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Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al., v. United States
Consol. Ct. No. 18-00143, Slip Op. 20-10
(CIT January 28, 2020)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination (*Final Remand Results*) pursuant to the decision and remand order issued by the U.S. Court of International Trade (the Court) in *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al., v. United States*, Consol. Court No. 18-00143, Slip Op. 20-10 (January 28, 2020) (*Remand Order*). These *Final Remand Results* concern Commerce's final determination in the antidumping duty investigation of carbon and alloy steel wire rod (wire rod) from the Republic of Turkey (Turkey).[1] The Court remanded one issue, directing Commerce to recalculate the duty drawback adjustments for both Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. (Icdas) and Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. (Habas), which Commerce had calculated by applying its duty neutral methodology and allocating the duty drawback over total cost of

[1] *See Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM), as amended by *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417 (May 21, 2018) (*Amended Final Determination*).

production. In accordance with the *Remand Order*, Commerce analyzed this issue and has now revised its calculation of the duty drawback adjustments for Icdas and Habas.

II. BACKGROUND

On March 28, 2018, Commerce published the *Final Determination* pertaining to mandatory respondents Icdas and Habas.[2] The period of investigation (POI) is January 1, 2016 through December 31, 2016. On May 21, 2018, Commerce published the *Amended Final Determination* after correcting a ministerial error present in the *Final Determination*.[3] On January 28, 2020, the Court remanded the *Final Determination* and directed Commerce to recalculate Icdas' and Habas' duty drawback adjustment using a different calculation methodology.[4]

On March 25, 2020, Commerce released the *Draft Remand Results* to interested parties and gave them an opportunity to comment.[5] On April 1, 2020, Habas, Icdas, and Nucor Corporation (the petitioner) each submitted comments on the *Draft Remand Results*.[6] Complete responses to each party's comments are provided below, following the final remand results.

[2] *See Final Determination*, 83 FR at 13250.
[3] *See Amended Final Determination*, 83 FR at 23417-18.
[4] *See Remand Order* at 30.
[5] *See* Memorandum, "Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al., v. United States, Consol. Court No. 18-00143, Slip Op. 20-10, Draft Results of Redetermination Pursuant to Court Remand," dated March 25, 2020 (*Draft Remand Results*).
[6] *See* Habas' Letter, "Antidumping – Carbon and Alloy Steel Wire Rod from Turkey; Habas comments on draft redetermination in remand," dated April 1, 2020 (Habas Comments); *see also* Icdas' Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Turkey; Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Comments on Draft Results of Redetermination Pursuant to Court's January 28, 2020 Remand Order: Slip Op. 20-10," dated April 1, 2020 (Icdas Comments); and Petitioner's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Comments on Draft Remand Results," dated April 1, 2020 (Petitioner Comments).

III. REMANDED ISSUE

A. Duty Drawback Adjustment

The Court remanded Commerce's duty drawback adjustment for Icdas and Habas, finding that Commerce's duty neutral calculation methodology of allocating duties exempted over total production was inconsistent with the plain language of the Tariff Act of 1930, as amended (the Act).[7] As set forth in detail below, Commerce has recalculated Icdas' and Habas' duty drawback adjustment, under respectful protest.[8]

1. Legal Framework

Pursuant to section 772(c)(1)(B) of the Act, Commerce shall increase export price (EP) and constructed export price (CEP) by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, Commerce looks for a reasonable link between the duties imposed and those rebated or exempted.[9] However, Commerce does not require that the imported material be traced directly from importation through exportation.[10]

In determining whether a respondent is entitled to a duty drawback adjustment, Commerce traditionally uses the following two-prong test: first, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another, or that the exemption from import duties is linked to the exportation of subject merchandise; and second, that there

[7] *See Remand Order* at 16-18, 30.
[8] *See Viraj Group, Ltd. v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003).
[9] *See Light-Walled Rectangular Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 47477 (October 12, 2017), and accompanying IDM at Comment 5; *see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying IDM at Comment 1.
[10] *Id*.

were sufficient import duties incurred on the imported raw material to account for the amount of duty drawback received upon the exports of the subject merchandise.[11] Notably, the respondent bears the burden of establishing that both prongs of the test have been satisfied and, thus, that its entitlement to a duty drawback adjustment is warranted.[12]

2. Background

In the *Final Determination*, Commerce calculated a ratio of Habas' POI exempted import duties to cost of manufacturing (COM) by dividing the POI total duty assessments by the POI total COM of billets, rebar, short length and coiled products.[13] Next, Commerce calculated the per-unit amount of exempted import duties by multiplying the duty cost ratio by the control number (CONNUM)-specific revised per-unit total COM. Commerce added these per-unit exempted import duties to the total COM in deriving the total POI cost of production.[14] In calculating U.S. Price, Commerce also made an upward adjustment to Habas' EP using the duty cost ratio.[15]

Commerce calculated Icdas' exempted import duty ratio by dividing Icdas' POI-exempted import duties by the total quantity of production during the POI. Commerce made an

[11] *See, e.g.*, *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*); *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006) (citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005) (*Allied Tube II*); A*llied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd v. United States*, 699 F. Supp. 309, 311 (CIT 1988) (*Far East Machinery*); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987)).
[12] *See Allied Tube II*, 374 F. Supp. 2d at 1261.
[13] *See* Memorandum, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from Turkey," dated October 24, 2017 at 3.
[14] *See Carbon and Alloy Steel Wire Rod from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances*, 82 FR 50377 (October 31, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 10-11 (Commerce's calculation of Habas' duty drawback adjustment remained unchanged in the *Final Determination*.).
[15] *See* Memorandum, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from Turkey," dated October 24, 2017 at 3.

upward adjustment to Icdas' EP using this per-unit amount.[16] Then, Commerce added this per-unit duty drawback rate to the CONNUM-specific per-unit total cost of manufacturing.[17]

The cost adjustments represent the amount of import duties which respondents would have recorded in their books and records as cost of materials but for the exemption of these import duties under Turkey's Inward Processing Regime (IPR) program. Commerce added these amounts of imputed import duty costs to each respondent's cost of production and limited the amount of each respondent's claimed per-unit duty drawback adjustment by the per-unit import duty cost reflected in each company's cost of production.[18] Under this approach, it is recognized that the average duty can be recovered by the company in any sale and in any market. Thus, the U.S. price adjustment for duty drawback is limited by the amount of import duties reflected in normal value (NV) (*i.e.*, the price of a home market sale that passed the sales-below-cost test), and, thus, according to Commerce, the comparison of NV and U.S. price is duty-neutral and constitutes a fair comparison, in accordance with section 773(a) of the Act.[19]

3. The Court's Remand Order

In its *Remand Order*, the Court remanded Commerce's calculation of Habas's and Icdas' duty drawback adjustment. Specifically, the Court held that Commerce erroneously relied on the purported statutory silence regarding the calculation methodology of the duty drawback adjustment to support its decision to allocate exempted duties over total production, rather than export sales.[20] Citing *Chevron*, the Court stated that only if the statute is silent or ambiguous

[16] *See* Memorandum, "Preliminary Analysis Memorandum for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. in the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Turkey," dated October 24, 2017 at unnumbered pages 3-4.
[17] *See Preliminary Determination* PDM at 10-11(Commerce's calculation of Icdas' duty drawback adjustment remained unchanged in the *Final Determination.*)
[18] *See Preliminary Determination* PDM at 11 (unchanged in the *Final Determination*).
[19] *Id*.
[20] *See Remand Order* at 16.

regarding Congress' intent must the Court determine whether the agency's action is based on a permissible construction of the statute.[21] However, the Court found that the plain language of section 772(c)(1)(B) of the Act is clear that Congress intended the duty drawback adjustment to fully adjust EP for the amount of duties that would have been paid, but for the exportation of the merchandise.[22] Thus, the Court held that allocating plaintiffs' exempted duties over the total cost of sales and total production contravened the Act, because it attributed some of the duty drawback amount to domestic sales, which could not earn drawback, and, thus, Commerce failed to adjust EP, as provided by the Act, by the full amount of the import duties exempted by reason of exportation.[23]

Additionally, the Court cited to five other duty drawback cases in which the Court concluded that the duty neutral methodology is inconsistent with the plain language of section 772(c)(1)(B) of the Act.[24] The Court stated that, in each of these cases, the duty neutral methodology failed to tie the exempted duties to exported merchandise and the methodology was, therefore, found to contravene the plain language of the statute.[25] Accordingly, the Court remanded to Commerce to recalculate the respondents' duty drawback adjustment in a manner consistent with its opinion.[26]

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[21] *Id*. at 17-18 (citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (*Chevron*)).
[22] *Id*. at 16.
[23] *Id*. at 18.
[24] *Id*. at 16-17 (citing *Toscelik Profil v. Sac Endustrisi A.S. v. United States*, 321 F. Supp. 3d 1270 (CIT 2018); *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 361 F. Supp. 3d 1314 (CIT 2019); *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States,* 357 F. Supp. 3d 1325 (CIT 2018); *Uttam Galva Steels Ltd. v. United States,* 311 F. Supp. 3d 1345 (CIT 2018) (*Uttam Galva*); and *Rebar Trade Action Coal. v. United States,* 38 ITRD 1730 (CIT 2016)).
[25] *Id.*
[26] *Id.* at 18, 30.

4. Analysis

Section 772(c)(1)(B) of the Act provides that "{t}he price used to establish export price and constructed export price shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[27] The primary purpose of the duty drawback provision regarding U.S. price is to recognize, and compensate for, the fact that, pursuant to a duty drawback program, the cost of the refunded or exempted import duties are not reflected in the price charged to the U.S. customer, which is the starting point to calculate EP or CEP, *i.e.*, the U.S. price. The concern is that the import duties are reflected in NV, but because the price to the U.S. customer is set exclusive of the refunded or exempted import duties, the dumping margin will be artificially increased by the amount of the rebated or forgiven duties not reflected in U.S. price. Therefore, the Act requires the addition of the rebated or forgiven duties to U.S. price.[28]

There are two general types of duty drawback programs: refund/rebate programs and exemption programs. These program types operate, and are accounted for, differently in a company's books and records. For a refund duty drawback program, where the import duties are paid and later refunded by the government of the exporting country, a producer will typically record the amount of import duties as a direct material cost and will then recognize a separate revenue for any amount of duty drawback granted for the export transaction. Conversely, for an exemption duty drawback program, when a material input is imported, typically, a producer will neither record an amount for import duties as a direct material cost, nor recognize a separate revenue for the amount of duty drawback granted for the export transaction. Thus, the per-unit

[27] *See* section 772(c)(1)(B) of the Act.
[28] *Id*.

amount of import duties imbedded in a product's cost of production may, in fact, be zero for an exempted duty drawback program, where import duties are forgiven by the government of the exporting country.[29] Regardless of the type of duty drawback program of which a company may avail itself, the duty drawback adjustment attempts to make the dumping calculation duty neutral by increasing U.S. price to reflect a duty-inclusive amount.

Additionally, the presumption that NV includes the full duty proportionate to the full duty drawback is uncertain. For example, a company may be capable of producing the merchandise under consideration from several alternative inputs (*e.g.*, iron ore, scrap metal, pig iron, slabs, billets, *etc.*), only some of which might be subject to import duty. Alternatively, another example is where only a portion of the inputs required to produce the subject merchandise may have been imported and the domestically-sourced inputs have no associated duty. It is important to note that the duty and duty drawback schemes of virtually all countries allow for substitution of inputs, meaning that, while the actual imported material subject to duty is fungible and can be consumed in any of the finished goods, it is assigned by the company to exported finished goods for purposes of the program. In other words, the imported inputs are presumed to have been consumed in producing the exported finished good assigned by the company in claiming its duty drawback. Both Commerce and the Court of Appeals for the Federal Circuit (Federal Circuit) have recognized that this can create an imbalance, where the statute requires an increase to the U.S. price of the drawn back duties, but there are significantly less, or no corresponding, import duties actually reflected in NV.[30]

[29] Generally, when exempted import duties have not been reported as a cost of production, Commerce practice has been to impute a cost for import duties based on the amount of imported raw material purchases during the period under investigation.

[30] *See Saha Thai*, 635 F.3d at 1342 ("{A}gree{ing} that Commerce reasonably decided that any increase to EP pursuant to a duty drawback adjustment should be accompanied by a corresponding increase to COP {cost of production} and CV {constructed value}.").

Consider the following example, wherein one unit of input is domestically sourced for $10 and one unit of input is imported for $10, plus a $5 duty. Under the standard way of determining costs for general accounting purposes, the company's average cost for the inputs per unit is the domestic input of $10 plus the imported input of $15 ($10 + $5) divided by two units of input which equals $12.50 (*i.e.*, $10 + $15 = $25 and $25/2 = $12.50). Thus, $12.50 is the annual average per-unit input cost, including only $2.50 of the import duty for each unit. However, upon export of one unit of the finished good, the duty drawback scheme allows the entire $5 of import duties to be rebated or forgiven. As a result, following this logic, the adjusted U.S. price reflects $5 per unit of duties, while the NV cost of production includes an average of $2.50 per unit. This creates an imbalance in the amount of duties on each side of the dumping equation, artificially lowering the margin by $2.50 of duties (assuming through the cost test the average home market price would include the $2.50 of duties in the cost of the input). The Court has recognized this distortion in *RTAC II*.[31] Specifically, in *RTAC II*, the Court agreed with Commerce's finding that granting a duty drawback adjustment "is flawed insofar as it produces a distorted comparison of a per-unit NV with a per-unit EP/CEP when production involves a mixture of foreign-sourced and domestic-sourced inputs."[32]

In a duty program that exempts the importer from paying import duties pending the expected export of the finished good,[33] the import duty is not actually paid, but a liability is created and the liability for the import duties is extinguished upon export of the finished good. Under such circumstances, the liability for duties does not usually appear in the company's

[31] *See Rebar Trade Action Coalition v. United States*, No. 14-00268, 2016 Ct. Intl. Trade LEXIS 90 (CIT Sept. 21, 2016) (*RTAC II*) at *14-*16.
[32] *Id*. at *15.
[33] This is as opposed to a rebated duty program where the importer pays duties on the imported goods and receives a rebate upon exportation of the finished goods.

books and records, as it is not recorded as part of material costs, because no cost was actually incurred or money paid out under the duty program. As noted above, both Commerce and the Federal Circuit have recognized this imbalance, where the statute requires an addition to the U.S. price by the amount of the uncollected "drawn back" duties, but there are no corresponding import duties actually in the NV or cost. In order to remedy this imbalance, Commerce imputed, and the Federal Circuit approved, a cost adjustment to add the uncollected import duties (*i.e.*, the liability) to the material costs, so that the import duties are accounted for in both sides of the dumping comparison, U.S. price and NV.[34]

Commerce originally attempted to remedy the distortions discussed above by making the adjustment to U.S. price limited to the average amount of duty included in the cost (*e.g.*, $2.50 in the example). Using the original methodology, Commerce had been dividing the duty drawback by the volume of exports. In the example above, one unit was exported, and the duty drawn back was $5, so that the per-unit duty added was 5/1 = $5. Commerce then revised its methodology and divided total duty by total production, as it did with cost, and based on the example again, $5 of duty divided by two units of finished goods results in a $2.50 per unit of import duty drawback adjustment. Limiting the U.S. price adjustment to $2.50 was warranted, because it represents the same amount reflected in NV. As a result, there was $2.50 per unit of import duties added to U.S. price and $2.50 of import duty in the cost, making the duty draw back adjustment duty neutral, consistent with the Federal Circuit's reasoning in *Saha Thai*.[35] However, this Court found that the language of the statute does not permit Commerce to

[34] *See Saha Thai*, 635 F.3d at 1343.
[35] *Id.*

calculate the duty drawback added to U.S. price by dividing total duty by total production and remanded the issue to Commerce for further consideration.[36]

Upon further consideration in response to the Court's opinions in other cases, Commerce developed a different method for accounting for the imbalance of import duties.[37] Commerce went back to adding the full $5 per-unit duty drawback to U.S. price, as required by the Court in those cases. Commerce continued to make sure the import duties were included in the cost, $2.50 per unit in the example, including the uncollected duties based on the *Saha Thai* adjustment. However, Commerce decided to make a circumstances-of-sale (COS) adjustment to the NV of $2.50, the per-unit differential between the per-unit duty drawback adjustment to U.S. price (*i.e.*, $5) and the per-unit duty included in the cost of production (*i.e.*, $2.50). As a result, based on the example, Commerce added $5 duty drawback to U.S. price and $5 ($2.50 in cost and $2.50 added directly to NV) to ensure that the import duty on both sides of the dumping equation, U.S. price and home market price, was $5. In other words, we attempted to make the comparison of U.S. price with NV duty-neutral.

The Court found that this remand method caused Commerce to double count duties on the NV side of the dumping margin equation.[38] Continuing with the example above, it appears that it was the Court's understanding that under the remand methodology, $5 was added to U.S. price and $5 was added to cost, with an additional COS adjustment of $2.50 to home market price, meaning that there were $7.50 of duties in the NV side of the dumping equation, thus double counting $2.50 of the duties already included in cost.[39] In fact, however, the $5 that

[36] *See Remand Order* at 16.
[37] Although this paragraph and the following paragraph discuss a methodology used in other cases, we are explaining it here in order to provide the Court with the full historical background of the issue. *Uttam Galva Steels Ltd. v. United States*, 374 F. Supp. 3d 1360, 1363 (CIT 2019) (*Uttam Galva II*); *Tosçelik Profil ve Sac Endüstrisi A.Ş. v. United States*, 375 F. Supp. 3d 1312, 1315 (CIT 2019).
[38] *See Uttam Galva II*, 374 F. Supp. 3d 1363.
[39] *Id*.

Commerce added to cost was diluted to $2.50 per unit – meaning that there were only $5 of duties in the NV side of the equation. Accordingly, Commerce respectfully disagrees that double counting occurred under the described remand methodology.

Duty drawback schemes "distort" normal costs, because they allow, for duty and drawback purposes, a party to assume the imported inputs were consumed in the exported finished goods. Thus, they allocate more import duties to exports than are accounted for by the annual weighted-average input costs of the company under standard cost accounting. Commerce's addition of $2.50 to the home market price, in addition to the $2.50 included in the example costs, is simply a re-allocation – thus, in fact, only $5 of import duty is included in the home market price. To be clear, there is not $7.50 per unit of duty in the home market price used as NV for comparison with the U.S. price. There is only a total of $5 per unit in the home market price: $2.50 in the cost and $2.50 added to the home market price.

The Court in the case involving this first COS adjustment methodology found that this methodology resulted in double counting and remanded the issue for further consideration.[40] As a result of those remands, we developed a revised duty drawback methodology which eliminates any perceived or actual double counting.

5. Revised Duty Drawback Redetermination Methodology

The Court remanded Commerce's duty drawback methodology with instructions to recalculate Habas' and Icdas' duty drawback adjustment.[41] Commerce has, therefore, applied its revised methodology to account for duty drawback on the NV side of the equation. Additionally, consistent with the Court's opinion, Commerce will add the full POI amount of exempted duties

[40] *Id*.
[41] *See Remand Order* at 30.

to EP.[42] This complies with the Court's decision that the full amount of duties rebated, or uncollected by reason of exportation of the subject merchandise, must be tied to exports (*i.e.*, added to U.S. price), while also ensuring that the NV reflects such duties.[43]

As explained above, duty drawback schemes treat the import duty liability different from standard cost accounting by permitting the assignment of imported inputs and the associated import duties to export sales, while attributing the domestic purchases exclusive of duty to domestic sales. In these circumstances, an adjustment to NV is both appropriate and permitted by the statute, which states that NV "shall be . . . increased or decreased by the amount of any difference (or lack thereof) between export price and {normal value} that is established to the satisfaction of the administering authority to be wholly or partly due to . . . other differences in the circumstances of sale."[44] Also, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), recognizes that "{t}o achieve such a fair comparison, section 773 {of the Tariff Act of 1930, as amended,} provides for the selection and adjustment of normal value to avoid or adjust for differences between sales which affect price comparability."[45] Commerce's regulations also provide, "{i}n calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets."[46] The regulations further state "{i}n general…the Secretary will make circumstance of sale adjustments…only for direct selling

[42] *Id.* at 16-18.
[43] *Id.*
[44] *See* section 773(a)(6)(C)(iii) of the Act.
[45] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1 (1994) at 820 (SAA); *see also* 1994 U.S.C.C.A.N. 4040, 4161.
[46] *See* 19 CFR 351.410(a).

expenses and assumed expenses."[47] The regulations define direct selling expenses as "expenses…that result from or bear a direct relationship to, the particular sale in question."[48]

The operation of Turkey's duty drawback scheme and the antidumping duty law duty drawback provision transform the import duties subject to the duty drawback scheme into a direct selling expense. Specifically, under the Turkish duty drawback scheme, these duty costs are assigned to products by respondents based on where they are sold, not on how they are produced, and, accordingly, are directly related to the sales in different markets. Also, the duty that may be drawn back is capped by the amount of the duty in the dutied input that is included in the specific sale for export. Thus, the statute provides for a COS adjustment to NV in cases such as this when there is a direct selling expense that is not the same in both markets.

In the instant case, the respondents, Habas and Icdas, purchased a number of different inputs subject to varying amounts of duty from both foreign and domestic sources. Habas and Icdas reported that they participated in the IPR program, which is a duty exemption program.[49] When the inputs are imported under the duty exemption programs, a liability is created for the duties, but no amount is actually paid.[50] When the finished product is exported, the duty payable (*i.e.*, the liability) is released.[51]

[47] *See* 19 CFR 351.410(b).
[48] *See* 19 CFR 351.410(c).
[49] *See* Habas' July 6, 2017 section C questionnaire response (Habas July 6, 2017 CQR) at 36-39; *see also* Icdas' July 7, 2017 section C questionnaire response (Icdas July 7, 2017 CQR) at 39-41.
[50] *See, e.g.*, Icdas July 7, 2017 CQR at 40 ("{T}he beneficiary of IPR exemptions must at the time of importation submit a letter of guarantee or pledge money covering the total of all duties and VAT that would otherwise be paid to the Turkish Customs authority.").
[51] *See, e.g.*, Icdas July 7, 2017 CQR at 40 ("ICDAS is exempted from paying import duties, charges and VAT on these imported inputs on condition that the finished products in which they are used will be exported.").

a. Cost Test

The cost test is performed to ensure that home market prices used as a basis for NV are made above the cost of production, including duties.[52] As a part of the cost test, we compare home market prices to the cost of producing the merchandise. Home market sales that pass the cost test will necessarily include any duties actually paid and reflected in the producer's books and records, because they were included in the cost calculations. The cost of production will not include any duties from an exempted program, because they are not actual costs incurred by the respondent. As explained below, any such exempted duties will be taken into consideration in making the duty drawback adjustments to U.S. price and the home market or constructed value (CV) to which it is compared.

b. Adjustments to Comparison Market Price and CV

Commerce's revised duty drawback methodology requires several steps which vary depending on whether a respondent uses a rebate and/or exemption duty drawback program(s). In this section, we will describe the steps of our revised duty drawback methodology. In the following section, we will describe the application of the revised methodology to the facts in this case.

In this case, neither Habas nor Icdas recorded import duties associated with imported raw materials in its costs because all of its duty drawback was made under a duty exemption program. Accordingly, the CV and home market prices in this review on remand are completely import duty-exclusive and require no initial adjustment pursuant to a "first" COS adjustment to remove all booked duties eligible for rebate from the CV and home market prices (an adjustment which would be necessary if a duty drawback reimbursement scheme had existed in this case).

[52] *See* section 773(b) of the Act.

However, to make a fair comparison, a "second" COS adjustment is still warranted. This is because: (1) the import duty program and drawback provision impose a different set of accounting and duty treatments dependent upon the market to which the finished good was sold and the markets from which the imported input is sourced; and (2) the effect of the different sourcing of inputs and associated duty costs, and how the duty drawback is treated for the U.S. and home market sales. The schemes treat the import duty liability different from standard cost accounting, as explained above, by permitting the assignment of imported inputs and the associated import duties to export sales, while attributing the domestic purchases exclusive of duty to domestic sales. Further, such treatment is different from standard cost accounting and the respondent's normal books and records, which calculate an annual weighted-average price of inputs allocated across overall production, rather than market-specific production. This difference results in a U.S. price which contains the full per-unit duty drawback amount and, thus, reflects a certain amount of import duties, as required by the Court, and NV which has a diluted per-unit amount of duty.

To rectify this imbalance, Commerce will use a COS adjustment to remove any duties from NV and use a second COS adjustment, described below, to add to NV the same per-unit amount of duty added to U.S. price, ensuring that both sides of the dumping equation contain the same amount of per-unit import duties and eliminating any possible double counting. This methodology adds the statutorily-required rebated or forgiven import duties to the company's export prices and is consistent with the Court's various rulings on this matter.[53]

[53] *See* section 772(c)(1)(B) of the Act; *see also Rebar Trade Action Coal v. United State*s, No. 14-00268, 2015 Ct. Intl. Trade LEXIS 132 (CIT 2015) (*RTAC*) at *5; *see also Uttam Galva*, 311 F. Supp. 3d at 1355; and *Allied Tube II*, 374 F. Supp. 2d at 1261.

At this point in the calculation, the adjusted U.S price includes the full amount of rebated or forgiven duties. However, neither the home market price nor the CV contains the duties. Therefore, in order to achieve a fair comparison, Commerce is making a second COS adjustment, adding to the NV the same per-unit amount of rebated or forgiven duty added to U.S. price. As a result, there is no double counting in the dumping calculations.

It is important here to note that this methodology works for either the situation where the respondent reports its duty drawback on a sale-by-sale basis or on a lump sum basis allocated over sales (*i.e.*, an average amount). In other words, under either scenario, the same per-unit amount of drawn back duty is being added to U.S. price, under section 772(c)(1)(B) of the Act, and the NV pursuant to section 773(a)(6)(C)(iii) of the Act.

6. Application of Duty Drawback Redetermination Methodology

Commerce has applied the revised methodology discussed above, thereby ensuring that: (1) Habas and Icdas receive the full amount of their claimed POI duty drawback adjustment; (2) the same amount of duty is contained in NV, which allows for a "fair comparison" under section 773(a) of the Act; and (3) no purported double counting occurs. The instant case involves an exemption program. In particular, Habas and Icdas requested a duty drawback adjustment for one duty program: the IPR program. The IPR is an exemption program.[54]

Concerning the IPR exemption program, there is nothing added to Habas' and Icdas' cost of production (which we would have done if this were a duty reimbursement program), because the companies did not incur and record any actual duty costs in their normal books and records. Rather, a liability, not recorded in the companies' books and records, was generated when inputs were imported under the IPR program, and that liability was later reversed upon exportation of

[54] *See* Habas July 6, 2017 CQR at 36-39; *see also* Icdas July 7, 2017 CQR at 39-41.

subject merchandise to the United States and other markets. If the liability had not been extinguished, the companies would have been required to pay the exempted duties. During the POI, Habas and Icdas did not pay or record as a cost any duties associated with the IPR exemption program. In addition, since Habas and Icdas never actually paid or recorded any duty costs associated with the IPR exempted duty scheme, there is no duty in CV or home market price associated with this program.

Finally, we made a duty drawback adjustment. Specifically, we granted Habas and Icdas the full amount of duties exempted, as an addition to U.S. price during the POI.[55] In accordance with our new methodology, we then added the same per unit duty amount to home market price and CV as a COS adjustment.[56]

IV. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

Comment: Duty Drawback Methodology

Petitioner Comments

- The Act calls for EP or CEP to be "(1) increased by (B) the amount of any import duties imposed by the country of exportation which have been rebated or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[57]
- This adjustment traces back to Section 203 of the Antidumping Act of 1921 (the 1921 Act), which included the adjustment for import duties, as well as an adjustment for excise taxes in the country of manufacture that have been rebated or not collected by reason of

[55] *See* Memoranda, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Draft Remand Results for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated March 25, 2020 at 2 (Habas Draft Remand Calculation Memorandum), and "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Draft Remand Results for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated March 25, 2020 at 2 (Icdas Draft Remand Calculation Memorandum).
[56] *See* Habas Draft Remand Calculation Memorandum; *see also* Icdas Draft Remand Calculation Memorandum.
[57] *See* Petitioner's Comments at 2 (citing section 772(c)(1)(B) of the Act).

exportation of the merchandise to the United States.[58] At the time, the Senate Finance Committee explained that the purpose of these adjustments was to ensure that "any drawback given by the country of exportation…or any excise tax which is refunded or not collected upon the exportation of the merchandise shall not constitute dumping." Congress wished to avoid situations in which dumping was found merely because goods could be more cheaply produced or sold for export than for domestic consumption, due to differences in a foreign government's tax treatment of production/sale for domestic purposes, and production/sale for export.[59]

- Over the past ten years, Commerce has attempted to ensure that the drawback-related portion of the upward adjustment called for in the Act continues to function as Congress intended.[60]
- One consequence of a drawback system in which duties are exempted, as is the case with Turkey's system, is that an EP that has been increased to reflect forgone duties could be compared to an NV based on costs that are not duty-reflective (because the respondent did not ever incur the exempted duties or record them in its books).[61]
- The Federal Circuit has stated that because "the entire purpose of increasing EP is to account for the fact that the import duty costs are reflected in NV…but not in EP…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 {cost of production} and {constructed value} that do not reflect those import duties."[62]

[58] *Id*. at 2-3 (citing the 1921 Act, Pub. L. No. 67-10, section 203, 42 Stat. 9, 12).
[59] *Id*. at 3 (citing S. Rep. No. 67-16 (1921) at 12).
[60] *Id*.
[61] *Id*. at 3.
[62] *Id.* at 3-4 (citing *Saha Thai*, 635 F.3d at 1342).

- Commerce developed a practice of including exempted duty costs into its cost calculations to ensure that the increased EP is compared with an NV that reflects the relevant import duties.[63] However, Commerce realized that this adjustment is imperfect, especially in instances where respondents source inputs from both domestic and import sources. In such cases, the use of different allocation bases for performing the EP and cost-side adjustments results in EP and NV calculations that continue not to be duty-loaded or duty-reflective to the same degree.[64]
- In the underlying investigation, as in several prior cases, Commerce attempted to eliminate this distortion by calculating both the EP and cost-side increases over all production, to be consistent with *Saha Thai*, and to produce a duty-neutral calculation. However, the Court rejected this approach, finding that "the duty drawback must be tied to exported merchandise, not overall domestic production."[65]
- Federal Circuit precedent casts this view into doubt. Specifically, the 1921 Act originally enacted the duty drawback adjustment simultaneously with an adjustment for foreign excise taxes. Over time, these two adjustments developed into subjects of two separate statutory provisions.[66]
- In the URAA, the statutory increase to EP for foreign taxes was removed, and Congress enacted a statutory decrease to NV. In *Federal-Mogul*, the Federal Circuit noted that such a decrease would be a direct and tax-neutral manner of ensuring that such taxes did

[63] *Id*. at 4 (citing *e.g.*, *Circular Welded Carbon Pipes and Tubes from Thailand*, 73 FR 61019 (October 15, 2008) and accompanying IDM at Comment 5).
[64] *Id*. (citing *e.g.*, *RTAC*, WL 7573326, at *4-5; *Draft Remand Results* at 14; Icdas' July 6, 2019 sections B-D questionnaire response at D-8, D-9 and Exhibit D-2; and Habas' July 6, 2019 sections B-D questionnaire response at section D, page 20 and Exhibits D-12 and D-13).
[65] *Id*. (citing *Remand Order* at 18).
[66] *Id.* at 5 and n. 14 (citing Trade Agreements Act of 1979, Pub. L. No. 96-39, section 101, 93 Stat. 144, 181).

not distort the antidumping duty calculations.[67] Congress stated that it intended to "ensure that dumping margins will be tax neutral."[68]

- In *Federal-Mogul*, the Federal Circuit did not find that the statute required the upward adjustment to EP to be equal to the absolute amount of foreign taxes rebated or forgone. Rather, it found the statutory language broad enough to encompass different approaches to the upward adjustment, so long as EP was increased.[69]
- Importantly, the *Federal-Mogul* Court did not find that the phrase "by reason of exportation" tied Commerce to a specific calculation methodology. Rather, it broadly endorsed Commerce's ability to calculate upward adjustments to EP in a way that achieves tax neutrality.[70]
- In *Saha Thai*, the Federal Circuit found that the purpose of the duty drawback adjustment is to bring EP to the same duty-loaded level as NV.[71] However, when a respondent, such as those in this case, sources inputs from both domestic and foreign sources, NV reflects the respondent's average duty cost of producing the merchandise (rather than the cost of using either only inputs that incurred duties upon import, or only inputs the did not incur duties upon import), and it is this average duty cost that needs, on a per unit level, to be added to EP.[72]

[67] *Id*. at n.14 (citing *Federal-Mogul Corp. v. United States*, 63 F.3d 1572, 1576 (Fed. Cir. 1995) (*Federal-Mogul*)).
[68] *Id*. at n.14 (citing SAA at 827 and 1994 U.S.C.C.A.N. 4040, 4166).
[69] *Id*. at 6 (citing *Federal-Mogul*, 63 F.3d at 1578-80).
[70] *Id*. (citing *Federal-Mogul*, 63 F.3d at 1578).
[71] *Id*. (citing *Saha Thai*, 635 F.3d at 1342-43).
[72] *Id*. at 6-7 (citing *Draft Remand Results* at 7-9).

- The methodology employed by Commerce in the *Final Determination* recognized this, and as indicated by the Federal Circuit in *Federal-Mogul*, the statutory language is capacious enough to accept this result.[73]
- Commerce's approach in the *Final Determination* also prevents respondents from being able to avoid dumping margins by using their sourcing strategies to "game" an adjustment that was meant only to prevent dumping margins from arising due to factors outside the respondents' control, *i.e.*, their government's tax policies.[74]
- Commerce's approach to the duty drawback calculations in the *Final Determination* was both lawful and appropriate. Nevertheless, the approach taken by Commerce on remand meaningfully and appropriately addresses the distortion that would otherwise result from the way Turkey's drawback system operates.[75]
- Commerce has taken pains in adjusting the cost-side methodology to ensure that there is no double counting, but that both the EP and NV sides of the equation are tax-neutral, such that the Turkish drawback program neither creates, nor masks, dumping margins.[76]
- Specifically, Commerce begins by adjusting home market prices to the level they would likely have been absent the drawback program. Commerce then further adjusted those prices by the per-unit amount of duty added to U.S. price.[77]
- This methodology creates a fair comparison in which the dumping calculations are undistorted by the use of the duty drawback system. It is also consistent with the Court's

[73] *Id*. at 7.
[74] *Id*. at 7 and n.25.
[75] *Id* at 7.
[76] *Id*. at 7-8.
[77] *Id*. at 8.

ruling that the per-unit U.S. price must be increased by the value of exempted duties allocated over U.S. exports, while achieving the goal of tax neutrality advanced in both *Saha Thai* and *Federal-Mogul*.[78]

Habas Comments

- Commerce made a technical error in its calculation of the duty drawback adjustment. Commerce excluded inward processing certificate (IPC) D1-4754, from the numerator of its calculation (total Customs duties), but it should have also excluded it from the denominator of its calculation (total volume of exports). Commerce should correct this error and deduct the volume of IPC D1-4754 from the denominator in calculating the per-unit duty drawback rate.[79]
- Commerce's application of the drawback adjustment to EP, where it added the full amount of duty drawback adjustment to the U.S. price, was appropriate.[80]
- However, Commerce's COS adjustment, equal in magnitude to the statutory adjustment to U.S. price, was not appropriate. The Court has consistently held that using a COS adjustment to increase NV by the amount equal to the statutory adjustment to U.S. price is unlawful.[81] In *Erdemir III*, *Toscelik III*, and *Habas II*, the Court found that Commerce's duty drawback COS adjustment was not tied to circumstances concerning the sale, as required by the law, but instead resulted from the operation of the law.[82]

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[78] *Id*.
[79] *See* Habas Comments at 1-2.
[80] *Id*. at 2 (citing *Draft Remand Results* at 12).
[81] *Id.* at 3-8 (citing *Eregli Demir ve Çelik Fabrikalari T.A.S. v. United States*, 415 F. Supp. 3d 1216, Slip Op. 19-135 (CIT 2019) (*Erdemir III*); *Tosçelik Profil ve Sac Endustrisi A.S. v. United States*, 415 F. Supp. 3d 1395, Slip Op. 19-166 (CIT 2019) (*Toscelik III*); and *Habaş Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 415 F. Supp. 3d 1195, Slip Op. 19-130 (CIT 2019) (*Habas II*)).
[82] *Id*. at 3-4 (citing *Erdemir III*, 415 F. Supp. 3d at 1227-8), 5 (citing *Toscelik III*, 415 F. Supp. 3d at 1401), and 6 (citing *II*, 415 F. Supp. 3d at 1213).

- In *Erdemir III*, the Court rejected Commerce's conclusion that the COS adjustment "ensure{s} a fair comparison,"[83] and referenced the Court's directive from *Timken* that the requirements and adjustments to NV as identified in section 773(a) of the Act are exhaustive.[84] Accordingly, the "'fair comparison' requirement is met when normal value is calculated in accordance with the statute and does not provide Commerce with additional authority to make adjustments 'beyond those explicitly established in the statute.'"[85]

- In *Toscelik III*, the Court stated that the "circumstance of sale adjustment does not remedy an imbalance; it negates the duty drawback adjustment."[86] Thus, the Court held that Commerce's circumstance of sale adjustment is not in accordance with the law."[87]

- Similarly, in *Habas II*, the Court held that: (1) "Commerce directly and completely nullified the duty drawback adjustment" and that, "Commerce may not…use the COS provision to 'effectively writ{e} {a separate adjustment} section out of the statute'";[88] (2) "render{ing} an allegedly fairer comparison" did not permit Commerce to "circumvent the legislative framework";[89] and (3) *Saha Thai* does not support a COS adjustment to a price-based NV.[90]

- In the *Draft Remand Results*, Commerce does nothing to controvert the rationales of the aforementioned judicial opinions, nor does it make any effort to distinguish this case

[83] *Id*. at 4 (citing *Erdemir III*, 415 F. Supp. 3d at 1229).
[84] *Id*. (citing *Erdemir III*, 415 F. Supp. 3d at 1229, citing *Timken Co. v. United States*, 354 F.3d 1334,1344 (Fed. Cir. 2004) (*Timken*)).
[85] *Id.* at 4 (citing *Erdemir III*, 415 F. Supp. 3d at 1229).
[86] *Id*. (citing *Toscelik III*, 415 F. Supp. 3d at 1400-01, citing *Habas II*).
[87] *Id*. at 5 (citing *Toscelik III*, 415 F. Supp. 3d at 1401).
[88] *Id.* (citing *Habas II*, 415 F. Supp. 3d at 1210).
[89] *Id.* at 6 (citing *Habas II*, 415 F. Supp. 3d at 1211).
[90] *Id*. (citing *Habas II*, 415 F. Supp. 3d at 1214).

from *Erdemir III*, *Toscelik III*, or *Habas II*, despite the fact that, in those cases, the Court rejected every rationale Commerce presented in this case.[91]

Icdas Comments

- Commerce properly increased U.S. price by the amount of export duties exempted during the POI.[92]
- However, Commerce erred in its calculation of the duty drawback adjustment amount. Commerce excluded open IPCs from the numerator of its calculation (total Customs duties), but it should have also excluded open IPCs from the denominator of its calculation (total volume of exports). Commerce should correct this error and deduct the volume of open IPCs from the denominator of the duty drawback adjustment calculation.[93]
- There is nothing in the Court's opinion that supports Commerce's decision to make a COS adjustment to NV. Rather, the *Remand Order* only addresses a cost side adjustment, not a COS adjustment to NV. Further, the *Remand Order* states that the duty drawback adjustment must directly link to merchandise exported to the United States.[94]
- Commerce's contention that there is an imbalance in the antidumping duty calculations is based on speculation that different duty amounts might be reflected in NV and EP when imported and domestic inputs are both used to produce subject merchandise. This hypothesis has no support in fact and ignores the Court's finding that Commerce's "duty neutral methodology is contrary to law."[95]

[91] *Id.* at 6-7.
[92] *See* Icdas Comments at 2.
[93] *Id*. at 3.
[94] *Id*. at 4.
[95] *Id* at 4-5 (citing *Remand Order* at 8).

- Commerce assumes that adjustments to input costs should be equal among exported and domestic sales. This assumption overlooks the fact that the drawback benefit is only granted to a party that exports finished goods and, therefore, the benefit of the adjustment cannot occur without a corresponding export.[96]
- Additionally, Commerce's numerical example is flawed because it assumes a change in costs automatically translates into a change in price. The example compares U.S. price to NV cost of production. This price-to-cost comparison is contrary to the Court's instructions in the *Remand Order*.[97]
- Icdas qualified for a duty drawback adjustment to EP because it demonstrated: (1) the exemption from import duties is linked to the exportation of the subject merchandise; and (2) there are sufficient imports of raw material to account for the drawback on the exports of subject merchandise. The law specifically directs Commerce to increase EP or CEP by "the amount of any 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." Commerce's *Draft Remand Results* unlawfully added two COS adjustments, first to remove any duties from NV and then to add to NV the same per-unit amount of duty added to U.S. price.[98] Duty drawback is not among the adjustments to NV prescribed by the statute.[99]

[96] *Id*. at 5.
[97] *Id*. at 5-6.
[98] *Id.* at 6-7 (citing section 772(c)(1)(B) of the Act).
[99] *Id.* at 7-8.

- Commerce rejected the suggestion that its draft regulation at 19 CFR 351.410, addressing adjustments for differences in circumstances of sale, functions as a "catch-all provision" to achieve "fairness."[100]
- COS adjustments are intended only for direct and assumed selling expenses.[101] Direct selling expenses "are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the a particular sale in question."[102] Assumed expenses "are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses."[103]
- The examples listed in the regulations are not exhaustive but are examples of expenses incurred to support and promote sales.[104] Nowhere in the statute are home market sales prices analyzed to determine the costs/expenses they include.[105]
- Commerce contends that the operation of Turkey's duty drawback program transforms the drawback duties into a direct selling expense.[106] However, Commerce has known about this program for over 15 years and the program has not changed so as to justify an alteration to the methodology.[107]
- On at least six occasions, Commerce has abandoned its attempts to change its drawback methodology in subsequent remand redeterminations parallel to this proceeding. In none

[100] *Id*. at 8 (citing *Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7346 (February 27, 1996) (*Proposed Rulemaking*)).
[101] *Id*. (citing 19 CFR 410(b)).
[102] *Id*. (citing 19 CFR 410(c)).
[103] *Id*. (citing 19 CFR 410(d)).
[104] *Id*. (citing *Habas II*, 415 F. Supp. 3d at 1209).
[105] *Id*. at 9.
[106] *Id*. (citing *Draft Remand Results* at 13).
[107] *Id*. (citing *Light-Walled Rectangular Pipe and Tube from Turkey*, 69 FR 53675 (September 2, 2004) and accompanying IDM at 8-11).

of those initial proceedings has Commerce claimed, as it has here, that the duty drawback program functioned as "a direct selling expense that is not the same in both markets" sufficient to justify "a COS adjustment to NV."[108]

- Nothing in the law, regulations, or past cases suggests that import duties that have not been collected, on inputs destined for export sales, qualify as a circumstance of sale, let alone as a selling expense.[109] Icdas' duties that were excused were for inputs and affected the cost of production. These duties were not expenses incurred to sell subject merchandise.[110]
- Because the duty drawback adjustment "results from the operation of law," it is unlike selling expenses such as "commissions, credit expenses, guarantees, and warranties," and it is not "assumed by the seller on behalf of the buyer."[111] Therefore, Commerce's interpretation is "inconsistent with the plain language of the regulation."[112]
- Commerce's methodology nullifies the duty drawback adjustment to U.S. price and therefore fails to "cure an imbalance that exists when home market prices are increased due to duties imposed on imported inputs, while exported products do not incur added duty costs."[113] The COS adjustment also significantly overstates the duty imputed to NV.[114]
- Commerce's revised duty drawback methodology is inconsistent with recent court precedent. There is no indication in the legislative history or the interpretation of the

[108] *Id*. at 9-10 (citing *Draft Remand Results* at 13).
[109] *Id*. at 10.
[110] *Id*.
[111] *Id*. at 11 (quoting *Uttam Galva Steels Ltd. v. United States*, 416 F. Supp. 3d, 1402, 1407 (CIT 2019) (*Uttam Galva III*)).
[112] *Id*. (quoting *Habas II*, 415 F. Supp. 3d at 1211).
[113] *Id*. at 12-13.
[114] *Id*. at 13.

reviewing courts to suggest that an adjustment to U.S. price must be accompanied by an equal adjustment to NV "in order to achieve a fair comparison," as Commerce states in its *Draft Remand Results.*[115]

- The Court has explicitly determined that a COS adjustment cannot be used to nullify a drawback adjustment to U.S. price, nor can it be used to trump the express language of the drawback provision in the Act.[116] In *Habas II* and *Uttam Galva III*, the Court also found that the COS adjustment in this context "negates the duty drawback adjustment."[117]
- Commerce's proposed methodology in the *Draft Remand Results* had an even worse neutralizing impact than the "duty neutral methodology" as is shown by the fact that Icdas' margin increased by over one percent from the *Final Determination*.[118]
- Commerce has found that NV is based on typical home market sales in the domestic market, and, therefore, no duty drawback would be expected, as the products are not exported.[119]
- The Federal Circuit determined that the Act did not permit the use of COS adjustments to nullify a U.S. price adjustment, or "to trump the express and specific statutory language covering tax adjustments."[120]

[115] *Id.* at 13-14 (citing *Draft Remand Results* at 14-15).
[116] *Id*. at 16 (citing *Rebar Trade Action Coal v. United States*, Court No. 14-00268, Stipulation of Dismissal (June 29, 2017), ECF No. 135).
[117] *Id*. (citing *Habas II,* 415 F. Supp. 3d at 1209 and *Uttam Galva III*, 416 F. Supp. 3d at 1406-07).
[118] *Id*. at 13-14.
[119] *Id.* at 15 (citing *Welded Carbon Steel Pipe and Tube Products from Turkey*, 80 FR 76674 (December 10, 2015) (*Welded Pipe from Turkey)* and accompanying IDM at 14).
[120] *Id*. at 15 (quoting *Zenith Elecs. Corp. v United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993) (*Zenith III*)).

- Commerce provided a fundamentally flawed and incomplete explanation for the COS methodology and relied on *post hoc* rationalization to justify the need for a COS adjustment.[121]
- Commerce cannot create a new regulation "under the guise of interpreting a regulation."[122] Use of the COS provision to "effectively write {the duty drawback adjustment} section out of the statute" is unlawful.[123]

Commerce's Position:

Technical errors in calculating the duty drawback adjustment: Both respondents contend that Commerce excluded open IPCs only from the numerator of the duty drawback adjustment calculation, when it should have also excluded the open IPCS from the denominator. Consistent with the *Amended Final Determination*, in the *Draft Remand Results*, Commerce deducted the value of open IPCs from the total value of IPCs during the POI to determine the total duties drawn back that were attributable to exports of subject merchandise to the United States.[124] However, in calculating the volume of exports to the United States in the *Draft Remand Results*, Commerce inadvertently did not remove the total quantity of those open IPCs from the denominator of the duty drawback adjustment calculation. Accordingly, in the *Final Remand Results*, Commerce is deducting the total volume of open IPCs from the total volume of exports to the United States to calculate the denominator.[125]

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[121] *Id*. at 17.
[122] *Id*. at 18 (citing *Habas II*, 415 F. Supp. 3d at 1212).
[123] *Id.* (citing *Habas II*, 415 F. Supp. 3d at 1209; *Uttam Galva III*, 416 F. Supp. 3d at 1407).
[124] *See Carbon and Alloy Steel Wire Rod from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances*, 82 FR 50377 (October 31, 2017) and accompanying Preliminary Determination Memorandum at 10-11 (unchanged in the *Final Determination* and *Amended Final Determination*).
[125] *See* Memoranda, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Final Remand Results for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated concurrently with these final results, at 2 (Habas Final Remand Calculation Memorandum), and "Antidumping Duty

Duty drawback to EP and CEP: The primary purpose of the duty drawback provision is to recognize and compensate for the fact that, pursuant to a duty drawback program, the cost of the refunded or exempted import duties is not reflected in the price charged to the U.S. customer which is the starting point to calculate EP or CEP, *i.e.,* the U.S. price. The concern is that the import duties are reflected in NV, but because the price to the U.S. customer is set exclusive of the refunded or exempted import duties, the dumping margin will be artificially increased by the amount of the rebated or forgiven duties not reflected in U.S. price. Therefore, the Act requires the addition of the rebated or forgiven duties to U.S. price.[126]

The Court has found that this statutory language does not permit Commerce to reduce the adjustment to U.S. price to be equal to the amount of duty in the NV. As a result, Commerce, in full compliance with the Court's finding, has added the full amount of the drawn back duty divided by exports, and has not divided this amount by total production.

Duty drawback adjustment to NV: The Court did not remand this issue with specific instructions on how to address the duty drawback adjustment to the NV side of the equation. The Court remanded the duty drawback issue for Commerce to recalculate the duty drawback adjustment using the full amount of the import duties exempted by reason of exportation.[127] Therefore, contrary to Icdas' argument, Commerce is in line with the Court's opinion in the *Remand Order* in developing its duty drawback adjustment to NV.[128]

We agree with the petitioner's comments on the purpose of the duty drawback adjustment, which is to ensure that the operation of the duty drawback scheme should neither

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Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Final Remand Results for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated concurrently with these final results at 2 (Icdas Final Remand Calculation Memorandum).

[126] *See* section 772(c)(1)(B) of the Act.

[127] *See Remand Order* at 18.

[128] *See* Icdas Comments at 3-4 and 7.

artificially create nor reduce the margin calculation, *i.e.*, the duty drawback calculation should be import duty neutral. As we have explained, respondents' arguments amount to nothing more than an attempt to prevent Commerce from ensuring that duty drawback adjustments are antidumping duty neutral because, in certain circumstances, where inputs are both imported and domestically-sourced, duty drawback adjustments are not duty neutral, resulting in decreased and distorted dumping margins. A party is not entitled under the Act to a distorted dumping margin.

Icdas cites to *Zenith III* for the proposition that the Federal Circuit has found that the concept of tax neutrality is not in the law, and that duty drawback neutrality is analogous.[129] The facts and issues addressed in the *Zenith* cases are not, by any stretch of the imagination, analogous to duty drawback. In fact, as explained below, they are inapposite.[130]

As an initial matter, the *Zenith* cases addressed domestic commodity taxes, not duty drawback. There is a significant factual difference between the two. The domestic commodity taxes applied to all purchases and were rebated on export sales, whereas duty drawback only applies to imported products that are then rebated or exempted from payment and forgiven on export. Thus, the commodity taxes addressed in the *Zenith* cases were always included in the home market prices such that adding to the U.S. price would compensate for taxes already included in the NV. Under duty drawback schemes, including Turkey's IPR program, where duties are not collected and rebated, but a duty liability is incurred on import and forgiven on export, there often are no duty costs in the NV side of the equation to match the duties added to EP/CEP under the U.S. price duty drawback adjustment.

[129] *See Zenith III,* 988 F.2d at 1573.
[130] *See Zenith Elecs. Corp. v United States,* 633 F. Supp. 1382 (CIT 1986) (*Zenith I*), *Zenith Elecs. Corp. v. United States,* 755 F. Supp. 397, 404 (CIT 1990) (*Zenith II*), and *Zenith III* (collectively, the *Zenith* cases).

When faced with the exempted duty factual scenario, the Federal Circuit has held, in *Saha Thai,* that it is appropriate for Commerce to add the duty to NV, because otherwise the dumping calculation would not be duty-drawback neutral.[131] Icdas attempts to use the *Zenith* cases to state that Commerce cannot compensate for the lack of duty costs in the NV side of the equation. The *Zenith* cases do not stand for that proposition.

In *Zenith I*, Commerce, noticing a difference in the domestic commodity taxes included in EP/CEP and NV,[132] did not follow the statutory language to increase the EP/CEP by the amount of the rebated taxes, but instead removed the taxes from the NV to arrive at a tax neutral calculation.[133] The Court rejected Commerce's argument by finding, as in this case, that the statutory language required an increase to U.S. price by the amount of domestic commodity taxes imposed on the product but refunded on export, and that Commerce did not have the discretion to ignore the addition to U.S. price and instead, decrease the foreign market value for taxes already included.[134]

On remand, in *Zenith II*, Commerce increased U.S. price, instead of reducing the foreign market value, but argued that it was not practical to calculate an actual amount of tax passed through to the domestic customer as required by the statute.[135] Instead, Commerce argued that "a tax differential generated by actual dumping constitutes an adjustable difference in circumstance of sale under {section 773(a)(4)(B) of the Act}."[136] The Court found that

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[131] *See Saha Thai,* 635 F.3d at 1343
[132] At that time, these were identified as U.S. Price and Foreign Market Value, respectively.
[133] *See Zenith I,* 633 F. Supp. 1382.
[134] *Id.*
[135] *See Zenith II,* 755 F. Supp. 397 at 404 (Commerce concluded that it would "continu{e} to assume that all indirect taxes in the home market are passed through to the ultimate customers." Stating disagreement with the Court's previous ruling, Commerce refused to "attempt to measure the amount of tax 'passed through' to customers in the Japanese market for several reasons.").
[136] *See Zenith II,* 755 F. Supp. at 407 (citing *Zenith I*, 633 F. Supp. at 1393).

Commerce was required by the statutory language to calculate the pass through, and could not use the COS adjustment to substitute for a calculation required by the statute.[137]

The Federal Circuit, in affirming the lower court's opinion, did not find that Commerce lacked the authority to adjust NV. What it found was that Commerce could not use the COS adjustment to adjust for a "variance caused by the operation of the Antidumping Act, not by a difference in circumstances of sale."[138] In other words, the courts' holdings, taken in total, in *Zenith I, II and III*, were that Commerce could not avoid the explicit statutory requirements of adjusting for domestic taxes, *i.e.*, (1) increasing U.S. price by the amount of the taxes rebated on export, and (2) substituting a COS adjustment for the statutorily-required pass through analysis to the NV side of the equation. The Courts did not find that Commerce could not make a COS adjustment to NV where there was a COS which was not already accounted for by the statute.

The duty drawback provision does not contain the "pass through" language addressed in the *Zenith* cases. The tax provision stated that U.S. price would be increased, "but only to the extent that such taxes are added to or included in the price of such or similar merchandise."[139] The duty drawback provisions contain no such restrictive language. Thus, the *Zenith* cases cannot be cited for the proposition that the statute prevents Commerce from adjusting NV for duty drawback through a COS adjustment. Moreover, consistent with, and subsequent to, the *Zenith* cases, the Federal Circuit in *Saha Thai* ruled that Commerce has the authority to adjust NV when the duties at issue are not paid or included in a respondent's books and records.[140]

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[137] *See Zenith II,* 755 F. Supp. at 407-408.
[138] *See Zenith III,* 988 F.2d at 1581.
[139] *See* section 772(d)(1)(C) of the Act.
[140] While the Federal Circuit in *Saha Thai* was addressing an adjustment to cost, not price, the proposition that the purpose of the duty drawback provision is to achieve duty neutrality with regard to duty drawback is universal and further, does not undermine the finding that differences in the circumstances of selling in export or domestic markets can be adjusted for using a COS adjustment.

Therefore, Icdas' argument that the *Zenith* cases prevent Commerce from using a COS adjustment for duty drawback adjustment to NV is legally incorrect.

In this case, Commerce made its COS adjustment to NV to account for differences in the taxes imposed on material inputs that are not otherwise accounted for in the statute. Adjustments to NV under section 773 of the Act do not address differences in the home market price related to import duties other than through the COS provision (*i.e.*, taxes imposed, only on particular inputs at particular rates from particular markets used to produce particular goods, which can be claimed and rebated only when resold to particular markets). Here, record evidence shows that imported material inputs (*e.g.*, steel billets and scrap) for wire rod production incur import duties at different tax rates (or not at all), while the domestically-sourced identical inputs incur no duties. The Turkish duty drawback law allows respondents to assume that exported products consumed all imported inputs that were subject to duties. Moreover, the duty drawback provision in the statute, granting the full duty drawback "for the amount of any import duties imposed…which have been rebated…by reason of the exportation of the subject merchandise," suggests that imported inputs (rather than domestically-sourced inputs), and inputs subject to import duties (rather than inputs not subject to import duties), were consumed in making the exported products.[141]

Like all adjustments to U.S. price or NV, the purpose of section 772(c)(1)(B) of the Act is to make a fair price comparison when an amount is present on one side of the comparison but not on the other. Section 772(c)(1)(B) of the Act increases U.S. price because that price was set without regard to import duties imposed on inputs to the exported product, while the NV product

[141] *See* section 772(c)(1)(B) of the Act.

was presumably set to recover such import duties. In the instant case, this is a false presumption, as inputs subject to duties are treated as being wholly consumed in export sales.[142] As such, there are no import duties in the NV. The antidumping duty statute is silent on what to do if record evidence shows that there is no corresponding duty in the NV. That is, there is no residual duty from dutiable imported inputs that were left over to be recovered from products sold domestically. The "other differences in the circumstance of sale" provision is the only means to ensure a fair comparison, when the home market sales are presumed to be made with different inputs, or sourced from different markets, and subject to or not subject to duties and rebate programs.[143] Furthermore, we note that in the *Zenith* cases, it was not disputed that all of the televisions were subject to the same domestic tax, and that amounts were rebated only on exported products.

The respondents argue that offsetting the U.S price adjustment with a COS adjustment to NV is equivalent to not granting the U.S. price adjustment in the first place.[144] However, no part of the statute is nullified or negated under this methodology. Contrary to the respondents' assertions, the COS adjustment applied in this case does not negate the effect of the duty drawback adjustment, but rather, it ensures that the NV is inclusive of the duties that form the basis for the duty drawback adjustment to EP and CEP.[145] Otherwise, we would be adjusting for duties presumed to be in NV when in fact, as the record shows in this case, there are none. The COS adjustment applied on remand in this case adjusts the NV for the duties that would have been incurred if the same imported materials had been used to produce the domestically-sold

[142] Though Icdas argues that this imbalance is merely perceived and based on speculation, the record is clear in that NV contains no exempted duties, while EP, with the duty drawback adjustment, contains all of the respondents' exempted duties. *See, e.g.*, Icdas July 7, 2017 CQR at 40-41.
[143] *See* section 773(a)(6)(C)(iii) of the Act.
[144] *See* Habas Comments at 5 and 8; *see also* Icdas Comments at 13.
[145] *See* Habas Comments at 3; *see also* Icdas Comments at 3-4.

products as were presumed to be used to produce the export products. Rather than nullifying the duty drawback adjustment, the COS adjustment complements the duty drawback adjustment in order to account for different circumstances of sale. The unrecovered duties attributed to domestically-sold products are replaced with duties comparable to those assigned to the export products accounting for the different circumstances of sale associated with the two markets. Thus, these duty costs are assigned to products by respondents based on where they are sold, not on how the products are produced, and, accordingly, are directly related to the sales in different markets. Finally, although Icdas also cites to *Uttam Galva III* to support its assertion that the COS adjustment negates a duty drawback adjustment,[146] in *Uttam Galva III* the Court ultimately sustained Commerce's COS adjustment.[147]

Habas and Icdas argue that a COS adjustment to NV is unlawful.[148] However, the statute requires a U.S. price adjustment based on the assumption that there is an equivalent duty cost in the NV. Thus, the whole purpose of the adjustment is to nullify the duty assumed to be in the NV. As the law is written, there is no guidance, with respect to duty drawback, for Commerce to follow when there is no duty reflected in the NV side of the equation. There is, however, a statutory provision to adjust NV for differences in sales between markets, so as not to artificially create or decrease margins, *i.e.*, the COS adjustment. Accordingly, our application of the COS adjustment in this case to Habas and Icdas is lawful.

Habas and Icdas cite to *Erdemir III*, *Toscelik III*, and *Habas II*, in arguing that Commerce's duty drawback COS adjustment was not tied to circumstances concerning the sales,

[146] *See* Icdas Comments at 16 (citing *Uttam Galva III,* 416 F. Supp. 3d at 1406-1407).
[147] *See Uttam Galva III*, 416 F. Supp. 3d at 1407 ("Because Plaintiff neither contests the legality of the Second, Third, and Fourth Adjustments nor requests that the Court remand, the {C}ourt sustains the Second Remand Results").
[148] *See* Habas Comments at 2-8; *see also* Icdas Comments at 16.

but instead was the result of the operation of the law.[149] As an initial matter, because *Erdemir II*, *Toscelik III*, and *Habas II* are all ongoing litigation, we find the respondents' arguments unpersuasive. Furthermore, although Habas argues that Commerce has done nothing to controvert the rationales of *Erdemir III*, *Toscelik III*, or *Habas II*,[150] we find that the reasons for applying a COS adjustment in those cases (*i.e.*, calculating a dumping margin that is not distorted) apply equally to this case. Specifically, it is undisputed that the respondents sourced inputs from both foreign and domestic sources, and that import duties rebated upon exports to the United States are not reflected in NV. Therefore, for the reasons explained above, a comparison of NV with EP or CEP (*i.e.*, the individual dumping margin) is distorted. The COS adjustment to NV corrects this distortion and ensures that the comparison of NV and EP is a fair comparison, as required by the Act.

Icdas further argues that nothing in the law or regulations specifically states that uncollected duties on inputs destined for export sales qualify as a COS or selling expense.[151] In this case, unrecovered duties attributed to domestically-sold products are replaced with duties comparable to those assigned to the export products, thereby accounting for the different circumstances of sale associated with two markets. Thus, contrary to Icdas' argument, these duty costs are assigned to products by respondents based on *where* they are sold, not on how the products are produced, and, accordingly, are direct expenses related to the sale of merchandise in different markets. Such an expense is exactly what the COS adjustment is created for when no other statutory provision applies.

[149] *See* Habas Comments at 3-8; *see also* Icdas Comments at 9-10.
[150] *See* Habas Comments at 6-7.
[151] *See* Icdas Comments at 10.

Habas and Icdas cite to *Habas III* in suggesting that Commerce's COS adjustment equates to Commerce writing a new regulation, that Commerce is circumventing a legislative framework that does not provide for a COS adjustment for duty drawback, and that case precedent does not support a COS adjustment to a price-based NV.[152] As previously addressed, *Habas II* is ongoing litigation and therefore, these arguments are unconvincing. Moreover, with respect to Congress's intentions in allowing for the duty drawback adjustment, section 773(a)(6)(C) of the Act provides that in determining NV, Commerce may "increase" or "decrease" by "the amount of any difference (or lack thereof) between the export price or constructed export price and the {home market price}…that is established to the satisfaction of the administering authority to be wholly or part due to…(iii) other differences in the circumstances of sale." In the SAA, Congress did not address separately each of the adjustment provisions, but it is telling that, in describing one adjustment for indirect taxes, the SAA stated that "{t}he change is intended to ensure that dumping margins will be ***tax-neutral***."[153] Likewise, with respect to the "new section 773," the House Report explained that specific provision was added to the Act consistent with the requirements of "Article 2.4 of the {Uruguay Round} Agreement that a fair comparison be made between the export price or constructed export price, and normal value."[154] Congress explained that "{t}o achieve such a fair comparison new section 773 provides for the selection and adjustment of normal value to avoid or adjust for differences between sales that affect price comparability."[155] For example, Congress explained with respect to the same tax provision addressed in the SAA that "{t}he

[152] *Id*. at 18; *see also* Habas Comments at 5-6.
[153] *See* SAA at 827 (emphasis added).
[154] *See* URAA, H.R. Doc. 103-826 (1994), at 82.
[155] *Id.*

deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping margins will be tax-neutral."[156] The House Report explained that, with regard to that particular provision, the changes made to the Act were "intended to insure that such taxes actually have been charged and paid on the home market sales used to calculate normal value, rather than charged on sales of such merchandise in the home market generally. It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale."[157]

As the House Report and the SAA reveal, Congress intended for Commerce, through the adjustment provisions of section 773(a)(6) of the Act, to ensure that a "fair comparison" was made in its antidumping duty calculations. Commerce has done this on remand, and its application of a COS adjustment fully complies with that requirement. On the other hand, if Commerce were to only make a duty drawback adjustment to respondents' U.S. price, with no COS adjustment, the calculations would not be duty neutral and the comparisons between EP and CEP and NV would not be "fair." Accordingly, we do not find that Congress intended for Commerce to provide no adjustment to NV when it allows for a duty drawback adjustment to United States price in its antidumping duty calculations. Therefore, Commerce is not circumventing the legislative framework or writing a new regulation, but rather using the legislative framework appropriately, and consistently, with its intent to ensure a fair comparison between EP and NV.

Relatedly, Habas argues that the fair comparison requirement is met when NV is calculated in accordance with the statute and that the statute does not provide Commerce with

[156] *Id.* at 84.
[157] *Id.*

additional authority to make adjustments beyond those "explicitly established in the statute."[158] The statute permits Commerce to make a COS adjustment for direct selling expenses, and, as discussed above, the duty drawback adjustment is a COS adjustment for import duties reflected in U.S. price. Therefore, Commerce both meets the statutory requirement for a fair comparison and makes no additional adjustments beyond those established in the statute.

Icdas' argument that Commerce assumed a change in costs automatically translates into a change in price misunderstands Commerce's COS adjustment to NV.[159] This COS adjustment serves to add a direct selling expense that is reflected in EP, but that is not reflected in NV. Therefore, Commerce is not comparing U.S. price to cost of production, but rather, is comparing U.S. price to NV, and ensuring a fair comparison. Moreover, Commerce's practice is to compare the net U.S. price to the net home market price. Accordingly, adjusting home market price for a direct selling expense is part of Commerce's standard practice.

Icdas reiterates that it qualifies for an EP duty drawback adjustment as prescribed by section 772(c)(1)(B) of the Act.[160] Consistent with the *Remand Order*, Commerce granted Icdas an upward adjustment to EP in the *Draft Remand Results* and continues to apply this upward adjustment in these final remand results.

Icdas argues that Commerce assumes that duty adjustments should be equal among exported and domestic sales.[161] Regarding cost of production, Commerce, in accordance with the general accounting standards it applies in calculating cost of production, calculates cost based on the annual average cost of the input, which includes both input prices with duties and

[158] *See* Habas Comments at 4.
[159] *See* Icdas Comments at 5.
[160] *Id.* at 6-7 (citing *Proposed Rulemaking*, 61 FR at 7346).
[161] *Id*. at 5.

domestically-sourced inputs without duties. When it comes to price comparison, Commerce is not assuming the duty should be shared equally. Commerce is compensating for circumstances surrounding the respondents' U.S. sales. Specifically, Commerce is ensuring that, regardless of where merchandise was sold, the duty drawback scheme is neither artificially creating, nor reducing, margins.

Icdas asserts that in promulgating 19 CFR 351.410, which governs adjustments for differences in circumstances of sales, Commerce rejected a suggestion to treat the regulation as a "catch-all" provision for achieving "fairness."[162] However, Commerce's reasoning for not treating the regulation as a "catch-all" was that section 773(a) of the Act sets forth methods for determining NV that results in a fair comparison with U.S. price, as required by the Act.[163] Consistent with this statutory requirement, Commerce's methodology does not treat the COS adjustment as a mere "catch-all" provision, but rather as the appropriate mechanism for making an adjustment to NV that ensures a fair comparison between U.S. price and NV that is import duty inclusive.

Icdas argues that Commerce has known about the Turkish duty drawback program for over 15 years, and, therefore, Commerce cannot now justify a change in its methodology.[164] Icdas also cites to *Welded Pipe from Turkey* where Commerce did not adjust NV under similar circumstances.[165] However, Icdas fails to cite any statutory authority or judicial or administrative precedent supporting the claim that our practice is not allowed to evolve or be refined over time. The courts have held that Commerce may change its practice if it provides a

[162] *Id*. at 8.
[163] *See Proposed Rulemaking*, 61 FR at 7346.
[164] *See* Icdas Comments at 9.
[165] *Id*. 15.

reasonable explanation for doing so.[166] Commerce routinely adjusts its practice, particularly because we treat each proceeding on a case-by-case basis. As described above, Commerce has revised its duty drawback methodology over time to ensure that dumping margins are not distorted.

Icdas argues that Commerce's reasoning regarding the appropriateness of a COS adjustment is somehow *post hoc*.[167] A remand redetermination, however, is an official administrative proceeding in which Commerce can provide its explanation of the redetermination. The reasoning in this remand redetermination is not *post hoc* rationalization, but rather an explanation as to how the COS adjustment meets the statutory purpose of ensuring that dumping margins are not artificially reduced or inflated.

Finally, Icdas argues that the *Draft Remand Results* have a "worse neutralizing impact" than the original duty neutral methodology.[168] Icdas bases this assertion on the fact that Icdas' dumping margin increased in the *Draft Remand Results* from the *Final Determination*. However, the law does not require a reduction in a respondent's dumping margin based on alterations in Commerce's duty drawback methodology, and the term "duty neutral" similarly does not require that the respondent's dumping margin decrease. Additionally, whether the dumping margin increases or decreases is irrelevant to the proper treatment of NV.

[166] *See, e.g.*, *NMB Sing. v. United States*, 557 F.3d 1316, 1328 (Fed. Cir. 2009) ("Once Commerce establishes a course of action…Commerce is obliged to follow it until Commerce provides a sufficient, reasoned analysis explaining why a change is necessary"); *SKF USA Inc. v. United States,* 630 F.3d 1365, 1373 (Fed. Cir. 2011) ("When an agency changes its practice, it is obligated to provide an adequate explanation for the change.").
[167] *Id*. at 17.
[168] *Id*. at 13-14.

V. FINAL RESULTS OF REDETERMINATION

In accordance with the Court's *Remand Order*, Commerce has recalculated Habas' and Icdas' duty drawback adjustments. Based on these changes, the estimated POI weighted-average dumping margins and cash deposit rates for Habas and Icdas are listed in the chart below.[169] Given that the estimated weighted-average dumping margins and cash deposit rates for Habas and Icdas have been revised, Commerce is also recalculating the estimated weighted-average dumping margin and cash deposit rates for all other producers and exporters.[170]

Exporter or Producer	Amended Final Determination (percent)		Remand Redetermination (percent)	
	Weighted-Average Dumping Margin	Cash Deposit Rate (adjusted for export subsidies)	Weighted-Average Dumping Margin	Cash Deposit Rate (adjusted for export subsidies)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	4.93	1.05	3.22	0.00
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	7.94	4.15	8.72	4.93
All Others	6.44	2.59	4.78	0.93

4/27/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[169] *See* Habas Remand Calculation Memorandum; *see also* Icdas Remand Calculation Memorandum.
[170] *See* Memoranda, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from Turkey: Calculation of All Others' Rate in Amended Final Determination," dated May 16, 2018; and "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Final Remand Results for All-Others," dated concurrently with these final results.