthened Deutsche mark, etc.). Because no party to the proceeding has provided substantial evidence showing the continued application of the dumping order is otherwise necessary to offset dumping, and because Habas has met the other requirements in the regulations with respect to revocation (see the accompanying Federal Register notice for further discussion), we have presumed that the order is no longer necessary with respect to Habas, in accordance with our practice.

Comment 2: *Cost Calculation Period for Ekinciler*

In accordance with the instructions in the questionnaire, Ekinciler reported its universe of U.S. sales transactions based on those sales of merchandise which entered U.S. customs territory during the POR. These sales were made pursuant to short-term contracts, and Ekinciler claimed that the material terms of sale for these contracts were set on the contract signature dates. Because Ekinciler reported this date as its U.S. date of sale, a significant portion of Ekinciler's U.S. sales had dates of sale prior to the POR.

As required by the questionnaire, Ekinciler reported home market sales data for three months prior to its first U.S. sales date in order to afford the Department sufficient data to make contemporaneous price-to-price comparisons. As with the company's U.S. sales, a significant percentage of Ekinciler's home market sales database had a sale date prior to the POR. Because the sales reporting period was unusually long in this case, in the preliminary results the Department relied on Ekinciler's costs of production (COPs) for two separate periods (*i.e.*, the 2005-2006 POR and the current POR) for purposes of applying the sales-below-cost test. Specifically, we applied the 2005-2006 costs to home market sales with a date of sale in the 2005-2006 review period, and the 2006-2007 POR COPs for home market sales with a date of sale during the current POR. Both Ekinciler and the domestic industry disagree with this approach, with Ekinciler arguing that the Department should use quarterly, rather than annual, costs for purposes of applying the sales below cost test on home market sales, and the domestic industry maintaining that the Department should revert to its "normal" methodology of using the POR.

Regarding Ekinciler's argument, Ekinciler agrees that the Department correctly determined that multiple cost periods are necessary in this case. According to Ekinciler, because almost half of the reported home market sales have a date of sale before the start of the review period, and because sales made prior to the POR and during the POR were made under different conditions, with significantly different costs, significant distortions would be caused if only one cost period were used.

Ekinciler asserts that the Department recognized that there was a significant increase in cost between the current POR and the last POR when it used two annual cost reporting periods for purposes of the preliminary results. Although Ekinciler acknowledges that the Department found that "the change in scrap prices was not significant enough to warrant a departure from the Department's normal practice of computing COP on an annual basis," it claims that this conclusion is inconsistent with the Department's chosen "fix" of using two cost reporting periods. Rather, Ekinciler argues that the cost differences between the prior POR and the current

POR are similar to the cost differences between the quarters within the POR. Specifically, Ekinciler asserts that the total cost of manufacture (COM) in the current POR was 18 percent higher than the COM in the prior POR when capitalized financial expenses are excluded from the 2005-2006 costs (see Comment 3, below), and 10.5 percent higher when capitalized financing expenses were included. Ekinciler claims that the COM in the last quarter of the current POR was about 18 percent higher than the COM in the first quarter of the current POR. Accordingly, Ekinciler argues that the Department should use quarterly costs here because: 1) its quarterly costs changed significantly from the beginning to the end of the POR; and 2) the magnitude of this change is in line with the change in costs between the two annual cost periods relied on in the preliminary results.

Ekinciler notes that section 773(a) of the Act requires the Department to make fair comparisons between U.S. price and normal value in determining whether subject merchandise is being, or is likely to be, sold at less than fair value. Ekinciler argues that in order to make a “fair comparison,” it is necessary to use an appropriate methodology that takes into consideration the facts of the specific case at hand. According to Ekinciler, while 19 CFR 351.414(d)(3) states that the Department normally will calculate a weighted-average cost for the entire period of review, it also permits the Department to calculate weighted-averages for shorter periods when normal values, export prices, or constructed export prices differ significantly over the course of the POR. See also Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy, 65 FR 77852 (Dec. 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, (Pasta from Italy) (where the Department stated that, for respondents “not in high inflationary economies,” its methodology “was to calculate a single weighted-average cost for the entire POR unless this methodology results in inappropriate comparisons.”) Ekinciler also notes that the Federal Circuit stated in Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1086 (Fed. Cir. 2001), “while various methodologies are permitted by the statute, it is possible for the application of a particular methodology to be unreasonable in a given case when a more accurate methodology is available and has been used in similar cases.”

Ekinciler notes that the decisions cited above are not unique, given that the Department has calculated a company’s COP using a shorter period in a number of cases. To support this assertion, Ekinciler cites Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan 63 FR 8909, 8925 (Feb. 23, 1998) (SRAMs from Taiwan), Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15476 (Mar. 23, 1993), and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664, 30676 (June 8, 1999).

According to Ekinciler, the Department has used a two-pronged test to determine whether to use multiple cost periods, one involving the number of primary inputs and another involving the significance of cost changes to that input. As evidence, Ekinciler cites Pasta from Italy at Comment 18, where the “Department has used monthly or quarterly costs in instances of non-inflation only when there is a single primary input product and that input experiences a significant and consistent decline or rise in its cost throughout the reporting period.” According

to Ekinciler, the rationale underlying the requirement that the product under consideration be made from a single primary input links a significant change in the price of the primary input to the impact on the company's total cost of manufacturing for that product. Similar to the facts in the pasta case, Ekinciler claims that the first prong is met because scrap is the single primary input in the production of subject merchandise, representing well over 50 percent of the COP. Moreover, Ekinciler claims that the second prong of the test, requiring a significant change in the cost of the primary input, has also been met because scrap prices increased dramatically during the POR.¹ Ekinciler asserts that this stands in stark contrast to other cases (including Pasta from Italy) where the Department has analyzed the increase in prices from the beginning of the POR to the end of the POR and found that changes in cost of 10 and 12 percent were not significant.

Moreover, Ekinciler asserts that, when it set prices for sales during the first quarter of the POR, it could not know that the scrap prices would increase significantly; further, after the cost increases occurred it adjusted its prices to take these increases into account. Thus, Ekinciler argues that it would be unfair and inaccurate to apply annual average costs that were greatly affected by cost increases in the second and subsequent quarters of the POR to evaluate home market sales made during the first quarter of the POR. Specifically, Ekinciler argues that the methodology used in the preliminary results distorted the antidumping calculation by improperly excluding home market sales that were made at prices above quarterly costs. According to Ekinciler, because of the significant differences between POR costs and quarterly costs, many home market sales that were above the weighted-average quarterly costs for the first quarter were treated as below the weighted-average POR costs by the Department in the preliminary results, thus resulting in a higher normal value and a distortion of the dumping margin calculation.

Ekinciler claims that the Department has recently assessed the significance of cost changes throughout the POR by comparing the COM of the five largest control numbers (i.e., products). In doing so, it has calculated the difference between the weighted-average quarterly costs and the annual average costs and then divided by the annual average cost. See Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part: Certain Steel Concrete Reinforcing Bars From Turkey, 70 FR 67665 (Nov. 8, 2005) (2003 - 2004 Rebar from Turkey), and accompanying Issues and Decision Memorandum at Comment 1. Ekinciler asserts that the Department should follow this methodology when assessing the significance of the costs increase here. Nonetheless, Ekinciler argues that, regardless of the methodology used, the record evidence shows that Ekinciler experienced a significant increase in costs that warrants the use of quarterly costs.

Ekinciler also argues that its factual situation falls squarely into the types of scenarios raised by the Department in its request for comment on this topic. See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) That May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364 (May 9, 2008) (Request for Comments). Ekinciler asserts

¹ Ekinciler claims that it has demonstrated that its average cost of scrap increased by 21.92 percent from the first quarter of the POR to the last quarter of the POR and that its weighted-average total COM increased by 17.68 percent.

that in that document, the Department indicated that a shorter cost period may be appropriate when there is a “direct linkage between resulting costs and sales prices,” and it indicated that there are various factors which may affect the timing relationship between the purchase of the raw materials, the production of a product, and its subsequent sale including: 1) the raw material inventory turnover period; 2) the inventory valuation method used by the company; 3) the extent to which raw materials are purchased pursuant to long-term contracts; 4) erratic production levels throughout the year; 5) sales made pursuant to long-term contracts; 6) the extent to which monthly accruals are made; and 7) year-end adjustments, all of which affect the timing relationship between sales transactions and costs. Ekinciler asserts that, consistent with these factors, its home market sales prices closely track changes in cost of the primary input; its inventory turnover is short; its home market sales are generally made from inventory and relatively small in size; the timing between the purchase of scrap and production is short; it calculates finished goods and cost of goods sold on a monthly basis, which reflects the actual cost of inputs used in the production; it did not have “errant” production levels, but instead had a consistent increase in production during the period at issue; its home market sales were made pursuant to telephone orders, not formally negotiated, long-term contracts; and the Department verified that Ekinciler prepares all accruals monthly and made no significant year-end adjustments.

Finally, Ekinciler disagrees with the domestic industry’s argument (see below) that the Department is required to conduct multiple cost tests if it continues to use multiple cost periods, noting that the domestic industry does not cite any support for this claim. According to Ekinciler, the Department is charged with using a methodology for the cost test that would result in the calculation of fair and accurate dumping margins. Thus, Ekinciler argues that, while the use of two cost tests might be permissible, there is no requirement that the Department use multiple cost tests to match multiple cost periods.

The domestic industry disagrees with Ekinciler, arguing instead that the Department should either use a single cost period or conduct separate cost tests for the two cost periods. According to the domestic industry, the use of two separate cost periods is inconsistent with the Department’s use of a single POR-wide cost period to evaluate all sales relevant to a proceeding, including those produced prior to the POR. The domestic industry points out that, while respondents in an administrative review are at times required to report U.S. sales and home market sales outside the POR, the Department’s normal practice is to base its dumping calculations on POR-wide costs regardless of when the relevant sales were made. The domestic industry claims that it cannot find an instance where the Department has used two annualized cost periods when faced with sales that were made both before and after the POR. The domestic industry notes that the first administrative review period following an antidumping duty order is generally around 18 months; nonetheless, the Department evaluates the costs over the POR. Similarly, the domestic industry argues that the Department should use a single cost-averaging period in this case, encompassing only the data actually reported by Ekinciler.

According to the domestic industry, the Department has not explained its reasoning nor cited supporting evidence to justify its decision to use two annualized cost periods. The domestic industry points out that the Department found that the cost increases over the POR were

insufficient to justify the use of quarterly costs, while holding that the cost increases between the last and current PORs are significant enough to justify using two annualized cost periods. The domestic industry asserts that the Department has not provided its underlying analysis supporting these conclusions, nor has it explained how the use of two annualized cost periods lead to increased accuracy.

The domestic industry argues that, if the Department continues to use two annual cost periods, it should also conduct separate cost tests. According to the domestic industry, the Department cannot accurately test for at least one prong of the cost test – whether there is a reasonable recovery of the costs – given that the difference between the tested prices and COP derive from two different periods. The domestic industry argues that the Department should conduct a cost test for sales of merchandise produced prior to the POR using the prior POR costs, and a separate cost test for the merchandise produced during the current POR using current POR costs. After determining which sales fail the separate, relevant cost tests, the domestic industry recommends merging the databases and calculating a dumping margin.

The domestic industry disagrees with Ekinciler’s argument that the Department should switch to quarterly costs, noting that it is the Department’s practice to use a single cost-averaging period, contemporaneous with the period of review. The domestic industry notes that the Department has specifically addressed this practice in this proceeding, citing 2003-2004 Rebar from Turkey at Comment 1, where the Department stated that “{w}e use annual average costs in order to even out swings in the production cost experienced by the respondent over short periods of time. This way, we smooth out the effect of fluctuating raw material costs (see Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990)), and erratic production levels, major repairs and maintenance, inefficient production runs, and seasonality.”

Finally, the domestic industry disagrees with Ekinciler that there was either a significant cost difference or a direct link between input costs and sales prices within a given quarter, and thus it contends that Ekinciler has not met either prong of the Department’s two prong test. The domestic industry asserts that Ekinciler has not provided substantive arguments that the change in costs is significant,² nor has it demonstrated that input costs and output prices are directly linked within each quarter. According to the domestic industry, in Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742 (Jan. 6, 2000) (Brass Sheet and Strip from the Netherlands), the record evidence showed that the company identified the precise, individual inputs incorporated into individual output pieces, and recorded the relevant cost and sales prices. The domestic industry maintains that this is the only acceptable showing of direct linkage, and it argues that this direct link was not demonstrated by Ekinciler. Finally, the domestic industry argues that the Department has refined its analysis of the use of multiple

² According to the domestic industry, the increase in Ekinciler’s costs is 15.7 percent, measured as the deviation between quarterly-average COM and POR-average COM.

cost periods and, as a result, an increase of 22 percent for a single, primary input is no longer enough to induce the Department to abandon annual costs.

Department's Position:

We disagree with Ekinciler that we should use quarterly, rather than annual, costs when applying the sales below cost test on home market sales. Moreover, in this case, we consider the issue of shifting the cost reporting period to be separate from the issue of whether costs increased significantly enough for us to use quarterly costs.

In this case, the Department based Ekinciler's U.S. date of sale on the date that Ekinciler signed short-term contracts with its U.S. customers. As a result, the date of sale for certain U.S. transactions was a number of months prior to the start of the POR. Because the Department's questionnaire instructs respondents to report all comparison market sales made three months before the month of the earliest U.S. sale, a significant proportion of Ekinciler's home market sales database was comprised of sales that occurred in the two quarters prior to the POR.

Under the Department's normal practice, the Department calculates costs for all home market sales using only costs which were incurred during the POR. In most cases, the Department makes the reasonable assumption that POR costs are representative of the costs for all reported sales, including those sales made during the window periods (*i.e.*, three months prior to the first, and two months after the last, U.S. sale). However, the Department has departed from this practice in cases where a significant portion of the home market sales occurred prior to the POR, by shifting the cost reporting period to match more closely the time period surrounding the reported sales. In such cases, the Department has still used an annual average cost reporting period, and simply shifted the period to cover the majority of home market and U.S. sales. For example, in the new shipper review conducted in this proceeding for Ege Celik Endustrisi Sanayi ve Ticaret A.S./Ege Dis Ticaret A.S., the POR was April through September 2006; however, that review covered only one U.S. entry of rebar during the review period, which had a U.S. date of sale in February 2006. In that case, the Department shifted the cost reporting period to November 2005 to April 2006 in order to better match costs with sales. See Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Steel Concrete Reinforcing Bars from Turkey, 72 FR 51598 (Sept. 10, 2007). See also Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania, 72 FR 18204 (Apr. 11, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (where the Department used costs from the prior review period because all of the U.S. transactions examined had dates of sale prior to the POR).

According to Ekinciler, approximately fifty percent of its reported home market sales occurred prior to the POR. Given this fact pattern, we determined that it was appropriate to depart from our normal methodology of relying exclusively on POR costs when conducting the cost test, and instead we used Ekinciler's production costs from the 2005-2006 review to test whether home market sales made before the POR were at prices below their COP. While we could have shifted the cost reporting period in this case, we determined that it was more reasonable to use Ekinciler's own reported costs from the prior review to test sales made during that review period.

Thus, because these sales comprised a significant proportion of Ekinciler's home market sales listing, we requested that Ekinciler place on the record the COPs from the prior review. This action permitted the Department to test these sales with the same costs used in the prior review, and thus to achieve the same results experienced in that segment of the proceeding. For this reason, in the Preliminary Results, we used the 2005-2006 POR COPs for purposes of applying the sales below cost test to home market sales with a date of sale in the 2005-2006 review period, and the 2006-2007 POR COPs for home market sales with a date of sale during the POR. See Preliminary Results, 73 FR at 24538. We disagree with Ekinciler that the Department's decision at the Preliminary Results to use two different costs periods set a benchmark for a "significant change in costs" which would justify the use of quarterly costs. The Department has not stated that the increase in cost between the two PORs alone justified the use of two annual cost periods, or that the increase in costs between the PORs was significant.

As noted by Ekinciler, the Department solicited public comment on its antidumping methodologies for proceedings that involve significant cost changes throughout the period of investigation or period of review. See Request for Comments, 73 FR at 26364. The Department stated that it sought to develop a predictable methodology to determine when, due to the occurrence of significant cost changes throughout the POI or POR, the use of shorter cost-averaging periods would be more appropriate than the established practice of using annual cost averages. We received comments from numerous parties and are currently assessing them. Further, we are in the process of developing policies to address the many issues that arise from what may be a significant change in methodology.

While the Department has yet to adopt a new policy concerning the issue of significant cost changes, we believe that a change in production costs during the POR would need to be significant, before moving away from the normal method of calculating an annual average period cost. It is appropriate that our standard method averages out normal price fluctuations that occur during an accounting period, because companies usually cannot change their prices to match every fluctuation in input cost.³ Moreover, it is appropriate to average out normal price

³ Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as: "{a}n amount equal to the sum of – (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business," emphasis added. We typically use the period of investigation (POI) or POR as the period that best represents that period. While production runs usually occur over a few months, most companies do not track costs directly to products. Even if companies did track costs as such, because of accounting limitations, timing problems and month-to-month cost fluctuations, costs calculated over a longer period are more representative of the actual cost of production. For this reason, the Department has developed a consistent and predictable methodology to calculate cost on an annual-average basis over the entire POR. The Department's questionnaire routinely requests that respondents report their costs on an annual-average basis over the entire POR. See, e.g., Pasta from Italy at Comment 18; Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006) and accompanying Issues and Decision Memorandum at Comment 5 (where the Department explains its practice of computing a single weighted-average cost for the entire period); and Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that

fluctuations that occur during an accounting period in an antidumping duty context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons.

Given the facts presented in this case, in determining whether a change in costs is significant, we believe that the most comparable scenario to rapidly changing input costs may be that of a high inflationary environment. As Ekinciler itself has pointed out, Turkey experienced a financial crisis in 2000 and 2001, when the Turkish lira devaluated sharply. See Ekinciler's case brief at 9. In fact, the Department applied its high inflation methodology in the LTFV and subsequent reviews of the Turkish rebar order for that time period as the point at which to depart from our normal methodology. See Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review, 66 FR 22525, 22526 (May 4, 2001),⁴ where the Department said, "Because Turkey's economy experienced significant inflation during the POR, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our '90/60' contemporaneity rule." See also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737 (March 4, 1997), where the Department said, "to avoid the distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly-average basis, rather than on a POI-average basis." Ekinciler was a respondent in the LTFV investigation.

Therefore, the Department believes that the application of a similar threshold would not be unfamiliar to the respondent, or inappropriate, in this case. Inflation is, after all, where general price levels are changing rapidly. High inflation results in costs that are at different currency levels due to rapidly decreasing currency values. It manifests itself in the increase of all prices stated in that currency, not just one input. However, the increase in price of a primary input, as we find in this review, has a similar distortive effect on the total cost of production and on our dumping calculations (i.e., comparison over a period of time).⁵

In terms of established generally accepted accounting standards, International Reporting Financial Standards (IRFS), International Accounting Standards No. 29 (IAS 29) addresses inflation accounting. IAS 29 states that, "The objective of IAS 29 is to establish specific standards for enterprises reporting in the currency of a high inflationary economy, so that the financial information provided is meaningful." Essentially, IAS 29 establishes when it is appropriate for an entity to depart from normal IFRS accounting standards and to adopt an

the use of quarterly data would cause aberrations due to short-term cost fluctuations). See also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (Sept. 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle).

⁴ Unchanged in Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (Nov. 7, 2001).

⁵ The Department considers a respondent to be in a high inflationary economy when the producer price index for the exporting country changed at a 25 percent annual rate. This threshold has been used for many years for respondent countries experiencing high inflation.

alternative method, because the existing method (*i.e.*, historical costing) will result in distortions. The inflation standard set out under IAS 29 is when the cumulative inflation rate over three years approaches, or exceeds, 100 percent. We note that a doubling of the index over a three year period equates to approximately a 25 percent annual rate of inflation.

Thus, for purposes of this review, we have looked to the market distortion benchmark used in our high inflationary economy analysis for purposes of establishing a benchmark. We believe this test to be reasonable as it has been used in prior segments of this proceeding. A threshold of a 25 percent change in COM, low quarter to high quarter, closely mimics the standard we follow for high inflation. While an increase of 25 percent in the cost of production during the POR, due to the rapid increase in the cost of a primary input, is not the same as high inflation, the 25 percent would be a reasonable percentage to establish the threshold for significance in this case. It is high enough to ensure that we do not move away from our normal practice without good cause and forgoing the benefits of using an annual average cost, but would allow for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations.

Because we are mainly concerned with how the change effects the dumping calculation, we have analyzed the extent to which Ekinciler's total COM changed during the POR. In performing this analysis, the use of quarterly average COMs is preferred over monthly average COMs, to ensure the change in cost is sustained rather than for only an isolated month or two. There is no doubt that scrap is the primary input in the production of rebar, representing well over 50 percent of the COP. The Department also recognizes that scrap costs increased by 21.92 percent from the beginning to the end of the POR. Ekinciler's cost of manufacturing increased by only 17.68 percent from the first quarter to the last quarter of the POR (*i.e.*, the high and low quarterly COMs). This amount does not reach the level of significance applied in prior segments of this order, and does not warrant a change in method. In addition, because the cost differences during the quarters of the POR were not significant enough to warrant deviating from our normal annual average cost methodology, there is no need to address the specific cost-price linkages in this case.

We disagree with the domestic industry that we must perform two separate cost tests. Section 773(b)(2)(A) of the Act states that, “[s]ales made at prices below the cost of production have been made in substantial quantities if -- (i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value.” Thus, the calculation of the 20 percent volume must be made over the entire population of sales under consideration. We have therefore used one period of review for the substantial quantities test. See, e.g., Brass Sheet and Strip from the Netherlands, 65 FR at 743 (where the Department used one overall period for the substantial quantities test, despite using monthly metal costs); SRAMs from Taiwan, 63 FR at 8913 (where the Department used one overall period for the substantial quantities test, despite using quarterly costs).

We also disagree with the domestic industry that the use of two sets of annual average cost data creates a mismatch in the cost test. That is, “given that the difference between the tested prices and COP derive from two different periods,” we cannot perform one overall test. We are testing

the reasonable recovery of the cost of the sales under consideration for normal value and we believe it is appropriate to use the costs that correspond to the sales tested. In this case an unusually large number of home market sales from the prior segment of review are under consideration in the current review, and thus it is reasonable to use costs from two different periods to perform the test. We satisfied the recovery of cost test because we used an annual weighted-average cost for the period in which the sales were made.

Comment 3: *Depreciation Expenses for Ekinciler*

The Commercial Code outlines the basic accounting, auditing, and financial reporting requirements for business entities in Turkey. See World Bank Report on the Observance of Standards and Codes; Accounting and Auditing; Turkey, dated March 2007, found at <http://www.worldbank.org/ifa/rosc_aa_tur_eng.pdf>. However, the Tax Procedures Code governs the Accounting System Implementation Regulation (ASI), which “prescribes certain fundamental accounting concepts, a chart of accounts, and a format for the presentation of financial statements.” *Id.* at 6. Turkish tax laws take “precedence over all other accounting regulations.” For tax reporting purposes, many “companies only prepare financial statements in accordance with the Uniform Chart of Accounts (UCA) and Turkey’s Tax Procedure Law.” *Id.* at 22. Accounting requirements under Turkey’s tax laws can, therefore, lead to “significant differences” between “the financial position and performance of an enterprise prepared in accordance with the UCA and Tax Procedure Law” and “International Financial Reporting Standards” (i.e., international Generally Accepted Accounting Principles (GAAP)). *Id.*

From 1998 to 2001, Ekinciler capitalized certain expenses onto its balance sheet, in accordance with Turkish accounting standards, instead of recognizing these expenses on its income statement. Also in accordance with Turkish accounting standards, Ekinciler did not amortize the resulting assets, or otherwise recognize the underlying expenses, and to this day continues to carry the amounts on its balance sheet under the category property, machinery and equipment (PME).⁶ In the prior two review periods, 2004-2005 and 2005-2006, the Department included a portion of these costs in calculating Ekinciler’s cost of production. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Review in Part, 71 FR 65082 (Nov. 7, 2006) (2004-2005 Turkish Rebar) and accompanying Issues and Decision Memorandum at Comment 11 and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (Nov. 6, 2007) and accompanying Issues and Decision Memorandum at Comment 6. The CIT affirmed the Department’s determination, in part, in the 2004-2005 review because Ekinciler failed to meet its burden to substantiate why it was not appropriate to amortize these assets. See Ekinciler Demir v. United States, 32 Slip Op. 2008-34 (CIT March 20, 2008) (currently on appeal).

⁶ See Memorandum from Laurens van Houten, Senior Accountant, to Neal Halper, Director of the Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination,” dated November 3, 2008 (Final Cost Calculation Memorandum).

As noted in Comment 2, above, we relied on Ekinciler's production costs reported in the 2005-2006 review when performing the cost test on home market sales made prior to the POR, adjusted for the same depreciation expenses related to the capitalized assets recorded as PME. Consistent with its position in the prior review, Ekinciler argues that the Department should not include these depreciation expenses in COP.

Ekinciler claims that it provided a detailed description of the disputed expenses, as well as supporting documentation (including accounting records showing all the original postings to the company's account for foreign exchange gains and losses, journal entries, a sample worksheet showing the exchange loss calculations and journal vouchers transferring the foreign exchange loss to the melt shop modernization account, which is part of PME). Ekinciler argues that the record shows that most of the asset at issue reflected foreign exchange losses realized on foreign currency loans during a "catastrophic economic crisis in Turkey." According to Ekinciler, during the Turkish financial crisis of 2000-2001 the Turkish lira fell against the U.S. dollar and German mark, and, as a result, Ekinciler incurred large exchange losses on its foreign currency loans. Ekinciler argues that it capitalized these foreign exchange losses and recorded the capitalized expenses as relating to the modernization of a meltshop facility asset under PME on its balance sheet. Ekinciler argues that it was an error to record the foreign exchange losses in a PME account that pertained to an asset that did not, in fact, exist, and to record the losses in an account that companies normally depreciate.

Ekinciler argues that a review of its fixed assets shows that there were no expenses for the purchase of any items of PME during the 2000-2001 period, and that there were no expenses for the construction of any fixed assets. It argues that the total absence of expenses that would be necessary to purchase or construct a fixed asset confirms that the disputed expenses were not associated with fixed assets. Moreover, at the public hearing held in this case, Ekinciler reiterated that all of the movements of expenses into the account in question were related to financial expenses and none related to meltshop modernization. See the transcript of the August 26, 2008, public hearing at 16 and 92-93.⁷ Indeed, Ekinciler stated unequivocally, "{o}ur balance sheet has a melt shop modernization asset and there is no modernized melt shop." Id. at 95.

According to Ekinciler, the loans on which it incurred the foreign exchange losses were general lines of credit, as demonstrated by the loan agreements it provided in its section D response. Ekinciler claims that the cost verification report confirms that its loans were general, and thus not tied to specific fixed assets. Ekinciler notes that the cost verification report states that, "the company recorded the foreign exchange losses as an asset in the balance sheet rather than recognizing the loss in order to obtain further bank financing which they claim they would not have been able to obtain if they had recognized the losses on their financial statements."

⁷ Specifically, Ekinciler stated that "in 2001, Ekinciler made accounting entries that transferred the expenses from the exchange loss account to a fixed assets account for melt shop modernization. Ekinciler did not modernize its melt shop. There are no expenses in the account for melt shop modernization. No expenses for any purchases. No expenses for any construction. It is all just a transfer from this financial expense, foreign exchange loss account, to the fixed asset account." Id. at 16.

Ekinciler claims that, because the foreign exchange losses did not relate to any depreciable asset, the Department has no basis to depreciate the asset and recognize an expense in the 2005-2006 POR. According to Ekinciler, the Department has not identified an accounting principle or other principle that permits foreign exchange losses and other financial expenses from prior periods to be depreciated over time and to be added to the cost of production in subsequent periods. Ekinciler argues that Turkish GAAP, U.S. GAAP, and IFRS do not allow amortization over future periods, and it argues that, in fact, such treatment violates the fundamental accounting principles of matching cost to revenues that benefit from those costs.

Ekinciler claims that, while Turkish accounting principles permit Ekinciler to recognize these foreign exchange losses either as an expense in the year in which they were incurred or to capitalize them indefinitely, they do not permit the capitalized financial expenses to be recognized, in whole or in part, in later years. Ekinciler argues that it is not allowed to depreciate this amount under Turkish law because the capitalized foreign exchange losses do not represent a tangible asset and did not benefit future periods.

Ekinciler argues that U.S. GAAP and IAS do not permit the capitalization and depreciation of financial expenses unrelated to the purchase or acquisition of a fixed asset. According to Ekinciler, the U.S. GAAP Statement of Financial Accounting Standards No. 34 (FAS 34) permits interest expenses to be capitalized only if related to the purchase or construction of a fixed asset. Ekinciler also cites to International Accounting Standards No. 23 (IAS 23), which permits only borrowing costs directly attributable to the acquisition, construction, or production of a qualified fixed asset to be capitalized as part of the cost of such asset. Ekinciler claims that there are no circumstances under these international accounting standards where it is permissible to capitalize and depreciate financial expenses alone. Ekinciler argues that, without a link to the construction or acquisition of a fixed asset, financial expenses are a period expense which do not benefit future production, and thus they must be recognized as part of the COP in the period in which they were incurred. As support for this assertion, Ekinciler cites Final Results and Final Partial Rescission of Antidumping Duty Administrative Review Frozen Warmwater Shrimp from Thailand, 72 FR 52065 (Sept. 12, 2007) and accompanying Issues and Decision Memorandum at Comment 16, where the Department stated that “financial expenses are normally reflected as a period cost and are expensed in the year incurred because they generally relate to a fiscal period.” Ekinciler argues that the capitalized foreign exchange losses at issue provide no benefit to subject merchandise produced during the 2005-2006 review.

According to Ekinciler, the Department’s depreciation of the capitalized financial expenses is inconsistent with its established prior practice because the Department requires respondents to treat all foreign exchange losses as an expense in the year incurred. Consistent with this practice, Ekinciler argues that the Department should treat the foreign exchange losses as period expenses here. According to Ekinciler, the Department has not permitted exchange losses on loans to be capitalized, and thus it has never permitted exchange losses on loans incurred in prior years to be counted as part of the COP in future years.

Ekinciler asserts that in 2003 the Department announced a change in practice regarding the treatment of foreign exchange gains and losses in the context of an antidumping duty administrative review on mushrooms from India. See Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Review, 68 FR 11045, 11048 (Mar. 7, 2003) (Mushrooms from India). Ekinciler maintains that the Department's new policy stated that, "{i}nstead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (i.e., consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation." Thus, Ekinciler argues that any portion of the capitalized financial expense, which is found to be related to foreign exchange losses, should be excluded in calculating depreciation expense.

Alternatively, Ekinciler argues that if the Department continues to depreciate the capitalized financial assets, the Department should recalculate the depreciation expense for 2005-2006 using five annual depreciation periods. According to Ekinciler, Turkish law requires the company to record a full year of depreciation expense on assets (except automobiles) acquired during the year regardless of when the assets were acquired during the year. Thus, Ekinciler argues that the Department should recalculate the depreciation on the capitalized financial asset using the annual depreciation methodology required by Turkish law, rather than depreciating the expense over 60 equal monthly periods (5 years), beginning in the month of acquisition. Ekinciler notes that, if the Department follows this approach, the asset in question is fully depreciated as of the end of the 2005-2006 POR and no depreciation expense relates to the 2006-2007 POR.

The domestic industry argues that, if the Department uses Ekinciler's prior period costs (see Comment 2, above), it should use the costs as calculated in the prior review and not remove depreciation imputed for the capitalized financial expense recorded as PME as requested by Ekinciler. The domestic industry notes that the depreciation on the asset in question has been an issue in the last two reviews, in both of which the Department has imputed depreciation on the asset.

According to the domestic industry, Ekinciler has tried to demonstrate that the asset in question consists of foreign exchange losses, and, therefore, that they should not be depreciated. The domestic industry argues that the loan agreements cannot be tied to the exchange losses that Ekinciler claims. Nevertheless, the domestic industry asserts that Ekinciler has placed this asset in its fixed asset schedule, and the Department has 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. See 2004-2005 Turkish Rebar at Comment 12.

The domestic industry argues that Ekinciler should not be permitted to update information after the Department's review of the prior period has closed. According to the domestic industry, permitting the record of a review to be supplemented long after the final results have been published weakens the respondent's incentive to supply all the relevant information while a review is ongoing.

Finally, the domestic industry notes that the Department's determination regarding the prior period is currently the subject of appeal. According to the domestic industry, if the Department were to change its decision on this topic, it runs the risk of interfering with the record on appeal, and altering the position of the parties in respect of litigation.

Department's Position:

We disagree with Ekinciler and continue to believe that it is appropriate to amortize the costs which Ekinciler capitalized as fixed assets and which it continues to avoid recognition of under Turkey's accounting standards.⁸ In accordance with section 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. However, the Department will not use those records if they are not reasonable.

We disagree with Ekinciler's suggestion that our treatment of the capitalized expenses in the Preliminary Results was wrong, even presuming Ekinciler's interpretation of the facts on the record, including the claim that the recording of its foreign exchange losses as a "property, machinery or equipment" asset to be "modernization" of a "meltdown facility" was an error.⁹ Essentially, there are two possible treatments for these capitalized expenses in our calculations: 1) to expense them in the year incurred (which, in effect, means disregarding them for purposes of this administrative review); or 2) to amortize them over a reasonable period. Amortizing Ekinciler's capitalized expenses is a reasonable approach, even if we presume the facts as asserted by Ekinciler.

As explained above, Turkey's accounting standards¹⁰ and tax laws are not one and the same. While Turkish tax law comports with the accounting standards, it is the latter which forms

⁸ In the current review, we used the 2005-2006 POR costs of production for purposes of applying the sales below cost test to home market sales with a date of sale in the 2005-2006 review period (*i.e.*, the prior review period). The adjustment does not affect the 2006-2007 POR cost of production because under the Department's amortization of these costs they are fully amortized as of the end of the 2005-2006 POR.

⁹ See the Final Cost Calculation Memorandum and the transcript of the August 26, 2008, public hearing at 16 and 92-95.

¹⁰ Ekinciler is a joint stock corporation under the Turkish Commercial Law. In the preparation of financial statements, Turkish Commercial Law permits wider latitude in the valuation of assets and the determination of accruals, reserves and liabilities than those which are allowed by the tax law. See KPMG Investment in Turkey, June 2008 at pages 15-17, 20-23.

Ekinciler's official financial reporting standards. Ekinciler prepares financial statements in accordance with Turkish accounting standards and files them with the government, at minimum as part of its tax return. According to Ekinciler, those accounting standards permitted it to recognize these expenses (*i.e.*, foreign exchange losses) either as an expense in the year in which they were incurred, or to capitalize them on the balance sheet indefinitely. Ekinciler's claim of the treatment of an asset under the "property, plant and equipment" category seems to support the observation in the World Bank's report on Turkey's accounting standards that, unlike the treatment allowed under IAS, the "UCA requires application of depreciation rates outlined in the tax laws, which **may not necessarily reflect the useful life of the asset.**" See World Bank Report on the Observance of Standards and Codes; Accounting and Auditing; Turkey, dated March 2007, at 23 (emphasis added), found at http://www.worldbank.org/ifa/rosc_aa_tur_eng.pdf.

In this case, Ekinciler concedes that Turkish accounting standards permitted it to capitalize these expenses because of the 2000-2001 currency crisis.¹¹ It appears that, when faced with a major currency crisis, the Turkish authorities allowed companies in Ekinciler's position to capitalize their significant foreign exchange losses. One can sympathize with the Turkish government's motivations for allowing such treatment, as, virtually overnight, the debts of these companies grew significantly through no activity or transaction of their own. Under normal economic conditions it is reasonable and appropriate to expense the entire foreign exchange losses in the year in which they are incurred, because the foreign exchange losses are deemed to be associated with the accounting period and the foreign loan. Normal accounting standards would call for the entire amount to be recognized in that accounting period, even when the actual loans themselves may not be payable for several years.

However, in severe economic conditions, foreign exchange losses can reach amounts that are larger than the original loan value. These losses were certainly significant in the case of Ekinciler. Under such conditions, it may not be reasonable to force the company to immediately expense the entire foreign exchange losses. Many factors may work to reverse the currency shift or mitigate the losses of such companies over time. For example, there is the possibility that the domestic currency may rally, that governmental intervention on behalf the currency and banks may occur, and banks and borrowers will renegotiate loans and payment terms, which will in turn generate a major gain for the company to offset the earlier losses.¹² Moreover, dramatic currency devaluations mean that the purchasing power of the currency has dropped (*i.e.*, inflation occurs) and thus assets denominated in historical currency values are understated. Tangible fixed assets increase in value as inflation erodes the purchasing power of the currency. In short, while the foreign denominated loan values are written up, the balancing entry to pre-existing fixed assets restates the assets to the new currency levels.

The Department has in rare cases examined companies which have capitalized their foreign exchange losses. For example, in Final Results of Antidumping Duty Administrative Review Published Notice Dynamic Random Access Memory Semiconductors of One Megabit or Above

¹¹ See the Final Cost Calculation Memorandum.

¹² See the Final Cost Calculation Memorandum.

(DRAMs from Korea) 66 FR 52097 (Oct. 12, 2001) and accompanying Issues and Decision Memorandum at Comment 1, the Department found that “(b)oth the fixed asset revaluation increment and the amortized foreign exchange translation losses were treated as adjustments to the equity section of Hyundai's balance sheets (i.e., did not flow through its income statements) in the ordinary course of business, in accordance with Korean GAAP.”

In those cases however, the Department did not allow the company to simply avoid amortizing the foreign exchange losses. In DRAMs from Korea, the Department explained its conclusions that depreciation expenses needed to be reflected in the respondent's antidumping calculations:

(I)n 1997, Hyundai capitalized its long-term translation losses, and amortized the losses over the lives of the corresponding liabilities. In 1998, the unamortized translation losses still remained. The respondent, in its new accounting methodology, simply moved these translation losses to a different part of its balance sheet. While this may be appropriate for Korean financial accounting, for antidumping purposes, this new practice fails to reasonably reflect the cost of producing the subject merchandise. Therefore, consistent with the respondent's practice for both translation losses and gains in 1997 and for deferred translation gains in 1998 and the Department's practice, we have continued to include an amortized portion of the 1997 long-term translation losses in the respondent's COP.

Id. at Comment 1.

Accordingly, it may be reasonable to capitalize and amortize such costs and to include an amount in the cost of production. Even if they are foreign exchange losses on loans as Ekinciler now asserts, it still can be shown that such losses were appropriately capitalized to fixed assets under Turkish accounting principles.

We also note that these costs were not expensed in full or reported to the Department by Ekinciler in the year incurred. While Ekinciler capitalized the costs in question five years ago, Ekinciler's treatment of the expenses did not truly come to light in the antidumping duty proceeding until several years into such treatment. The reason for this is three-fold. First, Ekinciler's U.S. sales were not reviewed by the Department for the first two years these particular expenses were listed on Ekinciler's asset schedule. Second, Ekinciler, by its own admission, did not reflect the nature of these expenses in its books and records, and instead decided to allegedly: a) report the existence of a steel making facility in its books and records; b) claim that facility was being “modernized” in its books and records; and c) then report the capitalized expenses under the “plant, machinery and equipment” category of the asset schedule as pertaining to the modernization of the facility. Thus, for the third and fourth years of this treatment, the Department did not have substantial record evidence to substantiate Ekinciler's current claims, and Ekinciler's audited books and records did not reflect the story now conveyed by Ekinciler as to the true identity of these capitalized expenses. Third, until this current administrative review, presuming all Ekinciler's claims are true, Ekinciler was not forthcoming about these expenses and the Turkish government's treatment of these expenses.

It is undisputed that Turkish accounting standards and tax law allowed for the capitalization of foreign exchange losses, and that Ekinciler continues to use the provision. We disagree with Ekinciler that there is no precedent in accounting literature for such treatment. For example, the International Accounting Standards Board has dealt with the issue of capitalizing foreign exchange losses. Prior to the 2003 revision of IAS 21, an exchange loss on foreign currency debt used to finance the acquisition of an asset could be added to the carrying amount of the asset, if the loss resulted from a severe devaluation of a currency against which there was no practical means of hedging. While that option was eliminated in the 2003 revision, the fact that IAS allowed the capitalization of foreign exchange losses to fixed assets shows that there is a rationale for such treatment. See IAS Plus: IAS 21 THE EFFECTS OF CHANGES IN FOREIGN EXCHANGE RATES found at <<http://www.iasplus.com/standard/ias21.htm>>. Some countries allowed such treatment prior to 2003. For example, in 1997, Hyundai capitalized its long-term translation losses and amortized the losses over the lives of the corresponding liabilities. See DRAMs from Korea at Comment 1.

Ekinciler makes two arguments as to why it is improper for the Department to recognize in the current POR a cost associated with these capitalized amounts. First, Ekinciler argues that Turkish GAAP, U.S. GAAP, and IFRS do not allow amortization of foreign exchange losses over future periods and it argues that such treatment violates the fundamental accounting principles of matching cost to revenues that benefit from those costs. We disagree with Ekinciler on this point, because capitalized foreign exchange losses do, in fact, benefit future periods. Even Ekinciler admits this because it recognizes that it obtained future benefits from capitalizing its foreign exchange losses, in effect buying its solvency into future periods. Specifically, by capitalizing its foreign exchange losses, the company admits it was able to report less loss on its income statement during the year in which the losses were incurred and increase the assets shown on its balance sheet to enable the company to obtain further financing. More directly, the capitalization restated the assets that are used by Ekinciler to generate revenues over the periods subsequent to the financial crisis.

Accordingly, the only distortion in this treatment under Turkish law is the failure to recognize the restatement on the income statement through depreciation or amortization of the capitalized amounts. The Department's approach in this case is fair to the respondent in that we rely on its normal books and records and do not recognize the losses in full in the year incurred, when unusual economic conditions occur. Further, it is also fair in that it systematically corrects for the distortion of never recognizing the expense and properly matches costs to revenues.

Second, Ekinciler argues that the Department's new practice of recognizing the net foreign exchange gains and losses with other types of financial income and expenses precludes the recognition of the prior period amounts. We disagree with Ekinciler. When the Department adopted the new methodology, we recognized that there might be instances where the new method would not be applicable. While the Department articulated its new practice regarding the treatment of foreign exchange gains and losses in Mushrooms from India, Ekinciler fails to mention that the Department also stated in that case, "there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice." See Mushrooms from India, 68 FR at 11048-49. In fact, it is unlikely that the Department could

justify deviating from a company's normal books and records, in accordance with its home country GAAP, and include the full amount of foreign exchange gains and losses in a given POR, if such losses dwarfed the respondent's normal cost of production. In any event, the Department's analysis in Mushrooms from India does not provide for the treatment of foreign exchange gains and losses that were properly capitalized under the home country's GAAP.

We also disagree with Ekinciler's claims that the Department has not permitted exchange losses on loans to be capitalized and has never permitted exchange losses on loans incurred in prior years to be counted as part of the COP in future years. In DRAMs from Korea at Comment 1, we explicitly stated that "the respondent's 1997 treatment of the deferred financial losses is also consistent with the Department's amortization of the respondent's deferred translation gains and losses in the forth administrative review covering 1996, when Hyundai did not recognize in its income statements any of its deferred translation gains and losses." Moreover, in the Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (Nov. 7, 2001) and accompanying Issues and Decision Memorandum at Comment 24, we stated that "we have included certain additional depreciation expenses in the reported amounts for purposes of the final results. Specifically, we have increased the reported depreciation to account for the amortization of certain expenses related to capitalized financing expenses that Ekinciler would have recorded during the POR, had it not been prevented from doing so under Turkish tax law. We find that this adjustment is appropriate because the asset values associated with them remain on Ekinciler's books" (footnote omitted).

In summary, Turkish tax law allows a company to distort its balance sheet by not amortizing or otherwise recognizing as an expense the capitalized amount. The fact that these expenses were capitalized and recorded as assets, without accounting for depreciation for five years in Ekinciler's books and records, results in a situation simply not addressed by U.S. GAAP or the IFRS. Such treatment of this item fundamentally creates a distortion in Ekinciler's reported costs. Therefore, for the final results, and consistent with the last two reviews, we have calculated a depreciation expense for the capitalized foreign exchange losses recorded on Ekinciler's asset ledger as PME and included this expense in the reported COM.

In addition, we note that all of the above analysis is entirely dependent on Ekinciler's claims as to the facts surrounding its current interpretation of the record. The domestic industry argues that Ekinciler has not shown substantial evidence that the capitalized assets in question were not additions of PME in 2000 and 2001, and to a certain extent, we do not disagree with its assessment of the administrative record. While the company may have incurred losses on bank loans denominated in U.S. dollars and German marks due to the devaluation of Turkish lira, it is possible that the additions in question were in fact associated with additions to fixed assets or asset improvements. Ekinciler continually argues that the expenses in question did not pertain to loans explicitly identified as pertaining to the purchase or acquisition of an asset, but as we have explained in past cases, money is fungible and there is no evidence that the loans in question were not used in the purchase or acquisition of an asset. See Final Results of Antidumping Duty Administrative Review, Stainless Steel Wire Rod From Taiwan, 66 FR 52587 (Oct. 16, 2001) and accompanying Issues and Decision Memorandum at Comment 2 (where the Department noted that "money is fungible, and a corporation can use the proceeds from loans for a variety of

corporate purposes, we do not generally investigate the use of the loan proceeds, and therefore do not associate interest expense with specific activities”).¹³

At verification the Department reviewed Ekinciler’s fixed asset ledger with company officials and tied the total assets and the accumulated depreciation reported on Ekinciler’s fixed asset ledger to Ekinciler’s balance sheet as of December 31, 2006. See the April 29, 2008, memorandum from Laurens van Houten, Senior Accountant, to Neal M. Halper, Director, entitled, "Verification of the Cost Response of Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. in the Antidumping Duty Review of Certain Steel Concrete Reinforcing Bars from Turkey" (the “Cost Verification Report” at page 5. Specifically, the Department reviewed the documents provided by Ekinciler to show how it recorded the foreign exchange losses, including journal entries and the Excel worksheet showing the bank balances at the end of 2000 and at the end of March 2001. However, we did not obtain or review the source documents showing the actual bank balances as of those dates.¹⁴ Further, Ekinciler did not provide, and the Department did not review, Ekinciler’s fixed asset ledgers between 1998 and 2001 or in the years prior to 2006. While company officials claimed that they did not acquire any significant assets in 2001 or the years just before 2001, there is no way to corroborate that claim based a review of the fixed asset ledger at the end of 2006.¹⁵

Ekinciler argues that it incorrectly capitalized exchange gains and losses as PME and, that since the exchange gains and losses related to prior years, they do not relate to, and should not be included in, a calculation of cost for the POR. However, while Ekinciler has attempted to show that the original transactions which gave rise to these capitalized expenses were foreign exchange losses, rather than purchased fixed assets or melt shop revitalization costs, it has also explained that Turkish accounting standards permit the “indefinite” capitalization of the reported asset. Further, Ekinciler continues to carry the expenses in question in its PME accounts and continues to avoid recognizing any associated expense. Indeed, to date, we are not aware that Ekinciler has restated its financial statements or taken any steps to amend its tax returns.¹⁶ Such

¹³ While the domestic industry argues that there is no link between the loan documents placed on the record and the exchange losses, we note that this link is not required. Because money is fungible, the underlying reasons for the bank loans are irrelevant. The loans provide funding for all operations of Ekinciler.

¹⁴ The cost verification report states “{w}e noted that the expenses were first recorded as exchange losses from short-term bank loans and then were recorded as an asset called melt shop modernization in the property, plant and equipment account. We obtained a worksheet showing how the exchange losses were calculated (see CVE 16, page 3). We noted that the exchange losses on the Dollar denominated loans were recorded each quarter by Ekinciler. We reviewed the underlying loans and noted that the loans were general loans which were guaranteed by the partners of the company as well as other group companies, see exhibit D-5 of the September 10, 2007 section D response for copies of the original loan agreements reviewed at verification.” Id.

¹⁵ Indeed, information on the record seems to contradict Ekinclier’s claim. However, because this information is business proprietary in nature, we are unable to disclose it here. For further discussion, see the Final Cost Calculation Memorandum.

¹⁶ See the Final Cost Calculation Memorandum.

a failure to take any action to correct what it calls “incorrect” treatment calls into question the veracity of its unequivocal claims on this point.¹⁷

Finally, we agree with Ekinciler that depreciation expense for the capitalized assets in question during 2005/2006 should be calculated using the annual depreciation methodology required by Turkish law, and used in Ekinciler’s normal books and records for its other assets, rather than over 60 equal monthly periods beginning in the month of acquisition. Section 773(f)(1)(A) of the Act directs the Department to follow the records of the respondent, provided that such records are kept in accordance with the respondent’s home country GAAP. In addition, we note that our verification of the respondent’s records supports this revision to the depreciation adjustment that we made in the Preliminary Results.¹⁸ Therefore, we have revised our calculations accordingly for purposes of the final results.

¹⁷ Our role at verification, or through the questionnaire process, is not to re-audit the books and records of a respondent company. We must rely on the company’s compliance with accounting standards. While Ekinciler does not have audited financial statements, its financial statements must be prepared in accordance with the accounting rules and regulations of Turkey and must be submitted to the Turkish tax authorities with the company’s tax return. We have no reason to believe that the financial statements were rejected by the Turkish government or that Ekinciler has amended its tax returns. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 73 FR 1202 (Jan. 7, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (stating that “in order for the Department to reject the independent auditors’ opinion and discredit the financial statements, the Department would need to have compelling evidence to the contrary”). Moreover, when faced with conflicting record evidence, and evolving descriptions by a respondent of its records, the company’s official financial statements, in this case filed with the Turkish tax authorities, must be the controlling factor.

¹⁸ See the Cost Verification Report at page 4.

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 review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree_____

Disagree_____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)