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Rebar Trade Action Coalition v. United States
Consol. Court No. 14-00268, Slip-Op. 15-130 (CIT November 23, 2015)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) issued on November 23, 2015, in *Rebar Trade Action Coalition v. United States*, Consol. Court No. 14-00268, Slip-Op. 15-130 (CIT 2015) (*Remand Order*). This final remand concerns the final determination in the antidumping duty (AD) investigation of steel concrete reinforcing bar (rebar) from Turkey, concerning the period of investigation, July 1, 2012, through June 30, 2013.[1]

In the *Remand Order*, the Court granted the Department's request for a voluntary remand to reconsider the issue concerning duty drawback calculations. Specifically, the Court granted the Department a remand to reconsider our duty drawback adjustment in its entirety, *i.e.*, 1) whether we should have granted Habas and Icdas[2] any duty drawback adjustment, 2) to provide further explanation or reconsider inclusion of "foregone" resource utilization fund (KKDF) taxes

[1] *See Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) (*Final Determination*), and accompanying Issues and Decision Memorandum (Final Determination Decision Memorandum).
[2] The respondents in the administrative proceeding are Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim, A.S. (Icdas) (collectively, respondents).

in any adjustment for duty drawback, and 3) to reconsider the duty drawback calculation as it specifically relates to the bases of the cost and sales adjustments.

Also, in the *Remand Order*, the Court remanded the case to the Department for the following general issues: (1) use of invoice date as the U.S. date of sale in the antidumping duty margin calculation for Icdas; (2) acceptance of yield strength information for rebar produced and sold by Icdas; and (3) the absence of alloy usage cost information from Icdas and the Department's decision not to adjust Icdas' costs to reflect alloy usage differentials.

In the Draft Results,[3] pursuant to the Court's *Remand Order*, we reconsidered the *Final Determination* taking into account record evidence obtained over the course of the AD investigation and from the respondents' supplemental questionnaire responses received after the Department re-opened the administrative record pursuant to the Court's *Remand Order*.[4] On March 25, 2016, the Rebar Trade Action Coalition (hereinafter referred to as Petitioners) and Icdas submitted comments to the Draft Results.[5] No other party submitted comments to the Draft Results.

B. BACKGROUND

On September 15, 2014, the Department published the *Final Determination* in which it found that the two mandatory respondents, Habas and Icdas, did not make sales of rebar from Turkey to the United States at less than fair value and, as a result, terminated the investigation.[6]

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[3] *See Rebar Trade Action Coalition v. United States* Consol. Court No. 14-00268, Slip-Op. 15-130 (CIT November 23, 2015), Draft Results of Redetermination Pursuant to Court Remand (March 18, 2016) (Draft Results).
[4] *See* the Department's letter to Habas and Icdas dated January 22, 2016 (Letter to Supplement the Record); *see also* and Habas' Remand Supplemental Questionnaire response dated February 4, 2016 (Habas Remand SQR).and Icdas' Remand Supplemental Questionnaire response dated February 4, 2016 (Icdas Remand SQR); *see also Remand Order*, at 28.
[5] *See* Petitioner's March 25, 2016, submission (Petitioner Remand Comments); *see also* Icdas' March 25, 2016, submission (Icdas Remand Comments).
[6] *See Final Determination* and Issues and Decision Memorandum at 1.

Petitioners challenged the *Final Determination* at the CIT.[7] On November 23, 2015, the Court issued its *Remand Order* for the Department to reconsider the *Final Determination* based on the four general issues referenced above.[8] In light of the issues raised regarding the duty drawback calculations, the Department sought a voluntary remand in the instant case to clarify certain aspects of the duty drawback calculations.

On January 22, 2016, the Department issued supplemental questionnaires to the respondents which requested documentation pursuant to the *Remand Order*.[9] On January 27, 2016, the Department tolled the administrative deadlines in all cases by four business days due to hazardous weather conditions which affected the Department's operations.[10] As a result, the Department received Habas' Remand SQR and Icdas' Remand SQR on February 4, 2016. On February 18, 2016, the Department requested an extension of the deadline to file the redetermination with the Court. The Court granted a partial extension resulting in a deadline of April 7, 2016 to submit the final redetermination. On March 18, 2016, the Department issued the Draft Results.

C. DRAFT RESULTS OF REDETERMINATION

In the Draft Results, the Department provided the following analysis concerning the issues raised in the Remand Order.

1. Duty Drawback

In the *Final Determination*, we granted respondents' request for a duty drawback adjustment, pursuant to section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act),

[7] *See* Consol. Court. No. 14-00268.
[8] *See Remand Order*, at 28.
[9] *See* the Department's January 22, 2016, questionnaires to Habas and Icdas (Habas and Icdas QNR, respectively).
[10] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

determining that respondents had demonstrated that they met the requirements of the statute and the Department's two-prong test, *i.e.*, 1) that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.[11]

As stated in previous antidumping proceedings involving Turkey, the Department found that a company would be eligible for a duty drawback adjustment on its U.S. sales of subject merchandise under the statute and the Department's two-prong test if the company was able to demonstrate that it satisfied the requirements of the Turkish duty drawback regime, *i.e.*, the Inward Processing Regime (IPR), by providing its inward processing certifications (DIIBs).[12]

In the *Final Determination*, we considered the Petitioners' arguments, *e.g.*, including whether the respondents satisfied the statutory requirements to receive the duty drawback adjustment and whether the reported duty drawback calculations were accurate. Respondents reported that they had participated in the Turkish IPR, which permitted them to import into Turkey "raw materials free of import duties, the resource utilization fund (KKDF) and value added tax if such inputs are intended for producing final goods for export." Based on the Department's analysis of the record evidence, including verification of respondents' reported data, the Department stated in in the *Final Determination*:

[11] *See, e.g.*, *Pipe and Tube from Thailand*, and accompanying Issues and Decision Memorandum at 11; *see also Mittal Steel USA Inc. v. United States*, 31 CIT 1395, 1412-1413 (2007); *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Intl. Trade 1999), and *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 41971 (July 18, 2014) (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum (OCTG from Turkey Decision Memorandum) at Comment 1. The courts affirmed this test. *See Saha Thai*, 635 F.3d at 1340-41.
[12] *See, e.g.*, OCTG from Turkey Decision Memorandum at Comment 1.

> In determining whether an adjustment should be made to {export price (EP)} for this exemption, the Department looks for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation.[49] We do require, however, that the company meet our "two prong" test as described above in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.[50]
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> In order for Turkish companies to qualify for exemptions from paying customs duties and KKDF on imported inputs for rebar exports under the IPR, each respondent demonstrated that it applied for or "opened," and the {Government of Turkey (GOT)} maintained an {Inward Processing Certificate} IPC which is the official mechanism under the IPR by which companies justify, and the GOT affirms, entitlement to such exemptions. Each respondent demonstrated that when it opened the DIIBs, it documented 1) projected quantities of imports; and 2) projected quantities of exports of rebar based on an approved production yield loss ratio also documented in the DIIB. Each respondent also demonstrated that, although the KKDF is related to the type of financing used, the tax is import-dependent and export-contingent. . .[13]

Before the CIT, Petitioners challenged several aspects of the Department's duty drawback adjustment calculations, including whether we should have granted a duty drawback adjustment, whether the KKDF tax should be included as part of the duty drawback adjustment, and whether the normal value (NV) side of the of the duty drawback adjustment is on a different basis than the export price (EP)/constructed export price (CEP) side of the adjustment. The Court granted our request for a voluntary remand to reconsider these issues; however, we find that such issues do not impugn our findings in the *Final Determination* with respect to the aforementioned two-prong test. Accordingly, based on record evidence and consistent with our practice, we reaffirm our finding that, as a threshold matter, respondents have met the statutory

[13] *See Final Determination* at Comment 1 (footnotes omitted).

requirements to receive a duty drawback adjustment.[14] The additional issues raised by the Court relating to the KKDF and the methodology employed in the Department's calculation of the duty drawback adjustment are addressed below.

a. Resource Utilization Fund (KKDF)

In the *Final Determination*, the Department granted the respondent's duty drawback adjustment request, which included exempted duties that included the KKDF. Petitioners challenged this decision based on several issues which the Court has remanded for further explanation. Specifically, Petitioners argue 1) that the Department did not provide an adequate explanation for determining that the KKDF tax qualified as a statutory "import duty" under 19 U.S.C. §1677a(c)(l)(B) or that the tax was "import-dependent and export contingent", 2) the KKDF tax is not imposed on imports, but on commercial loans that are financed in certain ways, and regardless of whether those loans are used to support imports or not, 3) the KKDF tax did not qualify as an "import duty" within the meaning of 19 U.S.C. § 1677a(c)(l)(B) because the KKDF tax can be avoided altogether, even with respect to loans to support imports, simply by avoiding certain types of financing options such as acceptance loans or loans denominated in foreign currencies, and 4) that "{i}f no tax was ever owed, then it could not have either been rebated or foregone by reason of exports to the United States."[15]

The Department, based on the analysis below, determines that the KKDF tax qualifies as a statutory import duty under 19 U.S.C. §1677a(c)(l)(B) and that the tax was "import-dependent and export contingent."

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[14] *See, e.g., Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) (*Welded Pipe 11-12*) and accompanying Issues and Decision Memorandum at 17-19; s*ee also OCTG from Turkey,* and accompanying Issues and Decision Memorandum at Comment 1.
[15] *See Remand Order*, at 12-17.

As background, the Turkish IPR provides tax exemptions to the Turkish manufacturer/exporters by permitting manufacturer/exporters to import raw materials free of import duties, KKDF, and value added tax if such inputs are intended for producing final goods for export.[16] Under this system, the beneficiary of IPR has to submit to the Customs authorities at the time of importation a letter of guarantee or pledge of money covering the total of all duties and VAT that would otherwise be owed.[17] Steel producers import scrap and alloys from various countries in significant quantities with a commitment to export the finished product that is manufactured by using the imported scrap. Upon importation, a steel producer is exempt from paying import duties, KKDF and value added tax on the condition that the finished products will be exported.[18] Upon completion of production and exportation, steel producers must submit a completion report demonstrating the export of finished goods. Failure to demonstrate that the finished goods are exported would result in retroactive collection of all the import customs duties, KKDF, and value added tax, according to the IPR. In order to ensure a fair comparison between export and domestic prices, a duty drawback adjustment is necessary. This duty drawback adjustment would represent the amount of duties that the company would have to pay, if the product had been sold in the domestic market rather than in the export market.[19]

During the investigation, we obtained from Icdas a copy of the IPR permit/certificate accompanying the letter of guarantee.[20] Icdas also provided the lists of exports and imports that correspond to an IPR Permit. Further, Icdas provided several samples of customs exit declaration for exports forms as well as samples of customs entry declarations for the imports

[16] *See* Habas' Section C Questionnaire Response dated February 11, 2014 at C-34.
[17] *Id*. at C-35 and Exhibit C- 16.
[18] *Id*. at C-35; *see also* Habas' Remand SQR at 1-4.
[19] *Id*., at C-35.
[20] *See* Icdas' Supplemental Questionnaire Response dated April 8, 2014 at S2C-2 and Exhibit S2C-1.

and demonstrated how these declarations tie to the export and import lists of the relevant IPR permit. Icdas also demonstrated that in each declaration form, both for imports and exports, the relevant IPR Permit number is noted and approved by the Turkish Customs authority.[21]

Additionally, in the underlying investigation, the Department obtained from Icdas the application letter it submitted to the Turkish Customs authority for purposes of preparing the completion report that is required under the IPR.[22] This documentation establishes that subject merchandise sold by Icdas to several export countries, including the United States, was produced from scrap that was imported under the IPR, and that Icdas reported these U.S. sales to the Turkish Government as part of the list of exports that were declared as manufactured from scrap imported under the IPR.

In response to questions raised by the Court in the *Remand Order*, the Department issued supplemental questionnaires to Icdas and Habas.[23] As indicated in the Habas Remand SQR, the KKDF is not a loan but a Turkish tax imposed on the importation of goods when the payment term is by acceptance credit, term letter of credit, and cash against goods.[24] The Habas Remand SQR further indicates that the amount of the KKDF tax is six percent of the value of the goods imported.[25] In the Habas Remand SQR, the company provides a copy of the KKDF decree and states that the relevant provision is paragraph 7(D).[26] The information from Habas further indicates that under the terms of the IPR, the IPR remission or suspension covers "all financial obligations such as taxes, duties, fees, fund payments, *etc.*, which are stipulated for collection

[21] *Id.*, at Exhibit S2C-2.
[22] *Id.*, at Exhibit-S2C-2 and S2C-3.
[23] *See* the Department's January 22, 2016 questionnaire to Icdas, titled "Questionnaire Issued to the Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)," (Icdas Remand Supp QNR); *see also* the Department's January 22, 2016 questionnaire to Habas, titled "Questionnaire Issued to Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)," (Habas Remand Supp QNR).
[24] *See* Habas' Remand SQR at 2.
[25] *Id.*
[26] *Id.*, at Exhibit 1; *see also* Habas' sales verification exhibit 21 at 96-98.

during import and export {of} goods."[27] Additionally, Habas provides a copy of the IPR legislation, which provides that under the terms of the inward processing regime, the IPR remission or suspension covers "all financial obligations such as taxes, duties, fees, fund payments, *etc.*, which are stipulated for collection during import and export {of} goods."[28] The Icdas Remand SQR provides similar information that further supports the information contained in Habas' Remand SQR.[29] Thus, the information from Habas and Icdas demonstrates that the KKDF is not a loan at all but rather a tax on imports.[30] Moreover, the underlying payment term for the imported merchandise is not a loan but a term letter of credit, acceptance credit, or cash against goods, none of which involves a loan of any type.[31] The KKDF amount is based on the value of the goods themselves. The KKDF is not paid "through the mechanism of the loan" since there is, in fact, no loan. Furthermore, it is not paid through the mechanism of the term letter of credit (L/C), the acceptance credit, or the cash-against-goods remittance. Rather, if the KKDF is payable, it is taxed directly on the importation and is payable upon entry, just as if it were a customs duty. Thus, the exemption for KKDF under the IPR is ensured by the terms of the IPR law.[32]

According to Habas, "{u}nder the operation of the IPR regime, when Habas imports such goods, the import duties and KKDF (if any) thereon are suspended, and when Habas exports rebar, thereby meeting its export commitment under the IPR, the contingent liability for the payment of the import duties and KKDF tax is lifted and the exemption is liquidated." [33] When

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[27] *See* Habas' Remand SQR at 1.
[28] *Id.*, at Exhibit 2 at 22-23 for legislation titled, "Resolution Concerning Inward Processing Regime (Resolution No: 2005/8391 at pages 2-3); *see also* Habas' Section C QR (Feb. 11, 2014) at Exhibit 16.
[29] *See* Icdas' Remand SQR at 6-9 and Exhibit 3.
[30] *Id.*, at 7.
[31] *See* Habas' Remand SQR at 1-2.
[32] *Id.; see also* Icdas' Remand SQR at 8.
[33] *See* Habas' Remand SQR at 4.

Habas imports inputs for its production under an inward processing certificate (DIIB), it is exempted from any import duties on such inputs and from any KKDF tax that would otherwise be payable for such imported inputs. Thus, when Habas imports scrap, billets, or ferroalloys under the IPR and the payment terms under which the purchases are made are by acceptance credit, term L/C, or cash against goods, then Habas is exempted from payment of the six percent KKDF tax by virtue of the IPR regime.

Documentation in the Habas Remand SQR indicates that when Habas imports goods under a term L/C, the transaction is subject to six percent KKDF; however, Habas is exempted from payment of the KKDF tax at the time of importation, and the exemption is finalized when Habas meets its export commitment under the given DIIB, and the DIIB is therefore closed.[34] The documentation includes all commercial documents, including (i) the GB (Turkish Customs import summary), (ii) commercial invoice, (iii) L/C's, and (iv) the purchase order documents for the transactions listed in the question.[35]

According to Icdas, when the company imports inputs for its production under the IPR, it is exempted from import duties and KKDF tax that would otherwise be payable for such imported inputs. Icdas argues that the KKDF was applied based on the payment terms. Specifically, when the company imports inputs under the IPR with payment terms under which these input purchases are made (*e.g.*, acceptance credit, term letter of credit, and cash against goods), these inputs are exempted from payment of the six percent KKDF tax by virtue of the IPR regime. Icdas explains that under the IPR, it is not necessary to trace a particular import into a particular export, rather the principle of substitution drawback allows an importer-producer to claim drawback on goods when goods of that type, or the equivalent goods, are used

[34] *Id*., at 2.
[35] *Id*., at Exhibit 3.

in the subject merchandise. Icdas states that, when İcdas imports inputs under the IPR regime, the import duties and KKDF are suspended, and when Icdas exports rebar, thereby meeting its export commitment under the IPR, the contingent liability for the payment of the import duties and KKDF tax is lifted and the exemption is liquidated.[36]

To demonstrate how respondents qualified for the KKDF tax and exemption under the IPR scheme, we requested that the respondents demonstrate specific linkage between the IPR and KKDF exempted amount claimed.[37] Habas reports that it did not receive a KKDF exemption for its imports under two of the Turkish customs entry numbers that we selected in our remand supplemental questions because the payment term for these imports was a sight L/C (which is not subject to the KKDF tax) rather than a deferred-payment (term) L/C. Since no KKDF tax would have been applied to these imports in the absence of the IPR, Habas did not report any KKDF exemption under IPR for these imports.[38] Instead, for these two transactions, Habas reported only the customs duty exemption, and not any KKDF exemption. For the other three imports for which we requested documentation, the payment term was a term L/C, and Habas would have been required to pay KKDF tax on the value of the goods at the time of entry if the company had not had an inward-processing certificate (DIIB). Since, for these imports, Habas had a DIIB, imported the goods under that DIIB, and based the payment term on an L/C, Habas was, pursuant to Turkey drawback scheme, exempt from the KKDF tax at the time of importation.[39]

In Icdas' Remand SQR, Icdas provides documentation in a form of commercial documents, including the customs entry declaration forms both the initial and the revised, and

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[36] *See* Icdas' Remand SQR at 8.
[37] *See* Icdas Remand Supp QNR; *see also* Habas Remand Supp QNR.
[38] *See* Habas' Remand SQR at 2.
[39] *Id*.

final forms, commercial invoice, L/C's, and the purchase order documents for the requested imports qualified under the IPR law. [40] Further, based on documentation in sales verification exhibit CVE-9, Icdas identified the selected transactions and demonstrated the connection with the relevant IPR through the supporting documents. According to Icdas, "As shown in the customs entry forms for the selected transactions, the payment terms for all are either "vadeli akreditif *i.e.*, term letter of credit," or "mal mukabili" *i.e.*, cash against goods for which a six percent KKDF would have been due had the scrap not been imported under IPR."[41]

Therefore, based on the information from the underlying investigation and on the remand questionnaire responses submitted by Habas and Icdas, the KKDF tax would be assessed to these respondents if they do not meet their respective export commitment under the IPR. The Turkish duty drawback scheme defines a tax as "{a}ll financial obligations such as taxes, duties, fees, fund payments etc. which are stipulated for collection during import and export goods."[42] The fact that the KKDF tax was identified as a tax, not a duty, is not determinative. The Department has previously determined that the name of the tax did not matter as long as its function was on import duties paid.[43] Furthermore, we find that the KKDF tax is a tax on imports purchased with deferred payments that is exempted if the goods are exported under the Turkish duty drawback system. For example, in the Habas Remand SQR, Habas states that it would have paid the KKDF tax but for the fact that the production input was imported under an inward processing

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[40] *See* Icdas' Remand SQR at Exhibit 5.
[41] *Id*., at 9 and Exhibit 5.
[42] *See* Habas Section C Questionnaire Response. Exhibit C-16 at 3, A23 (Def. Pub. Tab B).
[43] *See Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013) (*Circular Pipe from Turkey 2011-2012*) and accompanying Issues and Decision Memorandum at comment 4, in turn citing *Color Picture Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 56 FR 19084 (April 25, 1991) (*Color Picture Tubes from Korea*) and accompanying Issues and Decision Memorandum at comment 6.

certificate as part of Turkey's duty drawback program.[44] The applicable Turkish government bylaws concerning the KKDF Tax provides, in relevant part, that a six percent rate be applied on "imports made with acceptance loan, deferred letter or credit and in the form of cash on delivery."[45] The bylaw's next provision, Article 2 § 8. provides that the

> {a}bove rates are applied as 0 {percent} in the loans extended in Turkish Lira or in foreign currency for financing export, and in the loans to be obtained from abroad by the persons operating in Turkey for financing export (including those extended for financing the sales and the deliveries considered as export contingent to export promotion certificate. Inward processing licence and tax, duty and charge exemption certificate and for financing the foreign currency-earning services and activities), and in import made with acceptance loan, deferred letter of loan and in the form or cash on delivery within the scope of export promotion certificate and inward processing licence.[46]
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> This KKDF Tax bylaw specifically references the "'inward processing licence" that is, the Domestic Processing Certificate under the Turkish duty drawback scheme.[47]

The Department found, based on verified record evidence, that pursuant to the Turkish duty drawback scheme, lcdas and Habas had applied for Domestic Processing Certificates and approval of the Turkish government for an exemption from the tax on loans used to finance imports of steel inputs, upon the export of the subject merchandise, that is rebar.[48] Thus. the Department carefully considered record evidence as to the workings of the Turkish duty drawback system, notwithstanding Petitioners' assertion that the Department allegedly did not address their claim that the KKDF Tax was not an import duty under the statute.[49] Thus, record evidence indicates that the KKDF tax is assessed in conjunction with other duties and administered in the same manner as import duties.

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[44] *See* Habas' Remand SQR at 3.
[45] *See* Icdas Supplemental Section C Questionnaire Response (Pub. Doc. 166) at Exhibit SC-14, Communique On Resource Utilization Support Fund Regarding Bylaw. Art. 2, Sec. (7)0 (Pub. Doc. 168). A43 (Def. Pub. Tab D).
[46] *Id*., at Exhibit SC-14. Art. 2 § 8. A43 (emphasis omitted).
[47] *See* Pl. Pub. Tab 4. Habas Section C Questionnaire Response at Exhibit. C-16 at 7. Art. 9.
[48] *See* Final Determination Issues and Decision Memorandum at 14-15.
[49] *See* Pl. Mot. 9.

According to Icdas, the KKDF is a tax collected upon entry of goods and calculated on the value of the goods by assessing the tax on what was paid for the goods, either in the form of cash, letter of credit, or accepting credit in the import transaction.[50] Icdas claims that it never suggested that KKDF payment is related to a loan. Rather, "it has always been collected on entry just like a customs duty and the Department has examined the tax in multiple proceedings involving Turkish respondents."[51]

The issue of the basis of the KKDF was previously considered in *Welded Pipe and Tube Products from Turkey*,[52] which states, "{r}egarding Wheatland's argument that the KKDF taxes are not an import duty but a tax, the Department has determined that the name of a tax does not matter in this context if it functions as a duty on imports. This is supported not only by long-standing precedent, but also by recent decisions.[53] Even though the Department concluded in *Wire Rod from Turkey* that the KKDF taxes are a tax levied on financial transactions, not on goods and services, this again does not prevent the KKDF taxes from functioning as a duty on imports, as it did in this review."

The KKDF amount is considered a contingent liability similar to the duties exempted on raw materials imported under the requirements of the IPR. Therefore, we find that this contingency is tantamount to "owed duties" because such a tax would require payment absent the satisfactory exportation of the subject merchandise to the United States.

In sum, the Department has once again analyzed Turkey's duty drawback system and has found that not only import duties but also the KKDF tax are eligible for drawback treatment

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[50] *See* Icdas' Remand SQR at 7.
[51] *Id.*
[52] *See Final Results of the Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey*; 2012-2013, 79 FR 71087 (December 1, 2014), and accompanying Issues and Decision Memorandum at comment 3.
[53] *See, e.g., Color Picture Tubes from Korea* and accompanying Issues and Decision Memorandum at comment 6; *see also OCTG from Turkey* and accompanying Issues and Decision Memorandum at comment 1.

under U.S. law.[54] Record evidence here supports the same conclusion. Thus, we find that, for both respondents, the Department correctly included exemptions of KKDF in the duty drawback adjustment consistent with the Department's practice.[55]

b. Voluntary remand regarding the duty drawback calculation

In the *Remand Order*, the Court directed the Department to reconsider calculation of the duty drawback adjustment as it specifically relates to the bases for the adjustment to cost and sales. Specifically, we have reexamined the record evidence to address the issue of whether the cost side of the duty drawback adjustment is on a different basis than the sales side.

The Department, based on the analysis below, finds that respondents satisfied the two-prong test and, thus, has determined to grant a duty drawback adjustment to the EP pursuant to 772(c)(1)(B) of the Act.[56]

The record indicates that the respondents source some of their inputs both from foreign and domestic sources.[57] The portion of each input that was domestically sourced incurred no duties because they were not imported and thus, not subject to duties. In the underlying investigation, the Department divided the amount of the duty forgiven or rebated by a

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[54] *See, e.g., OCTG from Turkey*, and accompanying Issues and Decision Memorandum at Comment VI.1.
[55] *See Welded Pipe 11-12* at Comment 4.
[56] *See e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decisions Memorandum at Comment 1; and *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2013-2014, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum at Comment 1.
[57] *See* Memorandum to the File titled, "Verification of the Cost Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey," dated July 7, 2014 at pages 16-17 and Cost Verification Exhibit (CVE) 11; *see also* the Department's Memorandum to the File titled, "Verification of the Sales Response of Habas in the 2012-13 Antidumping Duty Investigation of Concrete Reinforcing Bar from Turkey," dated June 23, 2014 at SVE-5 (Habas Sales Verification Report); *see also* Habas' Section D Questionnaire response dated February 11, 2014 at D-5 and D-7.

denominator limited to exports instead of all production.[58] However, we find that, upon closer examination of the calculation of the duty drawback adjustment, in situations in which the inputs are sourced from both domestic and foreign sources, such a calculation results in an imbalance in the comparison of EP or CEP with NV.

This imbalance is the result of different aspects of the calculation as it was performed in the *Final Determination* of the underlying investigation. First, on the NV side of the comparison, the annual average cost for an input was an average cost of both the foreign sourced input, which incur duties, and domestic sourced input on which no duties were imposed. Thus, the denominator over which the amount of the duties forgiven or rebated was allocated was all production. This per-unit amount of duties was a component of the respondent's cost of production. On the EP/CEP side, however, the amount of duties forgiven or rebated was allocated over only the export sales quantity. As a result, the adjustment to the EP/CEP used a smaller denominator than that used on the NV side. Thus, the per unit U.S. sales adjustment was larger than the per unit duty amount imbedded in NV, and created an imbalance in the comparison of the EP/CEP with NV.

A duty drawback adjustment to EP or CEP is based on the principle that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not."[59] In other words, NV based on home market sales prices or cost of production are import duty

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[58] *See* Memorandum to the File, titled "Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey – Sales Analysis Memorandum for Icdas," (Sales Analysis Memorandum for Icdas), dated September 8, 2014; *see also* Memorandum to the File, titled "Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey – Sales Analysis Memorandum for Habas," (Sales Analysis Memorandum for Habas), dated September 8, 2014; Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," (Icdas Final Cost Calc Memorandum) dated September 8, 2014; Memorandum from Robert B. Greger to Neal M. Halper, re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (September 8, 2014) (Habas Final Calc Memo).

[59] *See Saha Thai Steel Pipe (Pub.) Co. v. United States,* 635 F.3d 1335, 1339 (Fed. Cir. 2011) (*Saha Thai*).

"inclusive," while export market sales prices are import duty "exclusive." In *Saha Thai*, the Court of Appeals for the Federal Circuit (CAFC) stated:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.[60]

Thus, the CAFC recognized the duty drawback adjustment is intended to prevent dumping margins from being created (or affected) by the rebate or exemption of import duties on inputs used in the production of subject merchandise. However, in circumstances such as those present here, where the dutiable input has been imported in additional to being domestically sourced, a distortion in the dumping margin is caused by calculating a per unit duty drawback adjustment using only the quantity of export sales of subject merchandise. In other words, in circumstances when an input is sourced both domestically and from imports, the actual per unit "cost of the duty . . . . reflected in NV"[61] is the average duty cost included in the cost of producing the merchandise and thus represents the appropriate amount of duty drawback adjustment to be made. Otherwise, the duty drawback adjustment will distort the comparisons of EP or CEP with NV.

Accordingly, the Department determines to take these distortions into account in order to accurately determine an adjustment for "the amount of import duties imposed . . . which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[62] Specifically, the Department will make an upward

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[60] *Id*.
[61] *Id.*
[62] *See* section 772(c)(1)(B) of the Act.

adjustment to EP and CEP based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI. This ensures that the amount added to both sides of the comparison of EP or CEP with NV is equitable, *i.e.*, duty neutral meeting the purpose of the adjustment as expressed in *Saha Thai*.

Thus, based on the facts of this investigation, the Department finds that the import duty costs, based on the consumption of imported inputs during the POI, including imputed duty costs for the imported inputs, properly accounts for the amount of duties imposed, as required by 772(c)(1)(B) of the Act. Thus, for this remand redetermination, the Department has revised its calculation of the adjustment to EP and CEP for duty drawback such that this adjustment is based on the per-unit duty costs included in the respondent's cost of production.[63]

2. Date of sale for Icdas

In the *Final Determination*, the Department considered whether to base the date of sale on Icdas' invoice date or on an earlier date. Ultimately, in the underlying investigation, the Department determined to rely on the invoice date.[64] In reaching this conclusion, the Department explained that under 19 CFR 351.401(i) the Department presumes the invoice date is the date of sale at which parties finalize the material terms of sale and, thus, will use this date as

[63] *See* Memorandum to Neal M. Halper, Director, Office of Accounting, from Alma Sepulveda, Senior Accountant "Cost of Production and Constructed Value Calculation Adjustments for the Draft Remand Determination – Icdas" dated concurrently with this memorandum (Draft Remand Cost Calculation Memo for Icdas); *see also Certain Corrosion-Resistant Steel Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination* (81 FR 63, January 4, 2016) (*Preliminary Determination of CORE from India*), and accompanying Preliminary Decision Memorandum (CORE from India Preliminary Decision Memorandum) at 13-17.
[64] *See* Final Decision Memorandum at Comment 10.

the date of sale, but that the Department may utilize a different date of sale if evidence indicates the terms of sale are set at a different time.[65]

In the *Final Determination*, the Department, as an initial matter, explained that while interested parties used the term "contract date" and "amended contract date" to refer to the alternative sale date, the information collected at verification indicated that the pre-invoice dates under consideration were, in fact, purchase order (P/O) documents.[66] The Department further noted that several of the P/Os reviewed at verification (*e.g.*, initial P/Os as well as amended P/Os) were unsigned despite the fact that they contained a signature block for Icdas and its U.S. customer.[67]

In the *Final Determination*, the Department also noted that the number of post-P/O modifications was significant and was on-par with or exceeded the number of modifications that the Department cited as the basis for rejecting contract date as the date of sale in prior proceedings.[68] Further, in the *Final Determination*, we cited to record evidence indicating that Icdas issued amended P/Os within days of the invoice date.[69]

In the *Final Determination*, the Department distinguished the facts of the instant investigation from those of *Welded Pipe from Thailand* and *Sulfanilic Acid from Portugal*.[70] The Department explained that unlike *Welded Pipe from Thailand*, the post-P/O revisions to the

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[65] *Id*.
[66] *See* Final Decision Memorandum at Comment 10.
[67] *Id*.
[68] *See Final Determination* at Comment 10, citing to *Circular Welded Carbon Steel Pipes and tubes from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 63902 (October 14, 2011) (*Pipe and Tube from Taiwan*) and accompanying Issues and Decision Memorandum at Comment 1.
[69] *See* Final Decision Memorandum at Comment 10.
[70] *Id.*, referencing *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review,* 65 FR 65910 (October 13, 2000) (*Welded Pipe from Thailand*), and accompanying Issues and Decision Memorandum at Comment 1; *see also See Notice of Final Determination of Sales at Less Than Fair Value; Sulfanilic Acid from Portugal,* 67 FR 67219 (September 25, 2002) (*Sulfanilic Acid from Portugal*), and accompanying Issues and Decision Memorandum at Comment 1.

terms of sale involved changes to quantity that exceeded the stated tolerances in the corresponding initial P/O.[71] Concerning *Sulfanilic Acid from Portugal*, where the Department used the amended contact date as the date of sale, the Department explained in the *Final Determination* that the facts of the instant investigation differed because Icdas' correspondence with its U.S. customers involved P/Os and amended P/Os, some of which were unsigned and issued mere days before the invoice date, as opposed to binding contracts between parties.[72] On this basis, the Department determined to use the invoice date as the date of sale for Icdas.[73]

In their arguments before the Court, Petitioners assert that the Department did not adequately explain its reasons for rejecting its preliminary conclusion to use contract date as the date of sale for Icdas or adequately support its final conclusion to use invoice date as the sale date, and that the Department's *post hoc* explanations are insufficient to remedy the problem and are further inconsistent with the record.[74] Petitioners further contend that the Department failed to identify a single instance in which Icdas' material terms of sale different from those in the last amended contract.[75] Petitioners contend that the fact that certain sales documents were unsigned indicates that Icdas and its customers did not view signatures as a necessary indicator of a "meeting of the minds."[76] Petitioners further question the validity of the Department's conclusion that the issuance of amended P/Os or contracts within days of the invoice date meant that those documents somehow did not reflect the final terms of sale. Further, Petitioners pointed out that the sole precedent relied on by the Department in the *Final Determination*

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[71] *See* Final Decision Memorandum at Comment 10.
[72] *Id*.
[73] *Id*.
[74] *See Remand Order* at 17.
[75] *Id*.
[76] *Id*., at 18.

involved different facts in the form of a documented instance of an invoice that reflected different material terms than the related contract.[77]

In its holding, the Court found that the Department failed to address the fact that there is no record evidence indicating that the material terms of sale differed from those in Icdas' last amended P/O contract.[78] The Court also noted that the Department relied on *post-hoc* arguments to support its approach in the Final Determination.[79]

The Court observed that the Department appeared to take the position that material terms of sale are not established unless they are unchangeable; in other words, even where no change occurs between a particular date on which material terms of sale are memorialized and the invoice date, if the terms were "subject" to change in the abstract, then the terms should be considered set only as of the invoice date.[80] The Court noted that this position was rejected in both *Nucor* and *Habas*, wherein the Court rejected the argument (as advocated by domestic parties) that sales terms were established only once they were no longer subject to even theoretical change.[81] The Court further noted that the Department itself has previously rejected such an approach and has opted instead to select a particular date as the date of sale despite the fact that material terms actually changed afterwards (and thus must have been "subject to change").[82]

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[77] *Id*. at 18.
[78] *See* Remand Order at 18-19.
[79] *Id*., at 19.
[80] *Id*., at 19.
[81] *See Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company v. United States*, Slip Op. 09-20, Court No. 05-00616 (March 2, 2009), (*Nucor*) at 73; *see also Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Slip Op. 09-55, Court No. 05-00613 (June 15, 2009) (*Habas*).
[82] *See Remand Order* 19-20, citing to *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013) and accompanying Issues and Decision Memorandum at Comment 6.

The Court noted that the salient question has been held to be that when the parties to the transaction intended the terms of sale to be final.[83] The Court noted Petitioners' argument that (1) based on information from Icdas, it does not appear that Icdas and its customers intended to – or ever did – continue to negotiate as to material terms through the invoice date; and (2) the rationale offered by the Department (*e.g.*, that the precedents cited by Petitioners involved sales contract transactions rather than P/Os and therefore were inapposite to the facts of the instant investigation) make no sense and are *post hoc*.[84] The Court further noted Petitioner' argument that the Department's apparent position that documents termed "contracts" are uniformly treated as such by contracting parties and represent an unchangeable "meeting of the minds," does not comport with the Department's prior findings with regard to changes to contracts.[85]

Thus, in light of Petitioners' arguments and the Department's "seeming departure from its own (and judicially-confirmed) precedent," the Court remanded this issue for further explanation and reconsideration.[86]

Under 19 CFR 351.401(i) the Department presumes the invoice date is the date of sale at which parties finalize the material terms of sale and, thus, will use this date as the date of sale, but that the Department may utilize a different date of sale if evidence indicates the terms of sale are set at a different time. The *Preamble* to the Department's regulations offers further guidance with regard to 19 CFR 351.401(i). The *Preamble* explains that:

> . . . as matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. The existence of an enforceable sales agreement between the buyer and the seller does

[83] *See Remand Order at 20*, citing to *Habas* at 58.
[84] *Id*., at 20.
[85] *Id*.
[86] *See Remand Order* at 21.

> not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes. The Department also has found that in many industries, even though a buyer and a seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoice. Thus, the date on which the buyer and seller appear to agree on the terms of a sale is not necessarily the date on which the terms of sale are actually established. The Department has also found that in most industries, the negotiation of a sale can be a complex process in which the details often are not committed to writing. In such situations, the Department lacks a firm basis for determining when the material terms were established. In fact, it is not uncommon for the buyer and seller themselves to disagree about the exact date on which the terms of became final. However, for them, this theoretical date usually has little, if any, relevance. From their perspective, the relevant issue is that the terms be fixed when the seller demands payment (*i.e.*, when the sale is invoiced).[87]

In the *Preamble*, the Department further explains that it

> . . . will use an alternative date of sale if it presented with evidence that the material terms of sale are established on a date other than the invoice date. . . However, the Department emphasizes that in these situations the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where negotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.[88]

The Department's approach in the *Final Determination* with regard Icdas' date of sale adhered to the standard set forth under 19 CFR 351.401(i) and the *Preamble*. The Department encountered a sales process that was subject to renegotiation for a significant percentage of U.S. sales, including renegotiated/revised terms of sales that occurred on the eve of the invoice date.[89] In other instances, Icdas and the U.S. customer issued a revised P/O in which the signature blocks were left unsigned and the date of the amended P/O was merely penciled in at the top of

[87] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*).
[88] *See Preamble*, 62 FR at 27349.
[89] *See* Icdas July 21, 2014, case brief, citing the Memorandum to Melissa G. Skinner, Director, Office III, AD/CVD Operations, " Verification of the Sales Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) in the 2012-13 Investigation of Steel Concrete Reinforcing Bar from Turkey, June 27, 2014) (Icdas Sales Verification Report) at 30.

the document.[90] In our view, such facts do not point to a formal or "firmly established" agreement in which there is a meeting of the minds between the buyer and buyer. Rather, our view is that the facts indicate a fluid sales process where parties were able to fill out unsigned P/Os and amended P/Os that, in some instances, were revised multiple times right before the issuance of the invoice.[91] As such, we find that it was reasonable to conclude in the *Final Determination* that the date of the P/O and amended P/Os do not constitute the formal "meeting of the minds."

The Court notes that the record lacks any evidence that Icdas' terms of sale were revised as of the invoice date. We do not dispute this fact. However, as explained in *Preamble*, an informal "preliminary agreement" (which in the instant proceeding includes instances involving unsigned P/Os with dates merely penciled in at the top of the document) in an industry where renegotiation is common," (which is certainly true in the case of Icdas), may not constitute a "meeting of the minds," and that this approach "holds even if, for a particular sale, the terms were not renegotiated." Thus, we contend that our approach in the *Final Determination* to use invoice date as the date for sale for Icdas adhered to 19 CFR 351.401(i) and the *Preamble*.

In its holding, the Court states that *Nucor* argues against the Department using invoice date for Icdas in the context of the instant proceeding. First, in *Nucor*, it is important to note that the Department, as part of a voluntary remand, switched from contract to invoice date as the date of sale based on a "single price change and the volume of sales affected by the price change to reach the conclusion that invoice date is the date of sale for all of Icdas' U.S. sales."[92] In *Nucor*, the Court found that this approach, which the Court found was reliant upon "an extraordinary

[90] *See* Icdas Sales Verification Report at 30 and verification exhibits SEV-34, SVE-35, SVE-38 and SVE-9.
[91] *See* Icdas Sales Verification Report at 30.
[92] *See Nucor* at 65.

low frequency of change,"[93] constituted "nothing more than a superficial, black-and-white, all-or-nothing determination whether there has been any change in any material term in any contract at issue, rather than a reasoned, case-specific, fact intensive analysis as to when the parties had a meeting of the minds on the material terms of sale, which what the law requires."[94] Given the Court's holding in *Nucor*, it is not readily apparent why emphasis should be placed on the lack of a single instance of the material terms of sale changing as of the invoice date when determining whether it was appropriate to use the invoice date as the date of sale rather than focusing on the fluid nature of Icdas' sales process as a whole, as discussed above.

Additionally, in *Nucor*, the Court emphasized "the importance of looking to the course of conduct between the parties in evaluating whether a written document represents a binding agreement" that may serve as the basis for establishing the date of sale.[95] Elsewhere in *Nucor* the Court explains that "the use of formal negotiation and contracting procedures is conduct that bears directly on the expectations of the parties to a sale."[96] The Court further explains in *Nucor* that it was reasonable to assume that the respondent's sale date for home market sales did not become final until the invoice date because such sales were made through an informal negotiation process in which there were no "formal written contracts."[97] However, the Court explained in *Nucor*, that with regard to U.S. sales, the respondent and the U.S. buyer first engaged in an informal exchange of information, made a formal written offer, entered into a "preliminary agreement regarding terms of sale," and then, in all instances, "went beyond" the

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[93] *See Nucor* at 79.
[94] *Id*., at 66; *see also Nucor* at 74, "the key element to consider" in determining date of sale is which date best reflects the point at which the parties had a meeting of the minds on the material terms of sale – not whether there is evidence of even a single change in a single material term of a single contract."
[95] *See Nucor* at 81 citing to *Sulfanilic Acid from Portugal* at Comment 1.
[96] *Id*., at 88.
[97] *Id*.

preliminary agreement to enter into a "formal written contract, signed by both parties." [98] The Court also noted in *Nucor* that the "contract memorialized the parties' meeting of the minds on all essential terms of the contract."[99] In reaching this conclusion, the Court in *Nucor* further stated that no party pointed to any evidence suggesting that the buyer and seller's "written contracts were not legally binding instruments but instead mere 'preliminary agreements on terms' where "renegotiation was common."[100]

Thus, in finding that the contract date constituted the "meeting of the minds" and, hence, the proper date of sale, the Court in *Nucor* placed great emphasis on the legally binding nature of the formal, written, and signed contracts between the buyer and seller. As noted above, the facts of the instant proceeding are different. Here, the record evidence indicates that Icdas engaged in a fluid sales process in which the sales terms of multiple P/Os (as opposed to a single contract), representing a significant percentage of U.S. sale, were revised (sometimes repeatedly) leading up to the invoice date. Moreover, unlike the facts of *Nucor*, the sales documents for Icdas in the instant proceeding reflect the use of unsigned P/Os (some of which contained a revised contract date that was merely penciled in at the top of the document), as opposed to signed and legally binding sales contracts.[101]

Concerning *Habas*, the issue similarly revolved around a change to a single "sales contract." In the underlying proceeding of *Habas*, the Department found the term of sale had changed in that single contract that warranted the use of invoice date as the date of sale. However, on remand, the Department determined that, in fact, there was no change in the terms

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[98] Id., at 89.
[99] *Id*., at 90.
[100] *Id*.
[101] *See* Icdas Sales Verification Report and U.S. Pre-select Verification Exhibits SVE-34, SVE-36, SVE-38, and SVE-9 (Date of Sale).

of sale for the sales contract in question, and, therefore, switched to contract date as the date of sale.[102] Thus, in *Habas*, the issue before the Court involved a single "sales contract" that, in point of fact, lacked any evidence of change with regard to the terms of sale. As noted above, in the instant proceeding, record evidence indicates changes in terms of sale to multiple unsigned P/Os that impacted a significant number of U.S. sales.

However, while we contend that the facts of the instant proceeding are distinct from the cases cited by the Court, in light of the Court's holding in the *Remand Order* we are, under respectful protest,[103] revising the date of sale for Icdas' U.S. date of sale. Specifically, in this draft remand redetermination we are using the date of Icdas' last amended P/O as the U.S. date of sale.

On March 7, 2014, the Department, requested Icdas to provide its date of contract as well as the date of any amended contracts. [104] In response, Icdas provided a revised database that included the field, "CONTDATEU."[105] However, Icdas indicated in its case brief that the field "CONTDATEU," in fact, only contained the initial P/O date and not the last amended P/O date. *See* Icdas July 21, 2014, case brief at 3. Thus, where the revised P/O date is available (*e.g.*, where the sales documents reviewed and collected at verification indicate an amended P/O date), we have used that last amended P/O date as the date of sale. Absent such information, we have used the date in "CONTDATEU" as the date of sale. For further information, see the Draft Remand Cost Calculation Memo for Icdas.

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[102] *See Habas* at 58-59.
[103] *See Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).
[104] *See* the Department's March 7, 2014, Section A 2nd Supplemental Questionnaire and Sections B-C 1st Supplemental Questionnaire - Antidumping Duty Investigation of Steel Concrete Reinforcing Bar (Rebar) from Turkey at 8.
[105] *See* Icdas' April 3, 2014 Supplemental QR at SB-14.

3. Acceptance of Icdas' yield strength information

As noted in the *Remand Order*, yield strength is a physical characteristic of rebar attributable to carbon equivalency and was among the factors that the Department included in its model match criteria. Petitioners emphasize repeatedly that Turkish standards require weldability, and assert that this is a point that the Department apparently downplayed or overlooked.

The Department disagrees with the claim made by Petitioners regarding weldability. We considered the maximum specified carbon equivalency (CE) in our model match criteria, which the Petitioners acknowledge is the component in steel that helps determine weldability.[106] Habas confirmed in the Department's administrative case hearing that the Turkish standards have no reference to weldability. Specifically, counsel for Habas stated during the hearing, "{a}nd the other point I wanted to raise is there's nothing in the Turkish specs at all about weldability. This is a term that just doesn't exist in the Turkish nomenclature. We can talk about carbon equivalency or whatever you like, but weldability is not a Turkish specification nomenclature."[107] Furthermore, Icdas indicated in its rebuttal brief that Turkish specifications do not contain any statement that all rebar sold in Turkey should be produced with > 0.55 percent CE.[108] Icdas indicated that Petitioners offer no support for its position other than its model match comments and stated that not all Turkish rebar is weldable as Petitioner alleges.[109] Icdas asserted that there is no statement in the Turkish specification indicating that all rebar sold in Turkey should be weldable and, referencing Petitioners' case brief, states that Petitioner does not

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[106] *See* the Department's Hearing Transcript for the Final Determination (July 31, 2014) submitted on August 14, 2014, at 59.
[107] *Id.*, at 62.
[108] *See* Icdas' Rebuttal Brief dated July 24, 2014 at 6; *see also* Petitioner's Case Brief dated July 18, 2014, at 15, n.33.
[109] *See* Icdas' Rebuttal Brief dated July 24, 2014 at 6; *see also* Icdas' Remand SQR at 3.

cite to anything indicating all Turkish rebar is weldable except to its own submissions, consisting of a website printout of a trading company with no official standing and no mention of even the word weldable.[110]

In the *Final Determination*, the Department addressed the issue of yield strength as it relates to weldability, stating:

> We disagree with Petitioners and maintain our decision to use the model match criteria applied in the *Preliminary Determination*. The respondent, Habas, stated the following in its response:
>
> {w}ater-cooled rebar sold in the home market does meet the ASTM specifications. There is nothing in ASTM A-615 specification prohibiting water cooling. Air-cooled and water-cooled rebar are interchangeable products. Habas understands that the air-cooling requirement in the U.S. market principally reflects cosmetic concerns, as water-cooled rebar tends to rust faster in the long voyage overseas, while the company's U.S. customers prefer a completely rust-free surface.[111]
>
> We confirmed at verification that specification ASTM A-615 does not specify a particular type of cooling method (*e.g.*, air vs. water cooling).[112] We also find that the physical characteristics included in the Department's initial questionnaire already properly account for the differences in physical characteristics, including strength and weldability, by virtue of the "minimum specified yield strength" field, which distinguishes rebar based on carbon equivalency percentages. Furthermore, we find that record evidence does not support Petitioners' claim that the different inputs and production processes result in rebar with commercially significant differences.
>
> The facts remain unchanged from the *Preliminary Determination* and the Department discovered no new information during the verifications of Habas and Icdas regarding rebar type that warrants reconsideration of our position on this issue. We continue to maintain the Department's decision made in the *Preliminary Determination* on this issue.[113] Accordingly, our model match criteria remain unchanged for this final determination."[114]

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[110] *Id*.
[111] *See* Habas' Second Section A-C supplemental questionnaire response, dated April 7, 2014, at 4; *see also* Habas' Section A QNR Response dated January 7, 2014 at Exhibit A-15, *see also Preliminary Determination*, and accompanying Decision Memorandum at 11-12
[112] *See* Habas' Sales Verification Report at 10.
[113] *See Preliminary Determination* and accompanying Decision Memorandum at 6-12.
[114] *See Final Determination* (Issues and Decision Memorandum at Comment 4, at 21 (citations omitted).

Thus, in the underlying investigation, the Department specifically contemplated weldability through the "minimum specified yield strength" criteria used in its model match hierarchy because it was accounted for by the "maximum specified carbon equivalency" as follows:

FIELD NUMBER 3.2 Minimum Specified Yield Strength

FIELD NAME: MSYSTRH

DESCRIPTION: Report the minimum specified yield strength (kpsi {MPa})[115] of the product using the following codes:

1 = ≤ 45,000 psi
3 = > 45,000 psi but ≤ 65,000 psi, and maximum specified carbon equivalent ≤ 0.55%
4 = > 45,000 psi but ≤ 65,000 psi, other
6 = > 65,000 psi but ≤ 78,000 psi, and maximum specified carbon equivalent ≤ 0.55%
7 = > 65,000 psi but ≤ 78,000 psi, other
9 = > 78,000 psi

As the respondents have argued, weldability is not a requirement identified in the Turkish specifications and Petitioners have not presented any evidence to the contrary. The Department recognizes that carbon equivalency influences weldability and reaffirms its detailed finding in the *Preliminary Determination*, unchanged in the *Final Determination*, that the aforementioned yield strength classifications account for commercially significant differences in rebar based on yield strength.[116] Furthermore, the model match criteria used in the instant investigation closely parallel the model match criteria used in the prior multi-country investigation for rebar, given its

[115] Kilo pounds per square inch {Mega pascals}. A pascal is the metric system (SI) unit of force or tension, defined as newtons (the amount of force to impart an acceleration of 1 meter per second per second to a mass of 1 kilogram) per square meter (N/m^2). To convert mega (1,000,000) pascals to kilo (1,000) psi, multiply by 0.145.

[116] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 22804 (April 24, 2014) and accompanying Preliminary Decision Memorandum at 6-12 (*Preliminary Determination*).

consideration of carbon equivalency differences which accounts for differences in weldability.[117] Specifically, in the prior rebar investigation the Department relied on three criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: type of steel, yield strength, and size.[118]

In the *Remand Order*, the Court requested clarification of the yield strength coding by Habas and the Department's consideration of such reporting. The Department clarifies Habas' reporting of the yield strength data as follows. First, Habas reported that sales of specification TSE708, grades S420 and TS3A have a reported minimum specified yield strength of code = "4" which covers rebar with a carbon equivalency of > 0.55 %.[119] In the Department's first Section A-C supplemental questionnaire issued to Habas in the underlying investigation, the Department requested that Habas provide full documentation for the carbon equivalent of each grade sold in the home market (HM). Habas stated that the TS3A standard was discontinued and replaced by S420. Habas provided a chart listing its rebar grades with their chemical properties, including the carbon equivalency levels. This chart (erroneously) reported that both grades (S420 and TS3A) of specification TSE708 have a maximum carbon equivalency level of 0.50 %.[120] Based on the information before the Department at the *Preliminary Determination*, the

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[117] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars From Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000).

[118] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From Latvia*, 66 FR 8323, 8326 (January 30, 2001), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Latvia*, 66 FR 33530 (June 22, 2001).

[119] *See* Habas' Section B Questionnaire Response dated February 11, 2014 at B-11 – B-12; *see also* Habas' home market sales database (habihm01.sas7bdat) submitted on February 11, 2014.

[120] *See* Habas' First Section A-C Supplemental Questionnaire response, dated March 31, 2014, at 12-13 and Exhibit SBC-8. This specification and grade chart contained an error because it incorrectly identified a carbon equivalent (CE) percentage for specification TSE708, grades S420 and TS3A where a CE did not exist.

Department recoded the minimum specified yield strength field (MSYSTRH) for such sales equal to code "3", which covers rebar with a carbon equivalency of $\leq$ 0.55 %, and reconstructed the control number (CONNUM) for these HM sales.

During verification, Habas presented specification and grade documentation which corrects its original specification/grade chart.[121] This information demonstrates that, in fact, *no maximum CE is specified* for grades S420 and TS3A of specification TSE708 (emphasis added).[122] Specifically, documentation of the Turkish TS 708 specification, which was provided at verification, was used by Habas to clarify the specification/grade requirements chart which was submitted prior to the *Preliminary Determination* with respect to CE. The TS 708 specification grade S420 does not identify a maximum specified CE. However, certain proprietary information obtained during the Habas cost verification indicates that its production of TS 708, grade S420 falls below the 0.55 percent CE threshold. Further, mill certificates obtained during the sales verification also indicate that Habas' production of TS 708, grade S420 falls below the 0.55 % CE threshold. Because we found that the information obtained at Habas' verification supersedes the TS 708 specification not having a maximum specified CE, we considered this information in classifying products under the yield strength variable. Accordingly, consistent with the *Preliminary Determination*, we applied the revised CONNUMs for Habas which recoded the maximum specified yield strength variable from code "4" to "3" in the *Final Determination*.

[121] *See* Habas Sales Verification Report at 2 and 11; *see also* Sales Verification exhibit (SVE-7), at 35-36, and 40.
[122] *See* Habas Sales Verification Report at 11.

With regard to Icdas, the Department considered a similar approach but did not have similar production information available on the record to conclusively re-code Icdas' home market sales transactions for the maximum specified yield strength variable from code "4" to "3." The Court directed the Department either to reopen the record and obtain relevant {mill test certificates} MTCs from Icdas as it did from Habas, or to reconsider and/or explain the reasonableness of resorting to what appears to be an uncorroborated "facts available" determination under 19 U.S.C. § 1677e(a)(1) in this instance.

In the Icdas Remand Supp QNR, the Department requested and Icdas provided mill test certificates (MTCs) for the requested sales transactions.[123] As seen in the MTCs, for Grade S420 for which İcdas reported a MSYSTRH value of code "4," the actual CE values are above 0.55 percent. As a result, we find that the MTC data submitted by Icdas in the context of the instant remand proceeding further supports the accuracy of the codes reported by Icdas for the maximum specified yield strength variable equal code "4."[124] Further, based on the CE reported for such transactions, this evidence demonstrates that sales in the Turkish HM are not required to be below the threshold of 0.55 percent, which contradicts this assertion made by Petitioners that all sales in Turkey must be weldable.

4. Icdas' alloy usage cost information

The Department collected information regarding air versus water cooling from respondents in its initial questionnaire but, based on record evidence and its practice, the Department did not include this field in its model matching criteria. The Department outlined its

[123] *See* Icdas Remand Supp QNR and Icdas Remand SQR at 1-3 and Exhibit-1.
[124] *See* Icdas' Remand SQR at 1-3.

reasoning in extensive detail in the *Preliminary Determination* and Petitioners did not raise this issue in its case brief submitted for the *Final Determination*.[125] The Department's model matching hierarchy did not rely on the manufacturing process (air versus water cooling) as a model matching criterion, in part, because such production processes can vary by manufacturer. Instead, our intent in matching specific products is to rely on the physical attributes of the product at issue. Furthermore, the Petitioners' basis for suggesting the cooling method (*i.e.*, to track yield strength of the rebar) was already captured in the Department's model matching criteria under the variable titled "minimum specified yield strength" by virtue of data ranges which identified the maximum specified carbon equivalent based on the respective specification (*e.g.*, ASTM, TSE, BS).

As stated in the *Remand Order*, the Department obtained information from Habas on the alloy cost differences attributable to water- and air-cooled product, but Icdas stated that it did not track such costs. Petitioners challenged this issue before the Court, arguing that the Department should adjust Icdas' cost reporting to reflect the greater alloy usage in air-cooled rebar. The Department declined, stating that Icdas' cost reporting was based on actual, product-specific costs, and thus already reflected all cost differences for water- and air-cooled rebar. Petitioners contend that the Department's explanation is inadequate, given that Icdas itself had stated that it did not track or record alloy usage or costs, and that the verification materials the Department cited did not support the conclusion that Icdas tracked actual, product-specific, alloy costs. Petitioners contend the Department's response indicates that at verification it found Icdas' repeated statements that it did not track product-specific alloy usage or cost essentially not correct, and therefore the plaintiffs argue that if this is true, it would indicate that Icdas

[125] *See* Preliminary Decision Memorandum at 6-12; *see also* Petitioners' Case Brief dated July 18, 2014.

"repeatedly stymied" valid agency requests for information to which the company had easy access.[126]

The Court remanded this issue to the Department to clarify how Icdas records and assigns alloy costs on a product-specific basis in their normal books and records, and in so doing, determine whether its reported product-specific alloy costs reasonably reflect the alloys needed to produce each product.[127]

After further examination of the record and pursuant to the *Remand Order*, the Department has confirmed that an adjustment to the alloy costs reported by Icdas is necessary. As discussed below, for purposes of this draft remand, the Department has recalculated Icdas' product-specific alloy costs using information contained in verification exhibit CVE 7, the detailed product cost build-up for the highest volume CONNUM sold to the US market.[128]

On January 22, 2016, the Department issued a questionnaire to Icdas seeking additional information relating to its reported alloy costs. Specifically, in the questionnaire we used Icdas' cost verification exhibits to provide a detailed calculation of our understanding of how Icdas calculates product-specific alloy costs in its normal books and records. In the questionnaire we then requested clarification of whether the alloy costs reflect actual quantities of alloys added in production, an estimate of alloys added in production based on the composition of the billets produced, or some other method.[129] In Icdas' Remand SQR, Icdas argued that the Department's calculations were inaccurate as they used the number of billets as the quantity figure in the calculations, when it should have used metric tons.[130] Icdas also argued that it does not track the

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[126] *See Remand Order* at 26.
[127] *Id.*, at 28.
[128] *See* Icdas Cost Verification Report at CVE 7.
[129] *See* Questionnaire Issued to the Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S., dated January 22, 2016 at 3-4.
[130] *Id.*, at 5-6.

alloy cost of each specific billet run. Instead, it tracks the total actual consumption of alloys for a given day, and allocates this consumption over the total billet production on that day, by quantity.[131]

Based on the information reported in Icdas' Remand SQR, we conclude that if Icdas produces several different grades of billet on any given day, the alloy costs assigned to each grade of billet will be the same, on a per-unit weight basis, regardless of the actual quantity of the different alloys required to produce each individual grade of billet. As such, we find that the reported product-specific alloy costs, which are based on Icdas' normal books and records, are actually not product-specific. Accordingly, we now agree with the Petitioners that Icdas' reporting methodology relies on daily averages for alloys consumed in production, not actual product-specific consumption.

As it is now evident from record information that Icdas' reported CONNUM-specific alloy costs reflect averages across all grades produced in a given day, we must now evaluate whether relying on the daily average alloy cost method used in their normal books and records is reasonable. Petitioners claim that alloy costs should significantly differ between the different grades of billet produced, while Icdas claims they should not. Icdas did not track such cost differences in its normal books and records and did not attempt to quantify such differences in reporting to the Department.

Icdas has previously argued that testimony from the U.S. International Trade Commission (ITC) hearing is sufficient evidence to conclude that alloy cost differences associated with producing the different grades of product is inconsequential.[132] We disagree with Icdas on this point. The testimony from the ITC hearing reflects that of a single person, made in

[131] *Id.*, at 6.
[132] *See* Icdas' Rebuttal Brief dated July 24, 2014 at 1.

a different context, and not specifically related to the operations of Icdas.[133] Further, in assessing whether Icdas' reporting method was reasonable, we analyzed the amount of alloy costs allocated to each of the different internal product codes that make up the highest volume CONNUM sold in the US market which was reviewed at verification (CVE 7).[134] This exhibit indicates the per-unit production costs assigned to the CONNUM, by cost element. The exhibit also indicates the per-unit cost of production, by detailed cost elements, assigned to all the internal product codes that fall within the CONNUM. The cost of producing the internal product codes are weight averaged in arriving at the final CONNUM-specific cost. Among the detailed cost element fields contained in the exhibit are alloy costs. By dividing the total alloy costs assigned to each internal product by the total production quantity of the same product, we are able to determine the amount of alloy costs, per-unit of finished production, assigned to each internal product making up the CONNUM.[135] From this information we are able to see the magnitude of the differences in alloy costs assigned to the different products making up the same CONNUM. The greater the difference between the highest per-unit alloy cost and the average per-unit alloy cost, the more likely it is that alloy cost differences between products is not inconsequential as Icdas contends. Although we lack record evidence indicating the mix of products produced on any given day which factor into the daily average alloy costs assigned to each of the products, we nonetheless find it reasonable to conclude that seeing significantly different alloy costs assigned to the different products falling within the same CONNUM is the result of there being differences in the mix of billet grades produced and there being a

[133] *Id.*, at 8, citing to the Matter of: Steel Concrete Reinforcing Bars from Belarus, China et al., ITC Hearing Transcript at 104 and 113 (EDIS 14031 & 14032), Inv. Nos. 731-TA-873-875, 878-880 & 882 (April 25, 2013) (2d review) (Testimony of Mr. Alvarado, Chairman of CMC Metals and Mr. Kerkvliet, VP of Gerdeau Metals).
[134] *See* Icdas Cost Verification Report at CVE 7, pages 1-12.
[135] *See* Draft Remand Cost Calculation Memo for Icdas, at Adjustment 1 and Attachment 1R.

meaningful difference in alloy costs between the grades of billets produced.

In analyzing this information we compared the highest per-unit alloy cost with the average per-unit alloy cost and calculated the difference, which we do not consider to be inconsequential. As this represents the difference in alloy costs for products that fall within the same CONNUM, we find that the reported product-specific alloy cost information is unreasonable, and an adjustment is warranted.[136]

Pursuant to section 776(a)(1) of the Act, we have used as facts available the alloy cost information contained in CVE 7 to calculate an adjustment to alloy costs because the "necessary information is not available on the record."[137] Specifically, using the internal product codes' detailed cost information, we calculated the difference between the highest per-unit alloy cost and the average per-unit alloy cost assigned to the CONNUM, as a percentage of the CONNUM's total direct material costs.[138] We applied the resulting percentage to the reported total per-unit direct material costs for all CONNUMs and increased the total cost of manufacturing accordingly. We find that this is the most reasonable manner for adjusting for the difference in light of the fact that the actual difference in alloy costs is not available from the company's books and records.

D. Comments to the Draft Results

Comment 1: Whether Turkey's IPR Satisfies the Department's Two-Prong Test

Icdas Remand Comments

Icdas agrees with the Department's Draft Results that Icdas fully qualifies for a drawback adjustment. Icdas claimed its drawback adjustment complies with Turkey's IPR requirements,

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[136] *Id.*, at Adjustment 1 and Attachment 2R.
[137] *See* Icdas Cost Verification Report at CVE 7.
[138] *Id.*

and Icdas supported its drawback claims by reporting all IPR agreements under which the subject merchandise was exported during the POI. The information submitted by Icdas demonstrates that there is a "reasonable link" between the subject imports and the imported material under the first prong of the Department's drawback test.[139]

Turkey's IPR system has been examined by the Department and the courts on numerous occasions and found to be acceptable.[140] Turkey's IPR system has not changed significantly in 10 years. Turkey's drawback system is nearly a mirror image of the U.S. drawback system, which similarly does not require payment of duties if the designated product is exported as required under the law.

Petitioners did not comment on this issue.

Department's Position: We agree with Icdas and continue to find that both Icdas and Habas have satisfied the Department's two-prong test for duty drawback. In the *Final Determination*, we granted respondents' request for a duty drawback adjustment, pursuant to section 772(c)(1)(B) of the Act, determining that respondents had demonstrated that they met the requirements of the statute and the Department's two-prong test, *i.e.*, 1) that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise. Neither the Petitioners nor the Court have raised any specific issues that call into question whether the respondents have satisfied the Department's two-prong test. Accordingly, consistent with the *Final Determination*, we continue to find that

[139] *See, e.g.,* OCTG from Turkey Decision Memorandum at Comment at 15.
[140] *See, e.g.,* Final Determination Decision Memorandum.

respondents have met the requirements of the two-prong test for duty drawback pursuant to the established framework of Turkey's IPR.

Comment 2: Whether to Include the Resource Utilization Support Fund (KKDF) in the Duty Drawback Adjustment

Icdas' Remand Comments

The amount of drawback claimed by Icdas is correct. The value of duties and of the KKDF amounts on imported scrap and other inputs often exceeds 10 percent.[141] As the Department has recognized, it is irrelevant under the law whether duties are actually paid. The statue does not require actual payments, and neither the Department nor the courts have ever imposed such a requirement.[142] The liability to pay the duty (which includes the KKDF) is incurred upon importation. The duty liability is then "exempted," as provided in the statute, when a corresponding export occurs that includes the imported input and qualifies under the requirements of the Turkish IPR scheme.

Petitioners' Remand Comments

The decree that establishes the KKDF tax specifies that the tax is owned on "consumer loans extended by the banks and the financial institutions," foreign currency loans "obtained from abroad by the persons operating in Turkey other than banks and financial institutions," "the imports made with acceptance loans, deferred letters of credit, and in the form of cash on delivery.[143] The KKDF tax is therefore not a tax on imports as such, but a tax on certain financing options, including financing options that may be supporting purely domestic transactions. Moreover, the tax amount is not based on the value of goods secured or paid for

[141] *See* Icdas' April 7, 2014, Second Supplemental Section C Questionnaire Response Part 2 at Exhibit S2C-4.
[142] *See Saha Thai*, 635 F. 3d 1335, 1340.
[143] *See* Icdas' April 1, 2014, Second Supplemental Section C Questionnaire Response Part 1 at SC-14.

through relevant loans or financing, but rather on the amount of money borrowed.[144] Regardless, the KKDF can be avoided altogether, even with respect to financing to support imports, simply by avoiding certain types of financing options, such as acceptance loans or loans denominated in foreign currencies.[145]

In the Draft Results, the Department continued to include KKDF taxes in the drawback adjustment. However, its analysis in the Draft Results does nothing more than show that Turkey has a duty drawback system, a fact that is not in dispute. However, Petitioners challenge is more particular: whether the KKDF can properly be considered an "import duty" under the statute given that it can be incurred on loans to support domestic purchases as well as imports and can be avoided entirely with regard to import financing by choosing non-taxable financing.

In the Draft Results, the Department concluded that the KKDF is not a loan but a tax on imports.[146] The Department further found that the KKDF tax is based on the value of the goods imported and not on the basis of the financing at issue.[147] But these conclusions run counter to the facts. The KKDF decree indicates that the KKDF tax is incurred based on financing options, and based on the value of that financing, rather than on the customs value of any relevant imported goods.[148] Further, it is not clear that the financing costs and the value of the imported goods would be the same. For example, acceptance credit facilities function basically as checking accounts. There is no reason to believe that the value of such a facility would equate exactly to the value of an import shipment; indeed such a facility might be used to only partially cover the value of a shipment, with the remainder paid for in other ways.

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[144] *Id*.
[145] *Id*.
[146] *See* Draft Results at 8.
[147] *Id*. at 9.
[148] *See* Icdas April 1, 2014, Second Supplemental Section C Questionnaire Response Part 1 at SC-14.

This point is critical because the Department's decision in the Draft Results appears to hinge on this assumption. However, the tax is assessable on financing not on goods, and is incurred not solely on imports, but also on transactions that are purely domestic.

Department's Position: Petitioners argue that the KKDF tax is not a tax on imports as such, but a tax on certain financing options, including financing options that may be supporting purely domestic transactions. The KKDF tax is based on the financing of inputs and can properly be considered an "import duty" under the statute. We disagree with Petitioners' assertion that the record does not support a duty drawback adjustment for the KKDF taxes. Regarding Petitioners' argument that the KKDF taxes are not an import duty but a tax, the Department has determined that the name of a tax does not matter in this context if it functions as a duty on imports. This is supported by long-standing precedent and recent decisions.[149] Even though the Department concluded in *Wire Rod from Turkey* that the KKDF taxes are a tax levied on financial transactions, not on goods and services, this does not prevent the KKDF taxes from functioning as a duty on imports, as it did in this case.[150]

We find that the Petitioners' argument does not call into question the legitimacy of the KKDF tax amount for which the respondents have claimed as an adjustment. As Habas states:

> {u}nder the terms of the inward processing regime, the IPR remission or suspension covers all financial obligations such as taxes, duties, fees, fund payments, etc. which are stipulated for collection during import and export {of} goods." We provide a copy of the relevant legislation in Exhibit 2, and have boxed the relevant language at page 3 of the translation (Exhibit 2 page 22).[151]

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[149] *See Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71087 (December 1, 2014), citing *Color Picture Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 56 FR 19084 (April 25, 1991) and accompanying Issues and Decision Memorandum at comment 1 (*Color Picture Tubes from Korea*).

[150] *See Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71087 (December 1, 2014), citing *Color Picture Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 56 FR 19084 (April 25, 1991) and accompanying Issues and Decision Memorandum at comment 1 (*Color Picture Tubes from Korea*).

[151] *See* Habas' Remand SQR at 1; see also Habas' Section C questionnaire response dated February 11, 2014 at

Based on the specific language of the relevant legislation and the KKDF exempted amounts claimed by the respondents pursuant to this provision, we have accepted the KKDF tax amounts reported by the respondents.

We disagree with Petitioners' assertion that it may be incurred on transactions that are purely domestic. Specifically, Habas reported the following:

> The Turkish inward processing regime ("IPR") provides tax exemptions to the Turkish manufacturer/exporters by permitting manufacturer/exporters to import raw materials free of import duties, resource utilization fund (KKDF) and value added tax *if such inputs are intended for producing final goods for export*. Under this system, the beneficiary of IPR has to submit to the Customs authorities *at the time of importation* a letter of guarantee or pledge of money covering the total of all duties, charges and VAT that would otherwise be owed.[152]

Thus, companies eligible under the IPR are exempt from the KKDF for foreign currency loans used to finance imported inputs that are used to manufacture goods for export. As noted above, Habas is exempted from payment of the KKDF tax at the time of importation, and the exemption is finalized when Habas meets its export commitment under the given DIIB, and the DIIB is therefore closed.[153] Similarly, Icdas states that, when it imports inputs under the IPR regime, the import duties and KKDF are suspended, and when Icdas exports rebar, thereby meeting its export commitment under the IPR, the contingent liability for the payment of the import duties and KKDF tax is lifted and the exemption is liquidated.[154] Thus, for input purchases that were imported under an Inward Processing Certificate that had deferred payment terms, Habas and Icdas were exempt from payment of the KKDF tax. Consistent with the statute, the two respondents are only claiming the duty drawback for KKDF tax exemptions that

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Exhibit 16; *see also* Icdas' Remand SQR at 6-9 and Exhibit 4.

[152] *See* Habas' Section CQR dated February 11, 2014 at page C-35 (emphasis added); *see also* Icdas' Remand SQR at 6-9 and İcdas' Section C Questionnaire Response at C-33--C-34.

[153] *See* Habas' Remand SQR at 4.

[154] *See* Icdas' Remand SQR at 8.

were received under the Turkish duty drawback system, and are not claiming the exemption for purchases that were not. The record indicates that the respondents' raw material imports were exempt from payment of the KKDF tax as a result of deferred payment terms, and the record evidence supports the conclusion that the only duty drawback adjustments being granted relate to export rebar quantities associated with imports exempted from the tax.[155]

Petitioners assert that the KKDF tax amount is not based on the value of goods secured or paid for through relevant loans or financing, but rather on the amount of money borrowed. Petitioners reference Article 3 of the Turkish Official Gazette, Decree No: 88/12944 dated June 7, 1988 from Icdas' initial questionnaire response as the basis for this argument.[156] In its remand supplemental response, Habas and Icdas stated that "{t}he amount of the {KKDF} tax is 6 % of the value of the goods imported."[157] Habas and Icdas provided the relevant portions of the KKDF decree dated August 26, 1989 which states in part, "7(D) – imports by acceptance credit, term L/C and cash against goods, 6 % (changed by government decree 2011 / 2304)."[158] Thus, Habas and Icdas specifically confirmed that the KKDF is based on six percent of the value of the goods imported. The decree provided by Habas and Icdas references the changes made by the Turkish government and is more contemporaneous than the prior version referenced by Petitioners. Therefore, by Habas declaring definitively that the tax is based on the value of the imported goods, coupled with documentation supporting its claim to the revised regulation, we find that Habas provides a more complete and accurate representation of the basis for the KKDF.

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[155] *See* Habas' Remand SQR at 4 and Exhibit 3.
[156] *See* Comments on Draft Remand Results at 7, citing lcdas Second Supplemental Section C Second Supplemental Questionnaire Response, dated April 2, 2014, at Exhibit SC-14.
[157] *See* Habas' Remand SQR at 1 and Exhibit 1 at 2; *see also* Icdas' Remand SQR at 6 and Exhibit 3.
[158] *Id*.

Accordingly, we maintain that the reported KKDF tax is based on the value of the goods imported under the IPR.

According to Icdas, the KKDF is a tax collected upon entry of goods and calculated on the value of the goods by assessing the tax on what was paid for the goods, either in the form of cash, letter of credit, or accepting credit in the import transaction.[159] Icdas claims that it never suggested that KKDF payment is related to a loan. Rather, "it has always been collected on entry just like a customs duty and the Department has examined the tax in multiple proceedings involving Turkish respondents."[160]

Petitioners reiterate their argument that the KKDF can be avoided altogether, even with respect to financing to support imports, simply by avoiding certain types of financing options, such as acceptance loans or loans denominated in foreign currencies. We find that this argument is not relevant to our analysis regarding the legitimacy of the KKDF tax amount claimed by the respondents because as discussed above, the respondents have satisfied the legislative requirements established to claim such an adjustment under the IPR and the Turkish duty drawback system.[161] While we verified the calculated amounts and whether the KKDF tax amount claimed meets the established legislative requirements, the decision by respondents to finance imported inputs based on the KKDF tax exemption, as opposed to alternative financing options, is not germane to our analysis of whether or not the KKDF tax amount is a legitimate adjustment. Accordingly, we continue to include the reported KKDF in the respective duty drawback adjustment calculated for the respondents.

Comment 3: Duty Drawback Calculation Employed in Draft Results

[159] *See* Icdas' Remand SQR at 7.
[160] *Id.*
[161] *Id.* at 9 and Exhibit 5.

Icdas Remand Comments

Icdas objects to the Department's decision in the Draft Results to calculate the drawback adjustment by allocating the amount of the adjustment over total production rather than over the export sales to which the adjustment applies.

As the Department has previously stated, the purposes of the drawback adjustment is intended to prevent dumping margins occurring because the exporting country rebates, or provides exemptions for import duties and taxes that it had imposed upon raw materials used to produce merchandise that is subsequently exported.[162] Nothing in the statute supports the notion that drawback adjustments should be allocated over anything other than the U.S. sales to which the drawback amount relates. Indeed, the statute specifically states that the adjustment – an increase to EP and CEP – to be in the amount of the import duties rebated or not collected "by reason of the exportation of the subject merchandise to the United States."[163] The adjustment for drawback is causally related to exportation, not production, and so is allocable to the exports to which it relates.

Saha Thai supports Icdas' argument that the entire amount of any drawback granted is to be reflected to U.S. price and that NV is unaffected:

> As discussed above, the entire purpose of increasing EP is to account for the fact that the import duty costs are reflected in NV (home market sales prices) but not in EP (sales prices in the United States). An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV.[164]

Saha Thai cannot be read as allowing any portion of exempted or rebated duties to be allocated to products sold on the domestic market. Yet that is what the drawback adjustment in the Draft

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[162] *See e.g., Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (2005) (*Allied Tube*).
[163] *See* section 772(c)(1)(B) of the Act.
[164] *See Saha Thai*, 635 F. 3d at 1342.

Results does. By allocating the adjustment over production, the effect is to attribute a portion of that adjustment to domestic sales that do not and cannot qualify for drawback under the Turkish IPR.

The Draft Results cite no legal authority to support the Department's view that the drawback adjustment should be modified where input materials are sourced from both domestic and foreign suppliers. Instead, the Draft Results conjures a supposed imbalance in the AD calculation by speculating that different duty amounts are reflected in NV and EP/CEP when imported and domestic inputs are both used to produce subject merchandise.[165]

The statute does not express assumptions about the composition of home market prices. Home market prices are what they are, however they are determined and, under the statute, are to be reported as they are. Indeed, the duty rate in Turkey for imported finished rebar is far more likely to impact domestic prices as Turkish rebar prices will likely be set at a price that incorporates that duty adjustment. Where the statute does speak to the elements of the prices underlying NV, it does so specifically and, by omission, to the exclusion of any other adjustments. Nowhere else in the statute are home market sales analyzed to see what costs or expenses they include or reflect.

Moreover, Icdas fails to see the relevance of citing the fact that some inputs are domestically sourced as opposed to imported. Under the Department's logic, as expressed in the Draft Results, the alleged distortion occurs if any or all inputs are imported and any finished product is sold domestically. The proposed adjustment is in fact justified on the assumption that finished rebar prices are proportionately affected by drawback received on imported inputs, even though the drawback benefit can only be received if an equivalent amount of exports occur.

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[165] *See* Draft Results at 15-16.

Thus, no benefit can be allocated unless there are exports. It seems incongruous to conclude that the drawback adjustment on export price should be diluted over overall production when the only way to receive that benefit is to export the finished product.

Icdas made the adjustments to cost of production approved by the Court in *Saha Thai* by imputing its exempt duty cost to all products without regard to whether they were sold to the U.S. or in the home market.[166] As a result, when the Department applied its cost test to home market sales, those sales were tested against costs that included imputed duties even when only domestically produced slabs were used in production. This is the purpose of the *Saha Thai* adjustment and it is unavoidable. Where home market sales pass the cost test it follows that those home market sales are priced in a manner that covers fully allocated costs *including imputed duty costs*.

Because of the *Saha Thai* adjustment, home market sales that pass the cost test are of necessity priced in a manner that covers the fully allocated cost of production including exempted duties and the statute allows no speculation or inquiry into whether that coverage is a design feature of respondent's pricing system. The unavoidable fact is that exempted duties are included in COP and the home market sales that pass the cost test already include that imputed (albeit fictional) cost. The Department's proposed adjustment would therefore introduce distortion where it does not exist by specifically allocating the statutory adjustment for drawback on exports to domestic sales. Therefore, the Department's proposed allocation of the drawback adjustment over total production is inconsistent with the statute. For the final remand redetermination, the Department should continue to apply its established practice of allocating drawback over export sales.

[166] *See* the Department's March 18, 2016, Cost Calculation Memorandum for the Draft Results.

Petitioners' Remand Comments

On remand, the Department has altered its cost-side drawback calculations in a way that eliminates the distortions present in the original calculation employed in the *Final Determination*. Further, its approach in the Draft Results comports with the duty drawback methodology employed in recent proceedings.[167] The adjustment made by the Department in the Draft Results eliminates the distortions present in the prior calculation.

We did not receive any comments from Habas.

Department's Position: We agree with Icdas that the purpose of the drawback adjustment is to prevent dumping margins from occurring when the exporting country rebates, or exempts, import duties that are imposed upon raw materials used to produce merchandise that is subsequently exported. However, the question at issue is how to calculate such an offset and to ensure a fair price-to-price comparison, so that dumping margins are neither created nor understated.

Section 772(c)(1)(B) of the Act states that the EP or CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise." A duty drawback adjustment to EP or CEP is based on the principle that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not."[168] Home market sales prices and cost of production are import duty "inclusive," while export market sales prices are import duty "exclusive." In *Saha Thai*, the CAFC stated:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty draw-back is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an

[167] *See, e.g., Preliminary Determination of CORE from India.*
[168] *See Saha Thai*, 635 F.3d at1339.

inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.[169]

The CAFC makes clear that the focus of the duty drawback adjustment is on the amount of duty taxes in the NV, and that an imbalance would otherwise occur. As discussed below, our duty drawback adjustment for this remand complies with the CAFC's guidance, and avoids imbalance. The amount of import duties "imposed" that are present in the NV must be determined and to the extent they were rebated, or uncollected, an adjustment, if supported by the record, should be granted on U.S. sales.

Icdas, noting that the statute states that the adjustment to EP and CEP is in "the amount of the import duties" rebated, or not collected "by reason of the exportation of the subject merchandise to the United States," asserts that its calculation of "the amount" must be used.[170] While we agree that IPRs show that there is a duty system in place, we do not agree that IPRs justify the amount claimed by Icdas. First, Icdas admits that any calculation of duty drawback to a period of investigation or review, "{O}f necessity … will include a portion of import duties and sales that fall outside the POI" and that "there is no practical way to report on a strict POI basis."[171] While we agree with Icdas that the nature of duties, and subsequent drawbacks, rebated or uncollected, make any calculation of the adjustment difficult, Icdas cannot then claim that the statute mandates the use of their figure. Second, their focus on the settlement under the IPRs ignores that purpose of the statute, *i.e.*, the amount of taxes remaining in NV that needs to be offset and the price comparison.

[169] *Id.* at 1339.
[170] *See Icdas Remand Comments* at 6 and 7.
[171] *Id.* at 4.

Icdas also argues that nothing in the statute supports the notion that drawback adjustments should be allocated over anything other than U.S. sales.[172] However, Section 772(c)(1)(B) is silent as to how the adjustment is to be calculated or what the amount of the duties is to be allocated over. Because the statute does not prescribe a specific methodology to make this adjustment, that determination is left to the Department. Therefore, we find it reasonable to make the adjustment as discussed above, as it is consistent with the intent of the statute, that dumping margin calculations be duty-neutral.[173]

Moreover, as explained in *Saha Thai*,

> An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV. Thus, because COP and CV are used in the NV calculation, COP and CV should be calculated as if there had been no import duty exemption. It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all.[174]

As explained below, the Department's calculation methodology in the Draft Remand reflects the principle articulated by the CAFC in *Saha Thai*, which additionally held that section 772(c)(1)(B) corrects the imbalance, "which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback."[175]

Icdas objects to the Department's decision to calculate the drawback adjustment to U.S. price on the same basis as the corresponding per-unit duty reported in the cost of production.[176] Icdas asserts that the Draft Results cites no legal authority to support the Department's view that

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[172] *See Icdas Remand Comments* at 6.
[173] *See* SAA at 823; *see also Chevron*, *USA, Inc. v. NRDC*, 467 U.S. 837, 843 (1984).
[174] *See Saha Thai*, 635 F.3d at 1342-43 (emphasis added).
[175] *See Saha Thai*, 635 F.3d at 1338 (*citing Hornos Electricos de Venezuela v. United States*, 285 F. Supp. 2d 1353, 1358 (Ct. Int'l Trade 2003); S. Rep. N. 67-16, at 12 (1921) ("In order that any drawback given by the country of exportation upon the exportation of merchandise shall not constitute dumping, it is necessary also to add such items to the purchase price.")).
[176] *See Icdas Remand Comments* at 2.

the drawback adjustment should be modified where input materials are sourced from both domestic and foreign suppliers, and instead "conjures a supposed imbalance" in the AD calculation.[177] As explained in detail below, we disagree. For its calculation, Icdas reported "the volume of subject merchandise exported under the IPRs and the volume of imported scrap credited," or to be credited to those IPRs.[178] That is, after making certain adjustments, *e.g.*, yield losses, Icdas calculated its drawback adjustment at the uncollected duty "assessed" on the corresponding imported raw material input. This approach assumes that the exported merchandise was comprised solely from the imported raw material.[179] If all of the raw material inputs in question were imported, such an assumption may be reasonable, as the merchandise sold domestically would likewise have incorporated the imported raw material and the imposed duty.[180] A duty drawback adjustment to the U.S. price would then be necessary in order to offset the amount of the duty imposed on the material used in domestically sold merchandise, and therefore present in the home market price.[181]

We note that the CAFC in *Saha Thai* assumed that the NV increases as a result of the duty that remains with the merchandise sold in the home market. This assumption however cannot be maintained when a portion of inputs are obtained from domestic sources, as a full measure of the duty cannot be presumed to be present in the NV. The home market product, and therefore its price, cannot be presumed to be made only from materials upon which duties have

[177] *Id.* at 8.
[178] *Id* at 2.
[179] *Id*. at 2, where Icdas asserts, and we agree, that certain timing differences will occur as imports, consumption and duty drawback assessment will take place over time periods that differ from the period of investigation or review.
[180] In this case, both respondents obtained materials from both inside and outside of Turkey.
[181] We note that if all of the raw material is imported and subject to duty, the adjustment as calculated by Icdas and the amount reported in cost of production should the same, except because of various timing differences that may occur.

been imposed and collected. Thus, NV will not have increased proportionally and a distortion will result if the duty drawback adjustment is calculated in a manner advocated by Icdas.

The amount of the duty drawback adjustment should be determined based on the duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration, and should consider inputs from both foreign sourced inputs and domestically sourced inputs.[182] That is, we assume for dumping purposes, that imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. As further explained below, the average duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably assumed to be present in the Home Market price. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost "reflected in NV," whether NV is based on home market prices or constructed value.

A reasonable question that follows is why then is the average duty imbedded in the cost of producing the merchandise under consideration the only reasonable amount of duty that we can assume to be present in the Home Market price? The natural inclination is to first think that the imported raw material inputs were first consumed in the exported merchandise, as the producer would seek to claim a duty drawback on the re-exportation of the imported inputs. Under this reasoning, the domestically purchased inputs not subject to duty would thus be consumed in the domestically sold merchandise. However, if the imported raw materials are

[182] The record indicates that the respondents source some of their inputs both from foreign and domestic sources. *See* Memorandum to the File titled, "Verification of the Cost Response of Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey," dated July 7, 2014 (Icdas Cost Verification Report) at pages 16-17 and Cost Verification Exhibit (CVE) 11; *see also* the Department's Memorandum to the File titled, "Verification of the Sales Response of Habas in the 2012-13 Antidumping Duty Investigation of Concrete Reinforcing Bar from Turkey," dated June 23, 2014 at SVE-5 (Habas Sales Verification Report); *see also* Habas' Section D Questionnaire response dated February 11, 2014 at D-5 and D-7.

assumed to be consumed in the exported merchandise and the domestic purchased raw materials were presumed to be consumed in the domestically sold merchandise, no duty offset adjustment can be justified, as the NV would no longer be duty inclusive as the CAFC presumed in *Saha Thai*. The duty exclusive U.S. price should then be matched directly with the duty exclusive Home Market price.

Conversely, if the imported inputs were presumed to be consumed first in the products sold domestically, thus creating a duty inclusive NV, there would still be no justification for a duty drawback claim, as a precondition of a duty drawback is the consumption and subsequently re-exported as part of another good and the collection of the rebate.[183] It would be nonsensical to claim a duty drawback for re-exporting the imported input while simultaneously claiming the same input was consumed in a domestically sold product. Therefore, while perhaps counterintuitive, the only reasonable assumption is that the imported raw materials and domestically sourced raw materials are consumed proportionally between the corresponding domestic sales and export sales, as then both the U.S. price and Home Market price will be duty inclusive.

Icdas strongly disagrees with the notion that the drawback adjustment should be modified where input materials are sourced from both domestic and foreign suppliers and accuses the Department of conjuring a supposed imbalance.[184] However, we are in fact merely recognizing the implications that result when raw material inputs are sourced in part from domestic sources. Moreover, we are recognizing that a drawback adjustment that overstates the amount of duty in NV will distort a determination of dumping. We find that a focus on the U.S. export rebate, or

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[183] We note that if all of the duties were assigned to NV sales and the cost of production increases accordingly, more sales are likely to be found below cost, increasing NV and thus margins of dumping.
[184] *See Icdas Remand Comments* at 8.

uncollected duty, as Icdas does, rather than a focus on the average duty in the cost of production, will lead to a distortion.

Icdas claims that *Saha Thai* cannot be read as allowing any portion of exempted or rebated duties to be allocated to products sold on the domestic market. Icdas asserts that *Saha Thai* supports Icdas' argument that the entire amount of any drawback granted is to be reflected to U.S. price and that NV is unaffected:[185]

> As discussed above, the entire purpose of increasing EP is to account for the fact that the import duty costs are reflected in NV (home market sales prices) but not in EP (sales prices in the United States). An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV.[186]

Icdas appears to read this portion of *Saha Thai* to mean that the duty's impact on NV is ignored. However, the remainder of the paragraph from *Saha Thai* reads:

> An import duty exemption granted only for exported merchandise has no effect on home market sales prices, so the duty exemption should have no effect on NV. Thus, because COP and CV are used in the NV calculation, COP and CV should be calculated as if there had been no import duty exemption. It would be illogical to increase EP to account for import duties that are purportedly reflected in NV, while simultaneously calculating NV based on a COP and CV that do not reflect those import duties. Under the "matching principle," EP, COP, and CV should be increased together, or not at all.[187]

Therefore, the CAFC held that the adjustment may affect both EP and NV. Thus, the exemption affects EP or CEP and not the NV; however the duty, to the extent it is present, clearly affects the NV.[188]

Icdas asserts that "{b}y allocating the drawback over "production," the effect of the calculation is to attribute that drawback, in part, to domestic sales that do not and cannot qualify

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[185] *See Icdas Remand Comments* at 7.
[186] *See Saha Thai*, 635 F. 3d at 1342.
[187] *See Saha Thai*, 635 F.3d at 1342-43 (emphasis added).
[188] *Id.*, 635 F.3d at1339.

for drawback under Turkey IPR.[189] However, Icdas is incorrect. The Department is not attributing the drawback to domestic sales. Instead, the Department is attributing a proportionate amount of the duty (*i.e.*, the tax) to the merchandise sold domestically. It is necessary to attribute a portion of the duty to the domestic sales as the presence of the duty in those sales is the justification for the making a duty drawback adjustment to EP or CEP.

Icdas objects to even contemplating the factors that impact home market prices. Home market prices, it says, "are what they are."[190] Icdas speculates that the duty rate in Turkey for imported finished rebar is far more likely to impact domestic prices of rebar as by duties on Icdas' raw material inputs.[191] We agree with Icdas that speculation on what impacts price should generally be avoided. However, we do not need to speculate on the amount of imposed duty, as we know, based on the respondents' reported data, the average amount of duty in the cost of production and the amount that the respective price would have to increase in order to recover the cost.

Icdas argues that the proposed adjustment is justified on the assumption that finished rebar prices are proportionately affected by the drawback received on imported inputs, even though the drawback benefit can only be received if an equivalent amount of exports occur. Thus, Icdas reasons that no benefit can be allocated unless there are exports. Icdas asserts that it seems incongruous to conclude that the drawback adjustment on export price should be diluted over overall production when the only way to receive that benefit is to export the finished product. While perhaps counterintuitive, it is congruous that a duty drawback adjustment to EP and CEP should avoid creating an imbalance in the price-to-price comparison and we must,

[189] *See Icdas Remand Comments* at 7.
[190] *See Icdas Remand Comments* at 8.
[191] *Id.* at 8.

therefore, look to both sides of the comparison when calculating a fair, accurate and balanced duty adjustment. Indeed, the Department's overriding purpose in administrating the antidumping laws must be “to calculate dumping margins as accurately as possible.”[192] The CAFC in *Nan Ya* recently held that the case law and statute “teach that a Commerce determination . . . is ‘accurate’ if it is correct as a mathematical and factual matter, thus supported by substantial evidence.”[193] Therefore, while an export must occur for a duty drawback to occur, the amount of any duty drawback adjustment in the dumping equation must consider the amount of the duty in NV.

Finally, Icdas argues that it made the adjustments to cost of production, approved by the Court in *Saha Thai*, by imputing its exempted duty cost to all products without regard to whether they were sold to the U.S. or in the home market. It argues further that, when the Department applied its cost test to home market sales, those sales were tested against costs that included imputed duties even when only domestically produced slabs were used in production.[194] Icdas asserts that this is the purpose of the *Saha Thai* adjustment and it is unavoidable. It concludes by reasoning that “{w}here home market sales pass the cost test it follows that those home market sales are priced in a manner that covers fully allocated costs including imputed duty costs” and necessarily are “priced in a manner that covers the fully allocated cost of production including exempted duties,” (emphasis in the original).[195] We agree with Icdas. The average amount of raw materials is included in the cost of production, which is the proportional amount of domestic and imported (dutiable) raw materials. Home market sales that pass the cost test will necessarily

[192] *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370*,* 1379 (Fed. Cir. 2013); *see also SNR Roulements v. United States,* 402 F.3d 1358, 1363 (Fed.Cir.2005) (“Antidumping laws intend to calculate antidumping duties on a fair and equitable basis.”).
[193] *See Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1344 (*Nan Ya*) (citing *Essar Steel Ltd. v. United States,* 678 F.3d 1268, 1275-76 (Fed. Cir. 2012) and *KYD*, Inc. v. United States, 607 F.3d 760, 768 (Fed. Cir. 2010)).
[194] *See Icdas Remand Comments* at 9.
[195] *Id.*

be at levels that would recover all costs, including the average duty amount. By basing the duty drawback for this remand on the average amount of duty reported in the cost of production, we make the price-to-price comparison symmetrical; as NV and U.S. price are adjusted in a balanced manner. We note further that if constructed value (CV) is used as NV, we would likewise have balance, as the average amount of duty reported in the cost of production would form the basis for CV.

Habas did not submit comments. Our finding with respect to the duty drawback calculation continues to also apply to Habas.

Comment 4: Treatment of Icdas' Alloy Costs

Icdas Remand Comments

Icdas has reported its alloy costs consistent with its records kept in the ordinary course of business. The Department should not retroactively apply a more stringent requirement for record keeping than in effect when the records were created. However, if the Department continues to apply facts available to adjust alloy costs as indicated in the Draft Results, the revised calculation should be limited so that any adjusted/attributed alloy costs applied do not exceed total alloy costs incurred during the POI.

In the Draft Results, the Department adjusted alloy costs so that "the DIRMAT of all reported CONNUMs increased by a certain percentage.[196] It is unclear, however, whether the initial reported alloy costs were removed and replaced, or additional alloy costs were simply added to the total. The adjusted allocated alloy costs cannot exceed the total reported alloy costs, which were verified. Accordingly, if the Department adjusts Icdas' reported alloy costs, it must

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[196] *See* the Department's March 18, 2016, Cost Calculation Memorandum for the Draft Results.

ensure that in reallocating these costs it does not create a total alloy cost greater than the total actual alloy costs reported by Icdas and verified by the Department.

Petitioners' Remand Comments

The Department confirmed during the remand proceeding that Icdas did not actually report its alloy costs on a product-specific basis.[197] Rather, Icdas allocated alloys over daily production runs.[198] As such, the Department reasonably concluded that an adjustment to these allocated costs is necessary in order to reflect product-specific alloy usage.[199]

The Department repeatedly asked Icdas to provide information on how alloy costs differed among products; however Icdas ultimately declined to do stating that "the juice wasn't worth the squeeze."[200] Further, while Icdas contends that any costs differences were minor, its own information indicates that alloy costs vary meaningfully amongst products within a single CONNUM, and are thus not as inconsequential as Icdas contends.[201]

In the Draft Results, the Department reasonably determined to rely on the facts available and took a conservative approach based on cost differences observable with respect to products within Icdas' most-sold CONNUM.[202]

Department's Position: We disagree with Icdas. The statute mandates that the Department follow a respondent's normal books and records only if they "reasonably reflect the costs associated with the production and sale of the merchandise."[203] In further reviewing the issue on remand, we found that Icdas' reporting methodology relies on daily averages for alloys consumed in production, not actual product-specific consumption and thus did not reasonably

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[197] *See* Draft Results at 35.
[198] *Id*.
[199] *Id*. at 35-37.
[200] *See* Icdas' April 4, 2014, Supplemental Section D Questionnaire Response at 39-41.
[201] *See* Draft Results at 36-37.
[202] *See* Draft Results at 37-38.
[203] *See* Section 773(f)(1)(A) of the Act.

reflect the cost associated with production of the merchandise.[204] The Department confirmed, during the remand proceeding, that Icdas did not actually report its alloy costs on a product-specific basis and that therefore, an adjustment is necessary.[205]

As a result of Icdas not providing product specific alloy costs, or the information to calculate such costs, we cannot determine which products costs are understated and which are overstated. Therefore, the Department has calculated a reasonable adjustment based on the facts available on the record. We based our adjustment on our findings for the one CONNUM analyzed,[206] where we can reasonably estimate the extent to which the reported product specific alloy costs are understated. We applied the adjustment amount to all CONNUMs because we cannot determine which CONNUM's alloy costs are understated and which are overstated.

Comment 5: Icdas' Date of Sale

Petitioners' Remand Comments

While the agency continues to find meaningful the lack of formal contracts involved in Icdas' sales, it is not clear why. The agency's duty is to determine when a meeting of the minds took place, not to opine on the level of formality involved in the parties' documentation of that meeting. As the agency concedes, the record here indicates that Icdas and its customers did not in any instance continue to negotiate the terms of sale through the invoice date, but always reflected the final terms in a prior-issued document.

The *Preamble*, as referenced by the Department in the Draft Results, does not appear to be reasonably in play here. For example, there is no reason to believe that the terms in the last-amended P/Os/contracts were "merely proposed," given that Icdas and its customers never varied

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[204] *See* the Department's January 22, 2016, questionnaire Icdas at 3-4.
[205] *Id* at 3-4.
[206] *See* Icdas Cost Verification Report at CVE 7, pages 1-12.

in observing those terms. Further, the Department refers to the sales documents at issue as "preliminary documents," however the terms of these sales documents were in fact observed. Thus, it seems that the Department solely takes issue with the level of formality involved in the parties' documentation of their final meeting of the minds. Also, while Icdas and its customers may have engaged in a lengthy negotiation process, such negotiations never resulted in the sales terms changing as of the date of the invoice.

In the Draft Results, the Department, in reference to *Nucor* and *Habas*, takes the position that the lack of any changes in sales terms as of the invoice date should not be something on which the Department can rely. But, as the Court found in *Nucor*, the law requires a "reasoned, case-specific, fact-intensive analysis as to when the parties had a meeting of the minds" regarding the terms of sale.[207] The facts of the instant remand demonstrate that the meeting of the minds occurred through P/Os or amended P/Os and never by means of invoicing.

The Department emphasis on the informal nature of Icdas' sales process is irrelevant. Contrary to the Department's claims, the Court in *Nucor* did not hinge its findings on the formality of the sales process at issue. Rather, in *Nucor*, the Court's analysis was "case-specific" and "fact-intensive" and in *Nucor* the Court incorporated into its analysis the fact that the parties engaged in uniformly negotiated, written contracts.[208] In the instant proceeding, the practice of the parties to the sale never included changes in sales terms as of the invoice date, a fact that must play a part in the Department's analysis regarding date of sale.

Habas does not support the Department's original reliance on invoice date. In *Habas*, the Court upheld a pre-invoice sales date for instances where there were no changes in material

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[207] *See Nucor*, 612 F. Supp. 2d at 1303.
[208] *See Nucor*, 612 F. Supp. 2d at 1301.

terms of sale between the issuance of a pre-invoice document and the invoice.[209] In the instant proceeding, there were no changes between the last amended P/O and invoice. Further the record indicates that Icdas and its customers intended to reach a meeting of the minds regarding the sales terms prior to the invoice date.

In sum, while Petitioners agree with the Department's decision in the Draft Results to use the date of the last amended P/O as the date of sale, Petitioners disagree with the Department's decision to do so under protest.

Icdas' Remand Comments

In the *Final Determination*, the Department correctly determined date of sale as invoice date. Its additional explanation in the Draft Results further establishes why invoice date constitutes the proper date of sale.

The record establishes that Icdas did not issue firm contracts during the POI and that its issued P/Os were unsigned and susceptible to renegotiation until final invoicing. Icdas further confirmed this aspect of its sales process at verification.[210]

The approach apparently advocated by the Court would require the Department to examine every single sale to determine the correct date of sale. Thus, in the final results, the Department should continue its approach from the *Final Determination* and use the date of invoice as the date of sale for Icdas.

Department's Position: As noted above, the *Preamble* states that if presented with evidence that the material terms of sale are established on a date other than the invoice date, the Department will use that date as the date of sale.[211] However, the *Preamble* further states that

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[209] *See Habas*, 625 F. Supp. 2d 1337.
[210] *See* Icdas Sales Verification Report at 30 and Exhibits SVE-9, SVE-34, SVE-36, and SVE-38.
[211] *See* Preamble, 62 FR at 27349.

deviation from the invoice date as the date of sale must involve situations where the "terms of sale" are "firmly established and not merely proposed."[212] Petitioners argue that this aspect of the *Preamble* does not apply in the instant proceeding because Icdas' terms of sale were not, in fact, merely proposed. Rather, Petitioners argue that Icdas and its customers never varied in observing the terms established in the pre-invoice sales documents. We disagree with Petitioners on this point and continue to find that the aforementioned guidance provided in the *Preamble* is germane to the facts of the instant proceeding. As explained in the Draft Results, the sales documents in question were "preliminary" in nature, as evidenced by the fact that for a significant number of transactions the terms of sale were renegotiated and, for certain sales were renegotiated more than once.[213] Further, as noted in the Draft Results, the record indicates that several of the pre-invoice sales documents were merely unsigned P/Os and that, in other instances, the amended P/O date was informally penciled in at the top of the revised P/O.[214] In these final results, our view continues to be that such facts do not constitute formal sales terms that were "firmly established prior to the invoice date."[215]

Concerning *Nucor* and *Habas*, we continue to find that the facts of those particular proceedings are distinct from those involving the sales process of Icdas. In *Nucor*, the Court examined a sales process involving a "single price change" and found that the Department cannot base its date of sale decision entirely on a single change to a single sale.[216] Similarly, in *Habas*, the Court examined a situation in which the Department's date of sale decision hinged on changes made to a single contract. As explained above, in the instant proceeding, the

[212] *Id*.
[213] *See* Icdas July 21, 2014, case brief, citing Icdas Sales Verification Report at 30.
[214] *See* Icdas Sales Verification Report at 30 and verification exhibits SVE-9, SVE-34, SVE-35, and SVE-38.
[215] *See Preamble*, 62 FR at 27349.
[216] *See Nucor* at 65.

Department is examining a sales process in which Icdas and its customers revised the terms of sale, as listed on the initial P/O, for a significant percentage of its sales; and in certain instances changed the terms of sales multiple times; and for some sales made changes to the terms of sale within the days of the invoice date.[217]

While the facts examined by the Court in *Nucor* and *Habas* differ from those of the instant proceeding, the Court's analysis in these cases, particularly in *Nucor*, nonetheless informs the Department's approach on remand concerning Icdas' the date of sale. Concerning *Nucor*, Petitioners imply that the Court did not consider the legally binding nature of the sales documents in question and, thus, the importance the Department attaches to the informal nature of Icdas' pre-invoice sales process in the Draft Results was irrelevant. We disagree. As noted above, in *Nucor*, the Court explains how the nature of the sales process is relevant to determining the date of sale. For example, the Court emphasized "the importance of looking to the course of conduct between the parties in evaluating whether a written document represents a binding agreement" that may serve as the basis for establishing the date of sale."[218] Further, in *Nucor*, the Court further noted that the utilization of formal, written contracting procedures bears directly on the expectations of the parties to a sale and that the lack of such formal written sales documents argues in favor of using invoice date as the date of sale.[219] In their comments on the Draft Results, Petitioners fail to acknowledge these crucial aspects of the Court's holding in *Nucor*.

On this basis, the Department continues to find that its decision in the Final Determination to use invoice date as the date of sale for Icdas followed the guidance provided in

[217] See Icdas Sales Verification Report at 30 and verification exhibits SVE-9, SVE-34, SVE-35, and SVE-38.
[218] *See Nucor* at 81, citing to *Sulfanilic Acid from Portugal* at Comment 1.
[219] *Id*., at 88.

the *Preamble* and was consistent with the holdings of the Court in *Nucor* and *Habas*. However, in light of the Court's holding in the *Remand Order* we are, under respectful protest,[220] continuing with our decision to revise the date of sale for Icdas' U.S. date of sale. Specifically, in this final remand redetermination we are using the date of Icdas' last amended P/O as the U.S. date of sale.[221]

Comment 6: Legal Effect of the Department's Determination on Remand

Petitioners' Remand Comments

In the event that the Department continues to calculate an above-*de minimis m*argin in the final remand results, the agency must treat those remand results as an affirmative final determination rendered pursuant to 19 U.S.C. § 1673d, and immediately take the legal steps required by that statute upon making an affirmative final determination. Specifically, that the Department must make available to the International Trade Commission all information upon which the Department's determination was based and which the Commission considers relevant,[222] require the posting of cash deposits in the amount determined in the final remand results,[223] and publish a *Federal Register*[224] notice of its final determination, per 19 U.S.C. § 1673d(c) and (d).

Petitioners argue that both the CIT and the CAFC have held that an agency's determination on remand replaces its original determination as a matter of law. As such, upon issuing a final remand determination, agencies must abide by the legal requirements to which they would have been subject had they made the remand determination in the first instance.

[220] *See Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).
[221] For further information, *see* Draft Results at 27; *see also* Draft Remand Cost Calculation Memo for Icdas, which are unchanged in this final redetermination.
[222] *See* 19 U.S.C. § 1673d(c)(1)(A).
[223] *See* 19 U.S.C. § 1673d(c)(1)(B).
[224] *See* 19 U.S.C. § 1673d(d).

Citing *Decca*,[225] Petitioners state that the CIT rejected arguments that the Department could not instruct U.S. Customs and Border Protection (CBP) to apply the new cash deposit rate that the agency had calculated in a remand determination until a final and conclusive court decision was issued. Instead, the CIT found that the Department's remand determination replaced its original, final determination, and thus required the agency to take the steps that it would have taken had it reached the remand results in the first instance.[226]

Petitioners also cite *Diamond Sawblades*, arguing that the CAFC affirmed the CIT's decision*,* indicating that the remand results become legally effective on the date of filing, and not when the CIT affirms those results.[227] Accordingly, the agency should take steps to ensure that its remand results are legally effective as of the date of filing. In regard to the legal implications of the remand results, the CIT has confirmed that, to the extent that any agency would have been required to take certain steps had it reached certain results in the first instance, it must take those same steps upon issuing a remand determination that reaches those results. In particular, in *Diamond Sawblades CIT*, the Court rejected the argument that a final affirmative investigation determination made pursuant to a remand order was not issued under 19 U.S.C. § 1673d, and accordingly did not prompt the same legal effects as an affirmative determination made in the first instance.[228]

The statute also requires the agency to order suspension of liquidation and/or continue suspension.[229] Petitioners indicate that all entries made by affected companies from September 15, 2014, onward are currently suspended pursuant to the countervailing duty order on Turkish

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[225] *See Decca Hospitality Furnishings, LLC v. United States*, 427 F. Supp. 2d 1249, 1255 n.11 (CIT 2006) (*Decca*).
[226] *Id.*
[227] *See Diamond Sawblades Mfrs. Coal. v. United States*, 626 F.3d 1374, 1378, 11.1 (Fed. Cir. 2010) (*Diamond Sawblades CAFC*); *Diamond Sawblades Mfrs.Coal. v. United States*, 650 F. Supp. 2d 1331, 1351 (CIT 2009) (*Diamond Sawblades CIT*) (collectively *Diamond Sawblades*).
[228] *See Diamond Sawblades CIT*, 650 F. Supp. 2d at 1350.
[229] *See* 19 U.S.C. § 1673d(c)(l)(C); 19 U.S.C. 1673b(d)(2).

rebar.[230] However, to the extent that entries not already being suspended pursuant to the countervailing duty order could be affected by the final affirmative determination here the Department must require the suspension of liquidation.

Icdas did not comment on this issue.

Department's Position: We agree that taken together, *Decca* and *Diamond Sawblades*, establish that the Department has a duty to expeditiously act upon, and implement, a remand determination. Indeed, the CIT and CAFC in *Diamond Sawblades* rejected the argument that the Department should wait for the *final and conclusive* resolution of litigation (meaning the resolution of all appeals) before giving effect to a remand determination.[231] As this Court explained in *Diamond Sawblades CIT*, "a remand determination becomes legally operative on the date that this Court issues a final decision sustaining it," not the final resolution of any appeal.[232] In *Decca*, this Court held that the Department was required to issue new cash deposit instructions after the trial court granted "judgment affirming Commerce's remand determination."[233] Critically, however, the courts in those cases did *not* confront the circumstance presented here – namely, a situation in which *no* court has yet had a chance to review the lawfulness of the Department's remand redetermination. Thus, contrary to what Petitioners insist, the holdings of those cases do not, in themselves, establish that the Department is required to suspend liquidation or issue cash deposit instructions based on a remand determination the moment that remand determination is filed with the Court.

To be sure, both *Decca* and the *Diamond Sawblades* decisions include language

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[230] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014).
[231] *See, e.g.*, *Diamond Sawblades CAFC*, 626 F.3d at 1378–80; *see also Diamond Sawblades CIT*, 650 F. Supp. 2d at 1352
[232] *See Diamond Sawblades CIT*, 650 F. Supp. 2d at 1352.
[233] *See Decca*, 427 F. Supp. 2d at 1263.

suggesting that giving immediate effect to remands – without waiting for *any* court review might be appropriate.[234] However, in neither case was that issue squarely before the courts. In *Diamond Sawblades*, "{t}he precise question" before the CAFC was "whether, in a case in which the Court of International Trade has remanded a negative injury determination to the Commission, and the Commission on remand has made an affirmative injury determination and notified Commerce of that determination, Commerce must issue antidumping duty orders and begin collecting cash deposits of the antidumping duties while a challenge to the material injury determination is still pending before the courts."[235] Meanwhile, in *Decca*, the Court acknowledged that "it need not decide this issue" of whether the Department should wait to take action until "a final and conclusive court decision is issued" because the CIT's intervening judgment and order "establishes Commerce's duty."[236] As discussed above, because the circumstances of those cases were different, the Department has not understood those cases to preclude waiting until after the Court has affirmed a remand determination before suspending liquidation or issuing cash deposit instructions.

Moreover, with regard to the Petitioners' argument that the Department must now require the suspension of liquidation, we disagree. There are two lessons to be drawn from *Diamond Sawblades*. First, there must be a court order sustaining the remand determination in place.[237]

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[234] *See, e.g.*, *Diamond Sawblades CAFC*, 626 F.3d at 1378 n.1 (noting that, under its statutory scheme, the ITC was not required to wait until its remand determination was sustained by this Court before notifying Commerce of the changed injury determination); *Decca*, 427 F. Supp. 2d at 1255 n.11 (noting that "Commerce's own remand determination, as a matter of law, replaced Commerce's original, final determination" and could be a basis for Commerce to issue new cash deposit instructions); *see also Diamond Sawblades CIT*, 650 F. Supp. 2d at 1351 (following *Decca*'s reasoning).
[235] *See Diamond Sawblades CAFC*, 626 F.3d at 1378.
[236] *See Decca*, 427 F. Supp 2d. at 1255 n.11.
[237] *See Diamond Sawblades CAFC*, 626 F.3d at 1377 (noting that after the Court issued its order sustaining the ITC's remand determination, the ITC notified Commerce and Commerce ordered the suspension of liquidation); *see also Diamond Sawblades CIT*, 650 F. Supp. 2d at 1352 ("{A} remand determination becomes legally operative on the date that this Court issues a final decision sustaining it.").

Second, an agency must act on its remand determination if the statutory scheme so requires.[238]

Here, neither of these two circumstances has occurred. First, the Court has not issued an order sustaining the Department's remand redetermination. Indeed, waiting for this Court to rule on the Department's remand redetermination before taking action is prudent in this instance and preserves the essential role of the courts to adjudicate the legality of the Department's determinations. At this point, the parties cannot know whether the Court will approve the Department's decision to issue an affirmative final determination pursuant to the Court's *Remand Order*. If the Court were to disagree with the approach the Department has taken in these results and remands again with the outcome that the Court ultimately sustains a negative determination of dumping for both respondents, any suspension of liquidation would have to be terminated and any improperly-collected cash deposits would have to be refunded. Requiring the Department and CBP to potentially go through such logistics is unnecessary in the absence of a court order addressing the merits of the Department's remand results when one is forthcoming. Second, unlike in *Diamond Sawblades CAFC* where the Department had a clear statutory duty to act under section 736(a) of the Act once it received notification from the ITC, the statutory scheme governing remand redeterminations is at best unclear concerning the Department's obligation to suspend liquidation until a final affirmative determination on remand has been sustained by the Court.[239]

[238] *See, e.g.*, *Diamond Sawblades CAFC*, 626 F.3d at 1378 (noting that, "{a}fter receiving the requisite statutory notification, Commerce was required to publish appropriate antidumping duty orders within seven days of being notified by the Commission of its affirmative determination").
[239] *See Diamond Sawblades CAFC*, 626 F.3d at 1378.

If the Court sustains the Department's remand redetermination, the Department will immediately give effect to the Court's decision and take the action being prematurely sought by Petitioners, including instructing CBP to suspend of liquidation and requiring the collection of cash deposits.

E. Final Results of Redetermination Pursuant to the Remand Order

In accordance with the Court's *Remand Order*, we have reconsidered and, as discussed above, revised certain aspects of the dumping margins calculated for Icdas and Habas. Based on these changes, the estimated weighted-average dumping margins for Habas, Icdas and all others[240] for the POI, July 1, 2012, through June 30, 2013, for steel concrete reinforcing bar from Turkey are as follows:

[240] Section 735(c)(5)(A) of the Act provides that the estimated "all others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all zero or *de minimis* rates, and all rates determined entirely under section 776 of the Act. Icdas is the only respondent in these remand results for which the Department calculated a company-specific rate which is not zero, *de minimis* or based entirely on facts available. Therefore, for purposes of determining the "all others" rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Icdas on remand as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.

Producer or Exporter	Estimated Weighted-Average Dumping Margin From Final Determination (percent)	Estimated Weighted-Average Dumping Margin for Final Redetermination (percent)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)	0.00	*de minimis*
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)	0.00	3.64
All Others	0.00	3.64

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 7, 2016
Date