

Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States
Consol. Ct. No. 18-00143, Slip Op. 20-137
(CIT September 23, 2020)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO SECOND COURT REMAND**

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination (*Second Final Remand Results*) pursuant to the decision and second 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. 20-137 (September 23, 2020) (*Second Remand Order*). These *Second Final Remand Results* concern the final determination of the less-than-fair-value investigation of carbon and alloy steel wire rod (wire rod) from the Republic of Turkey (Turkey).¹ In the *Second Remand Order*, the Court remanded and ordered Commerce to recalculate normal value without making a circumstance of sale adjustment related to U.S. duty drawback.²

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 Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417 (May 21, 2018) (*Amended Final Determination*).

² See *Second Remand Order* at 17.

As set forth in detail below, pursuant to the *Second Remand Order*, Commerce has, under respectful protest,³ granted Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) a duty drawback adjustment without making a circumstance of sale adjustment to normal value. Specifically, Commerce has calculated each company's exempted import duty ratio by dividing its period of investigation (POI) exempted import duties by its POI cost of production (COP) and applied the resultant ratio to the product control number (CONNUM)-specific total cost of manufacturing to determine the per-unit, CONNUM-specific, imputed amount of import duties.⁴

II. BACKGROUND

On March 28, 2018, Commerce published the *Final Determination* pertaining to mandatory respondents Habas and Icdas.⁵ On May 21, 2018, Commerce published the *Amended Final Determination* after correcting a ministerial error present in the *Final Determination*.⁶

On January 28, 2020, the Court remanded the *Final Determination* and directed Commerce to recalculate Habas' and Icdas' duty drawback adjustments using a different calculation methodology than the duty neutral methodology Commerce applied in the *Final Determination*, which allocated the duty drawback over total COP.⁷ On April 27, 2020, Commerce filed its Final Results of Redetermination Pursuant to Court Remand, under respectful protest, in which Commerce added the full amount of exempted duties to Habas' and

³ See *Viraj Group v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003).

⁴ See Memoranda, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Draft Second Remand Results for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," dated November 18, 2020 (Habas Second Remand Calc Memo); and "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Analysis for the Draft Second Remand Results for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated November 18, 2020 (Icdas Second Remand Calc Memo).

⁵ See *Final Determination*, 83 FR at 13250.

⁶ See *Amended Final Determination*, 83 FR at 23417-18.

⁷ See *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) (*First Remand Order*).

Icdas' U.S. price; at this time, Commerce also made a circumstance of sale adjustment related to the duty drawback adjustment made to U.S. price.⁸ On September 23, 2020, the Court ordered Commerce to recalculate normal value without making a circumstance of sale adjustment.⁹

On November 18, 2020, Commerce issued its *Second Draft Remand Results* to interested parties and gave them an opportunity to comment.¹⁰ On November 25, 2020, Nucor Corporation, a petitioner in the underlying investigation, and Icdas each filed comments on the *Second Draft Remand Results*.¹¹ Complete responses to each party's comments are provided below.

III. ANALYSIS

Pursuant to the Court's instructions, Commerce, under respectful protest, has recalculated each respondent's normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to U.S. price.¹² We have added, pursuant to the opinion of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F. 3d 1335 (Fed. Cir. 2011) (*Saha Thai*), the amount of the duty exempted divided by the total production quantity to arrive at the annual average per-unit import duty burden to add to the COP.¹³

⁸ See Final Results of Redetermination Pursuant to Court Remand, *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Ct. No. 18-00143, Slip Op. 20-10, dated April 27, 2020 (*First Results of Redetermination*).

⁹ See *Second Remand Order* at 17.

¹⁰ See Draft Results of Redetermination Pursuant to Second Court Remand: *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S., et al. v. United States*, Consol. Ct. No. 18-00143, Slip Op. 20-137 (CIT September 23, 2020), dated November 18, 2020 (*Second Draft Remand Results*).

¹¹ See Nucor's Letter, "Carbon and Alloy Steel Wire Rod from Turkey: Comments on Draft Results of Second Remand Redetermination," dated November 25, 2020 (Nucor Draft 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 September 23, 2020 Second Remand Order: Slip Op. 20-137," dated November 25, 2020 (Icdas Draft Comments).

¹² See Habas Second Remand Calc Memo; see also Icdas Second Remand Calc Memo.

¹³ *Id.*

IV. COMMENTS ON SECOND DRAFT REMAND RESULTS

Comment: Whether the Duty Drawback Methodology Complies with the Court's Order

Nucor's Comments

- In a series of proceedings over the past decade, Commerce has developed a practice that seeks to ensure that its duty drawback calculations under section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) do not artificially inflate or depress dumping margins.¹⁴
- The *Second Draft Remand Results* rely on a duty drawback methodology that produces a distorted margin, reducing the margins for most Turkish wire rod manufacturers well below what a duty-neutral calculation would produce.¹⁵
- The *Second Draft Remand Results* apply a methodology Commerce originally developed in *Saha Thai* but subsequently found to produce distorted dumping margins in some instances. Nucor urges Commerce to explain its rationale for adopting the *Saha Thai* methodology that produces distorted margins.¹⁶
- Alternatively, Commerce should adopt a different duty-neutral calculation methodology than the one previously rejected by the Court. For example, Commerce could adjust the cost-side drawback methodology approved in *Saha Thai* to ensure that the per-unit costs are duty-reflective to the same degree as per-unit export price (EP), consistent with the principles espoused in *Saha Thai*.¹⁷
- In *Saha Thai*, the Federal Circuit recognized that Commerce has the statutory authority to include in the cost calculation “implied costs” that are not reflected in a respondent’s

¹⁴ See Nucor Draft Comments at 3-6.

¹⁵ *Id.* at 6-7 (citing *First Results of Redetermination*).

¹⁶ *Id.* at 5-7 (citing *Saha Thai*, 635 F. 3d 1335).

¹⁷ *Id.* at 8 (citing *First Remand Order*; and *Second Remand Order*).

books, so as to “reasonably reflect the costs associated with the production and sale of the merchandise.”¹⁸

- Consistent with *Saha Thai*, Commerce should impute the cost of duties, up to the same per-unit level as is reflected in EP. It is particularly important to take this action here, where EP is fully “duty-loaded,” but the respondents do not incur or record in their accounting records any duty costs at all.¹⁹
- As further support for this adjustment, in *Rebar Trade Action Coalition v. United States*, the Court specifically suggested that costs and normal value could be adjusted to ensure duty neutrality by imputing the same domestic-to-foreign input content ratio that is implicitly embodied in the U.S. duty drawback adjustment to cost and/or normal value. Such an approach does not result in an overstated cost/normal value; rather, it appropriately places normal value at the same duty-inclusive level as EP, eliminating the distortive imbalance that otherwise exists in the duty drawback calculation. Commerce should recalculate the drawback adjustment using the modified *Saha Thai* approach described here.²⁰
- Although the *Second Remand Order* directed Commerce to recalculate the duty drawback adjustment without making a circumstance of sale adjustment, the Court’s opinion was based on the conclusion that section 773(a)(6)(C)(iii) of the Act does not allow normal value to be adjusted directly in relation to a drawback program. However, the Act does not contain such a direct prohibition, and Nucor urges Commerce to continue to find a

¹⁸ *Id.* at 8 (citing section 773(f)(1)(A) of the Act; and *Saha Thai*).

¹⁹ *Id.* at 9 (citing *Saha Thai*).

²⁰ *Id.* at 10 (citing *Rebar Trade Action Coalition v. United States*, No. 14-00268, Slip Op. 16-88 (CIT September 21, 2016)).

circumstance of sale adjustment for duty drawback programs lawful, while being mindful that the Court has found otherwise.²¹

Icdas' Comments

- Icdas agrees with Commerce's recalculation of Icdas' normal value in the *Second Draft Remand Results*.²² This calculation is consistent with the opinion in *Saha Thai*.²³

Commerce's Position:

We agree with Nucor that the duty drawback methodology used, under protest, in the *Second Draft Remand Results* produces distorted antidumping duty margins in certain situations. Specifically, in situations where the respondent purchases an input both from the domestic market, which is import duty free, and from a foreign source, which incurs import duty liability, the average per-unit amount of duty in the home market sales price is less than the amount attributed to the U.S. price through the duty drawback adjustment. While the adjustment to U.S. price contains a full amount of the per-input unit duty, the cost only contains the annual average amount, which is a lower per-unit duty burden because the duty-free input purchases are averaged with the import input purchases which incurred duties.

We have not adopted the revised cost-side drawback methodology proposed by Nucor, because there is no statutory or regulatory basis for making such a cost-side adjustment. The statute and regulations do provide for imputing the input duty cost as a part of the input cost, as affirmed by the Federal Circuit in *Saha Thai*. However, neither the statute nor the regulations provide for an artificial allocation of cost to compensate for the duty drawback adjustment to U.S. price. The circumstance of sale adjustment was the appropriate mechanism to address the

²¹ *Id.* at 10-11 (citing section 773(a)(6)(C)(iii) of the Act).

²² *See* Icdas Draft Comments at 2.

²³ *Id.* at 3.

difference between the per-unit duty amount in the U.S. price and the per-unit duty amount in the normal value. However, the Court's *Second Remand Order* held that Commerce's circumstance of sale adjustment to normal value was not in accordance with law and directed Commerce to recalculate normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to U.S. price.²⁴ Therefore, under respectful protest but in compliance with the Court's *Second Remand Order*, we are not, as Nucor urges, providing further analysis in these final results of redetermination on the lawfulness of a circumstance of sale adjustment for duty drawback programs.

V. FINAL RESULTS OF REDETERMINATION

In accordance with the Court's *Second Remand Order*, Commerce has, as discussed above, revised certain aspects of its dumping analysis. 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. Since Habas' revised estimated POI weighted-average dumping margin is 0.00 percent, if these final results of redetermination are affirmed by the Court, wire rod produced and exported by Habas shall be excluded from the *Order*. Further, because the estimated weighted-average dumping margin for Habas is now 0.00 percent, Commerce is assigning Icdas' estimated

²⁴ See *Second Remand Order* at 17.

weighted-average dumping margin and cash deposit rate to all other producers and exporters of wire rod from Turkey.

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	0.00	0.00
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	7.94	4.15	4.44	0.65
All Others	6.44	2.59	4.44	0.65

12/11/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance