

Kaptan Demir Celik Endustrisi Ve Ticaret A.S. v. United States,
Court No. 21-00565, Slip Op. 23-62 (CIT April 26, 2023)
Steel Concrete Reinforcing Bar from the Republic of Turkey

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

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States*, Consol. Court No. 21-00565, Slip Op. 23-62 (April 26, 2023) (*Remand Opinion and Order*). These final results of redetermination concern *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in Part; 2018*, 86 FR 53279 (September 27, 2021) (*2018 AR Final Results*), and accompanying Issues and Decision Memorandum (IDM). In the *Remand Opinion and Order*, the Court ordered Commerce to further explain and review the finding that Nur Gemicilik ve Tic. A.S. (Nur) was a cross-owned input supplier of products primarily dedicated to the production of downstream products.¹

As discussed below, pursuant to the Court's *Remand Opinion and Order*, Commerce reexamined the facts on the record of this proceeding and, upon further consideration of those facts in conjunction with Commerce's regulations and the *Preamble*, we find that Nur does not constitute a cross-owned input supplier of products (*i.e.*, steel scrap) deemed to be primarily

¹ See *Remand Opinion and Order* at 16.

dedicated to downstream steel production during the period of review (POR), January 1, 2018, through December 31, 2018.

II. BACKGROUND

On January 17, 2020, Commerce initiated an administrative review of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) for 26 producers and exporters of subject merchandise for the POR.² On May 7, 2020, Commerce selected Icdas Celik Enerji Tersane ve Ulasim A.S. and Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan Demir) as the mandatory respondents in the administrative review.³ On May 8, 2020, Commerce released the initial countervailing duty (CVD) questionnaire to the Government of Turkey (GOT) and informed the GOT that it was responsible for forwarding it to the mandatory respondents.⁴ On June 5, 2020, Kaptan Demir timely filed its affiliation response.⁵

In its Affiliation Response, Kaptan Demir explained that it intended to submit full questionnaire responses on behalf of itself and two cross-owned affiliates (*i.e.*, Martas Marmara Ereglisi Liman Tesisleri A.S. (Martas) and Aset Madencilik A.S. (Aset)).⁶ Kaptan Demir also explained that it was a privately owned corporation and the parent company of a group of companies whose business operations included, but were not limited to, “steel manufacturing, steel trading, ocean and inland transport, construction, shipping agency, seaport operations”⁷ Within this corporate grouping, Kaptan Demir claimed that it was the sole producer of the subject merchandise or inputs used in the manufacture of subject merchandise.⁸ Finally, Kaptan

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014 (January 17, 2020).

³ See Memorandum, “Respondent Selection,” dated May 7, 2020.

⁴ See Commerce’s Letter, “Initial Questionnaire in Countervailing Duty Administrative Review for 2018,” dated May 8, 2020 (Initial Questionnaire).

⁵ See Kaptan Demir’s Letter, “Affiliation Response,” dated June 5, 2020 (Affiliation Response).

⁶ *Id.* at 2.

⁷ *Id.* at 3 and Exhibit 1.

⁸ *Id.* at 3-4.

Demir specified that all group companies were owned by members of the Cebi family or companies owned by Cebi family members.⁹

Regarding steel scrap purchases, Kaptan Demir informed Commerce that it purchased steel scrap from affiliated and unaffiliated parties during the POR, including a small portion from Nur.¹⁰ Because Nur sold a relatively small amount of steel scrap to Kaptan Demir during the POR, Kaptan Demir requested that Commerce provide it with an exemption from providing a full questionnaire response for Nur.¹¹ As part of its exemption request, Kaptan Demir explained that it was already providing full questionnaire responses for two other steel scrap suppliers (*i.e.*, Martas, a seaport operator, and Aset, a company that provided packing and heating services for anthracite coal imported by Kaptan Demir) that generated steel scrap from their business operations.¹²

Regarding Kaptan Demir's Affiliation Response, the Rebar Trade Action Coalition (the petitioner) submitted comments on June 18, 2020.¹³ In its comments, the petitioner argued that Nur should provide a full questionnaire response because: (1) there was no threshold amount that a cross-owned input supplier must meet in order for it to be required to submit a questionnaire response; (2) Kaptan Demir planned to provide a full response for Aset, a cross-owned company that sold even less steel scrap to Kaptan Demir than Nur during the POR; and (3) the basis for granting exemptions in the cases cited by Kaptan Demir applied to trading companies in antidumping duty cases, but not to cross-ownership in CVD reviews.¹⁴ In rebuttal

⁹ *Id.* at 4 and Exhibits 1 and 2.

¹⁰ *Id.* at 6-7 and Exhibit 3.

¹¹ *Id.* at 6-7 and Exhibit 4.

¹² *Id.* at 5-6 and Exhibit 4.

¹³ See Petitioner's Letter, "Comments on Kaptan's Affiliation Questionnaire Response," dated June 18, 2020 (Petitioner's Affiliation Response Comments); and Kaptan Demir's Letter, "Response to Petitioner's Affiliation Comments," dated June 25, 2020.

¹⁴ See Petitioner's Affiliation Response Comments at 3-4.

comments filed on June 25, 2020, Kaptan Demir argued that: (1) although there was no threshold amount for an input supplied by a cross-owned affiliate for a questionnaire to be required, it requested that Commerce exercise its discretion in this case to exempt Nur from reporting; (2) the small amounts of inputs provided by Nur to Kaptan Demir still warranted consideration in granting Nur the reporting exemption; (3) Aset provided other services, liquefied natural gas, and scrap to Kaptan Demir, while Nur only provided steel scrap during the POR; and (4) Nur was a shipbuilding company not involved in the production and/or sale of subject merchandise.¹⁵

On July 6, 2020, Kaptan Demir filed its response to section III of the Initial Questionnaire on behalf of itself, Martas, and Aset.¹⁶ In its initial questionnaire response (IQR), Kaptan Demir explained that it was founded by members of the Cebi family and began operations in 1964.¹⁷ Kaptan Demir also explained that in 2006, it entered into the shipping business (*i.e.*, as a port and ship agency, chartering services provider, and ship owner) and in 2015, it “formed the Trabzon shipping yard, owned by Nur shipping, to provide vessel design and construction.”¹⁸ The petitioner subsequently filed comments on Kaptan Demir’s IQR, reiterating that Commerce should require complete initial questionnaire responses from all of Kaptan Demir’s cross-owned affiliates, including Nur.¹⁹

On November 12, 2020, Commerce issued a supplemental questionnaire requesting that Kaptan Demir provide a complete section III questionnaire response for Nur.²⁰ On December 15, 2020, Kaptan Demir filed its supplemental response, which included complete initial

¹⁵ See Kaptan Demir’s Letter, “Response to Petitioner’s Affiliation Comments,” dated June 25, 2020.

¹⁶ See Kaptan Demir’s Letter, “Initial Questionnaire Response,” dated July 6, 2020 (Kaptan Demir’s IQR).

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7.

¹⁹ See Petitioner’s Letter, “Comments on Kaptan’s Section III Countervailing Duty Questionnaire Response,” dated August 11, 2020, at 11.

²⁰ See Commerce’s Letter, “Supplemental Countervailing Duty Questionnaire,” dated November 13, 2020.

questionnaire responses for Nur.²¹ In Nur’s IQR, Kaptan Demir explained that it was providing full questionnaire responses for Nur. Kaptan Demir specified that Nur was 98 percent owned by Cebi family members and two percent by Kaptan Demir and Kaptan Metal Dis Tic. Ve Nakliyat A.S. (Kaptan Metal) by the end of the POR, which, as discussed above, belonged to the same family members.²² Kaptan Demir also explained that Nur “was always under the control of the Cebi family without any significant structure change.”²³ Its main business operations included the production and sales of fishing vessels and ships.²⁴

We issued the preliminary results of the administrative review on March 19, 2021, and preliminarily found Martas, Aset, and Nur to be cross-owned input suppliers during the POR.²⁵ In the *Preliminary Results*, we explained that because these companies were involved in the production of rebar during the POR, they satisfied the attribution criteria under 19 CFR 351.525(b)(6)(i) and (iv) and, as such, we included these companies in our subsidy analysis.²⁶ On July 28, 2021, Kaptan Demir submitted its case brief and argued that Commerce erred in finding Nur to be a cross-owned input supplier within the meaning of 19 CFR 351.525(b)(6)(iv), because there was no record evidence that the provision of steel scrap by Nur could be deemed to be primarily dedicated to the Kaptan Demir’s downstream product (*i.e.*, rebar).²⁷ According to Kaptan Demir, Commerce must: (1) make cross-ownership decisions on a case-by-case basis depending on the input, downstream product, and production process; (2) analyze the business

²¹ See Kaptan Demir’s Letter, “Supplemental Questionnaire Response,” dated December 15, 2020 (Nur’s IQR).

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind in Part; 2018*, 86 FR 15921 (March 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

²⁶ *Id.* at 9.

²⁷ See Kaptan Demir’s Letter, “Case Brief,” dated July 28, 2021; see also Petitioner’s Letter, “Case Brief,” dated July 28, 2021.

activities of the input supplier and how it relates to the production of the downstream product; and (3) determine whether it is reasonable to conclude that the purpose of the subsidies received by the cross-owned input supplier would benefit the production of the downstream product.²⁸

On August 11, 2021, the petitioner filed its rebuttal brief, arguing that Commerce should continue to find that Nur's production of steel scrap was primarily dedicated to Kaptan Demir's downstream steel production.²⁹ To support its claim, the petitioner explained that: (1) in past administrative reviews, Commerce consistently found Nur's production of steel scrap attributable to the subject merchandise; (2) in other administrative reviews, Commerce has made similar attribution findings (*i.e.*, there is no *de minimis* standard for attribution findings); and (3) "downstream product" under 19 CFR 351.525(b)(6)(iv) may encompass more than subject merchandise (*i.e.*, both subject and non-subject merchandise).³⁰

Commerce published its *2018 AR Final Results* on September 27, 2021, wherein Commerce continued to find that Nur was Kaptan Demir's cross-owned input supplier for the POR under 19 CFR 351.525(b)(6)(iv) because the record clearly demonstrated that: (1) Nur produces steel scrap as a by-product of its production process, which is, in turn, used by Kaptan Demir in the production of downstream steel products; and (2) there is no record evidence demonstrating that Nur sold steel scrap to any parties other than Kaptan Demir during the POR.³¹ Further, we explained that there was no *de minimis* standard when examining cross-ownership or attribution of subsidies, and the Court upheld the final results of the 2016 administrative review

²⁸ *Id.* at 11.

²⁹ See Petitioner's Letter, "Rebuttal Brief," dated August 11, 2021 (Petitioner's Rebuttal Brief).

³⁰ See Petitioner's Rebuttal Brief at 7-10.

³¹ See *2018 AR Final Results* IDM at Comment 5.

of rebar from Turkey, where it found that Commerce is not required to look to the quantity of scrap provided to a downstream producer.³²

III. REMAND OPINION AND ORDER

In the *Remand Opinion and Order*, the Court ordered Commerce to further explain and review its decision that Nur was a cross-owned input supplier of inputs primarily dedicated to the production of downstream products. Regarding the decision to attribute subsidies received by Nur to Kaptan Demir, the Court found that Commerce did not adequately explain the cross-owned supplier issue and the primarily dedicated analysis.³³ Furthermore, the Court found that Commerce needed to provide additional explanation why the input in question (*i.e.*, steel scrap) was primarily dedicated to production of downstream steel products.³⁴

The Court noted that Commerce did not sufficiently explain how several specific situations raised in the *2018 AR Final Results* supported the conclusion that Nur was a cross-owned input supplier whose production of scrap was primarily dedicated to the production of the downstream product.³⁵ Specifically, the Court stated that Commerce did not adequately address or explain why in some prior cases, Commerce considered factors including the by-product nature of scrap, and why it did not do so in this instance. Finally, the Court found that Commerce did not adequately support its claim that there was no *de minimis* standard, when Commerce has previously found ingots and scrap sold in miniscule amounts were not primarily dedicated to the production of downstream product.³⁶ Recognizing that decisions regarding attribution are fact-specific, the Court found that Commerce needed to address adequately the

³² *Id.* (citing *Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. v. United States*, 498 F. Supp. 3d 1345, 1364 (CIT 2021) (“While the final quantity may be low, the regulations do not obligate Commerce to measure the impact of an input supplier’s contributions when weighing whether to attribute its subsidies to the downstream producer.”)).

³³ See *Remand Opinion and Order* at 12.

³⁴ *Id.* at 13.

³⁵ *Id.* at 14.

³⁶ *Id.*

fact-specific circumstances of this administrative review, and remanded Commerce to further review and explain its rationale regarding for finding Nur to be a cross-owned input supplier for purposes of subsidy attribution.³⁷

Therefore, as ordered, we addressed each of the specific circumstances of this case with respect to our primarily dedicated standard in our analysis below and provided further explanation regarding Commerce’s input supplier analysis, the rationale for our determinations regarding steel scrap, and the distinction between this case and other cases where we made determinations on similar inputs.

IV. ANALYSIS

A. Commerce’s Determination Regarding Nur

As requested by the Court, and as explained below, we reexamined our determination that that Nur provided inputs primarily dedicated to the production of downstream products. Upon further consideration of the facts contained on the record of this proceeding, the regulations, and the *Preamble*, we find that Nur does not constitute a cross-owned input supplier whose production is primarily dedicated to the production of downstream product pursuant to 19 CFR 351.525(b)(6)(iv).

Regarding the Court’s finding that Commerce did not sufficiently explain the cross-owned supplier issue, we first note that neither the statute nor the CVD regulations provide a definition of “primarily dedicated.” Thus, recognizing that decisions regarding primarily dedicated inputs are case-specific, following 19 CFR 351.525(b)(6)(iv) and taking guidance from the *Preamble* and our past CVD decisions, we find that Commerce has relied on several factors under which we would analyze the facts of the case at issue in this remand.³⁸

³⁷ *Id.* at 15.

³⁸ See *Countervailing Duties*, 63 FR 65348 (November 25, 1998) (*Preamble*).

Section 351.525(b)(6)(iv) of Commerce’s regulations states that “if there is cross-ownership between an input supplier and a downstream producer, and *production* of the input product is *primarily dedicated to production* of the downstream product, {Commerce} will attribute subsidies received by *the input producer* to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations)” (emphasis added). Therefore, one of the factors we considered for this analysis is whether an input supplier produced the input.

In addition to the language found in our regulations, our determinations regarding this attribution provision have always been guided by the *Preamble*, which states that Commerce developed regulations to countervail subsidies provided to cross-owned input suppliers for a specific purpose: “the main concern we have tried to address is the situation where a subsidy is provided to an input supplier whose production is dedicated almost exclusively to the production of a higher-value added product – the type of input product that is merely a link in the overall production chain.”³⁹

Rather than explicitly defining what qualifies as an input supplier relationship with a downstream producer, the *Preamble* provides two examples: (1) stumpage subsidies on timber that is used in lumber production; and (2) subsidies to semolina primarily dedicated to pasta production.⁴⁰ “We believe that in situations such as these, the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products.”⁴¹ At the same time, we cautioned against including all the cross-owned input producers in a CVD case. Specifically, we stated that:

³⁹ *Id.*, 63 FR at 65401.

⁴⁰ *Id.*

⁴¹ *Id.*

Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer.⁴²

As we previously stated, neither the *Preamble* nor the statute and regulations offer an explicit definition of “primarily dedicated”; the determination may, therefore, be reasonably made based on the facts of each proceeding. Therefore, two factors we considered in our analysis include whether the input is merely a link in the overall production chain, as stumpage is to lumber production or semolina is to pasta production as described in the *Preamble*, and whether the input is a common input among a wide variety of products and industries, as plastics are to automobiles, and thus, not the type of input that is merely a link in the overall production.

Since the *Preamble* was published, we gained more experience with respect to investigating input producers. Accordingly, based on the *Preamble* and our attribution regulation, we have further clarified how we analyze whether inputs are primarily dedicated on a case-by-case basis. In *Coated Free Sheet Paper from China*, in deciding the company HJP Pulp was a cross-owned input supplier, we explained that:

Section 351.525(b)(6)(iv) of our regulations addresses situations where cross-owned suppliers receive subsidies and directs that those subsidies be attributed to the combined sales of the input and downstream products, as long as the input product is primarily dedicated to the production of the downstream product. There does not appear to be any dispute in this case that pulp is primarily dedicated to the production of paper ...⁴³

⁴² *Id.*

⁴³ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*Coated Free Sheet Paper from China*), and accompanying IDM at Comment 18.

In general, {Commerce} does not trace subsidies⁴⁴ Whether a producer uses a particular input is usually driven by business considerations. For example, a producer may choose different inputs based on the demands of different customers. Also, government regulations may make it more or less costly to use certain inputs depending on where the product is to be sold. In such situations, it is perfectly rational for the producer to create a business model that takes these factors into account. However, these business choices should not dictate how {Commerce} attributes subsidies bestowed on the inputs.⁴⁵

Therefore, one of the factors we considered is whether the input could be used in the production of downstream products, regardless of whether the input was used in the production of subject merchandise.

We also considered in prior cases whether the downstream producers in the overall production chain were the primary users of the inputs produced by the input producers and whether the production of the inputs by the input producers was exclusively for the overall production chain.⁴⁶ For example, in the case of electricity, while electricity could be used in many industries, it is reasonable to assume that a cross-owned electricity producer's production is primarily dedicated almost exclusively to the production of downstream product if the subject merchandise producer is the sole user of the electricity produced, because the production of electricity by the cross-owned input producer is exclusively for the overall production chain. Similarly, in *Lined Paper from Indonesia*, we found that “pulp logs are used to make pulp which, in turn, is used to make paper{,}” and, as such, the logs harvested and sold to the pulp producers are primarily dedicated to the production of pulp and to the downstream product, lined-paper.⁴⁷

⁴⁴ *Id.* (citing *Preamble*, 63 FR at 65403; and *Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 67388 (November 5, 2002), and accompanying IDM at Comment 8).

⁴⁵ See *Coated Free Sheet Paper from China* IDM at Comment 18.

⁴⁶ See *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (*Lined Paper from Indonesia*), and accompanying IDM at Comment 3.

⁴⁷ *Id.*

Lastly, we examined a company’s business activities in previous cases to assess whether an input supplier’s production was “dedicated almost exclusively to the production of a higher value-added product” in the manner suggested by the *Preamble* or if the purpose of any subsidy provided to the input producer would be “to benefit the production of both the input and downstream products.”⁴⁸ In *Glass Containers from China*, we found that the glass machinery provided by a company was not a primarily dedicated input because the company’s business license detailed a variety of production activities other than glass equipment manufacturing. Given the company’s involvement in producing a variety of machinery and products unrelated to glassmaking machinery, we found the input producer’s production was not dedicated almost exclusively to the production of a higher value-added product in the manner suggested by the *Preamble*.⁴⁹

In sum, for the purposes of these results of redetermination, we examined the facts on the record with consideration toward the following factors:

- Whether an input supplier produced the input;
- Whether the input could be used in the production of downstream products including subject merchandise, regardless of whether the input is actually used for the production of the subject merchandise;
- Whether the input is merely a link in the overall production chain, as stumpage is to lumber production or semolina is to pasta production as described in the *Preamble*, or whether the input is a common input among a wide variety of products and industries and it is not the type of input that is merely a link in the overall production chain, as plastic is to automobiles;
- Whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer and whether the production of the inputs by

⁴⁸ See *Preamble*, 63 FR at 65401.

⁴⁹ See *Certain Glass Containers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 31141 (May 22, 2020) (*Glass Containers from China*), and accompanying IDM at Comment 12; see also *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Affirmative Countervailing Duty Determination*, 85 FR 80011 (December 11, 2020) (*FEBs from Germany*), and accompanying IDM at Comment 14.

the input producers is exclusively for the overall production chain; and

- Examining a company's business activities to assess whether an input supplier's production is "dedicated almost exclusively to the production of a higher value-added product" in the manner suggested by the *Preamble* such that the purpose of any subsidy provided to the company would be "to benefit the production of both the input and downstream products."

These factors are not in hierarchical order, but rather, provide a general outline of our considerations in our examination of the record to determine whether Nur's inputs or production processes are primarily dedicated to the production of downstream product. We also note that these criteria are not exhaustive or exclusive, and that any analysis of whether an input is primarily dedicated is established by all the facts on the record, which in many instances, are proprietary.

When assessing these factors and examining the record, we are still guided by our regulation and the *Preamble*. Furthermore, to clarify for the Court, we do not consider the amount of the input provided to be one of the factors in determining whether an input is primarily dedicated. Neither our statute nor our regulations include a threshold for the amount of the input supplied by a cross-owned company. For example, if an input is critical for the production of downstream products, such as stumpage is to lumber production, even if the input supplier supplies a miniscule amount to the subject merchandise producer, we would still consider the input to be primarily dedicated to the production of downstream product.

The Court ordered Commerce to review and further explain its decisions regarding Nur's provision of steel scrap to Kaptan Demir. Below, we analyze the facts on the record according to the factors described above.

Nur's Provision of Steel Scrap to Kaptan Demir

As we explained in the Draft Remand, neither the statute nor the regulations define “primarily dedicated.”⁵⁰ The Courts have provided Commerce a great deal of deference “when a statute fails to make clear ‘any Congressionally mandated procedure or methodology for assessment of the statutory tests.’”⁵¹ In that circumstance, “Commerce ‘may perform its duties in the way it believes most suitable.’”⁵² Consequently, Commerce receives “tremendous deference” that is “both greater than and distinct from that accorded the agency in interpreting the statutes it administers” when it exercises its technical expertise to select and apply methodologies to implement the dictates of the trade statute.⁵³ If “the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”⁵⁴ In such cases, “{a}ny reasonable construction of the statute is a permissible construction,”⁵⁵ and Commerce’s “interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.”⁵⁶ Commerce’s interpretation of the statute need not be “the only one it permissibly could have adopted” in order for Commerce’s determination to be reasonable.⁵⁷ Therefore, Commerce has discretion when determining an appropriate methodology for analyzing whether production of an input product is primarily dedicated to the production of the downstream product.

⁵⁰ See Memorandum, “Draft Results of Redetermination Pursuant to Court Remand,” dated June 26, 2023 (Draft Remand).

⁵¹ See *JBF RAK LLC v. United States*, 790 F.3d 1358, 1353 (Fed. Cir. 2015) (quoting *U.S. Steel Grp. V. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996)).

⁵² *Id.*

⁵³ See *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996).

⁵⁴ See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. at 837, 843 (S. Ct. 1984).

⁵⁵ See *Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004).

⁵⁶ See *United States v. Eurodif S.A.*, 55 U.S. 305, 316 (S. Ct. 2009).

⁵⁷ See *Chevron*, 467 U.S. at 843.

Furthermore, neither the statute nor the regulations provide a definition of “primarily dedicated.” Commerce’s interpretation of what is considered “primarily dedicated” is necessarily complex because of the vast variety of companies, inputs, types of subject merchandise, production processes, and circumstances surrounding all the aforementioned that Commerce must examine on a record-specific basis. We have repeatedly emphasized such determinations are record-specific and involve an analysis of all relevant facts on each individual record to determine whether an input producer’s production processes or involvement in the production of subject merchandise indicates that a subsidy a government provided to that input producer was intended to support the production of downstream product.

In its comments on the Draft Remand, Kaptan Demir raised certain case-specific facts that Commerce should analyze in determining whether Nur’s steel scrap is primarily dedicated to Kaptan Demir’s downstream production. These factors include the business activities of the input supplier (*i.e.*, Nur) and whether Nur’s relationship with Kaptan Demir constitutes a vertically integrated supply chain based on the extremely limited nature of the transactions between Nur and Kaptan Demir during the POR.⁵⁸ Upon consideration of Kaptan Demir’s arguments, and further consideration of the facts on the record of this proceeding, we find that the facts on the record do not support a finding that the steel scrap generated by Nur is primarily dedicated to Kaptan Demir’s downstream production.

As demonstrated in the various steel proceedings that Commerce administers, Commerce does not have a rule that steel scrap is always primarily dedicated to the production of steel in the manner of semolina to pasta or stumpage to lumber. Neither Commerce’s regulations nor the *Preamble* states that scrap is always primarily dedicated to the production of downstream

⁵⁸ See, *e.g.*, Kaptan Demir Draft Remand Comments.

product. Thus, Commerce makes a determination regarding steel scrap as an input on a case-by-case, fact-specific basis. Commerce has never made a finding that steel scrap is always primarily dedicated to the production of steel. This is evident by not only this case, but *Cold-Rolled Steel from Korea*, *FEBS from Germany*, *CTL Plate from Korea*, and Commerce’s Final Results of Redetermination Pursuant to Court Remand (*Nucor Remand*) in *Nucor Corporation v. United States*, Court No. 21-00182, Slip Op. 22-116 (CIT October 5, 2022) issued on January 31, 2023, in which Commerce did not treat steel scrap as a primarily dedicated input.⁵⁹ While Commerce’s remand results of redetermination in the *Nucor Remand* is not final and is subject to review by this Court, we find that our analysis in that redetermination is relevant to our analysis of the facts on the record of this proceeding. The difference in outcome between these cases and *OCTG from Turkey*, in which we found steel scrap to be a primarily dedicated input, shows that Commerce’s analysis is not rigid, but, instead, is based on a consideration of all relevant facts on the record of each proceeding. With respect to steel scrap, as we stated in the Draft Remand, it is a case-by-case determination based on the facts on each record, following 19 CFR 351.525(b)(6)(iv) and the *Preamble*.⁶⁰

First, it is apparent that the threshold factor of whether Nur produces the scrap at issue is satisfied.⁶¹ Here, there is no dispute that Nur produces the scrap in the process of carrying out its primary business activity, shipbuilding. The second threshold factor, whether the input can be used in the production of downstream products including subject merchandise, is also satisfied.⁶²

⁵⁹ See *Cold-Rolled Steel from Korea* IDM at Comment 2; *FEBS from Germany* IDM at Comment 14; *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018*, 86 FR 15184 (March 22, 2021) (*CTL Plate from Korea*), and accompanying IDM; see also Commerce’s Final Results of Redetermination Pursuant to Court Remand (*Nucor Remand*) in *Nucor Corporation v. United States*, Court No. 21-00182, Slip Op. 22-116 (CIT October 5, 2022) issued on January 31, 2023, at 27-28.

⁶⁰ See Draft Remand at 22-23.

⁶¹ See Affiliation Response at 6.

⁶² *Id.* at 5-7 and Exhibit 3; see also Nur’s IQR at Exhibit 9.

Third, as discussed in greater detail below in response to comments from the parties, Kaptan Demir is the primary and exclusive user of the scrap provided by Nur.

Fourth, as we discussed in our Draft Remand, we considered in our analysis whether the input is merely a link in the overall production chain, as stumpage is to lumber production or semolina is to pasta production as described in the *Preamble*. After further review of the record and consideration of the comments filed by the parties, we find that the evidence on the record does not support a finding that the steel scrap produced by Nur is primarily dedicated to Kaptan Demir's downstream production, such that it is merely a link in the overall production chain. When considering this factor, it is significant that there is no evidence that the scrap provided by Nur was processed in any way prior to selling it to Kaptan Demir. Whether or not scrap is generated or otherwise prepared for downstream products in the production line is a factor to consider when determining whether an input is primarily dedicated to the production of a downstream product. In this regard, the steel scrap produced by Nur is not merely a link in the overall production chain, as stumpage is to lumber. Rather, like plastic, unprocessed steel scrap is a common input among a variety of products and industries and used in a variety of production processes.

Furthermore, the input Nur provided, steel scrap, is not the type of input product that is merely a link in the overall production chain contemplated in the *Preamble* barring other intervening factual circumstances. While we relied on an analysis of Nur's provision of steel scrap to Kaptan Demir as part of a "vertically integrated supply chain" in the Draft Remand, after further consideration and review of the facts on the record we no longer find that this analysis supports a finding that Nur's steel scrap is primarily dedicated to Kaptan Demir's downstream production. An analysis of whether a company provides an input that is "primarily

dedicated” to the production of downstream product relates generally to two primary considerations. First, the term “primarily dedicated” usually refers to the input suppliers’ actual production of the input product and not the sales of the input product without production by the input supplier. Second, “primarily dedicated” normally involves an analysis of both the input supplier’s entire production (*i.e.*, the nature of the supplier’s operations) and input production itself and its relationship to downstream products (*i.e.*, nature of the input). These concepts are reflected in the discussed factors in our analysis relating to whether a product is “merely a link in the overall production chain” and an input supplier’s business activities.

When determining whether a particular input is “merely a link in the overall production chain,” we look to the input production and the nature of the input as one factor of our analysis. As Kaptan Demir argues in its comments, an analysis of the relationship between other affiliates and Kaptan Demir does not relate to an analysis of the nature of the input itself and whether it is merely a link in the overall production chain, and thus Kaptan Demir’s relationships with other affiliates, or input suppliers, as put forth by the petitioners in their comments,⁶³ are not appropriate to consider as a part of our analysis regarding whether Nur’s steel scrap is merely a link in Kaptan Demir’s downstream production chain. Moreover, as we have explained in other decisions related to steel scrap, unprocessed scrap is a common input among a wide variety of products and industries, as plastics are to automobiles, and thus, not the type of input that is merely a link in the overall production.⁶⁴ As such, we do not find that the scrap Nur provided to Kaptan Demir is “merely a link in the overall production chain.”⁶⁵

⁶³ See Kaptan Demir Draft Remand Comments at 7-8.

⁶⁴ *Nucor Remand* at 60.

⁶⁵ See *Preamble*, 63 FR at 65401.

Finally, we find that Kaptan Demir’s arguments regarding Nur’s primary business activity lead us to reconsider our evaluation of Nur’s primary business activity as a shipbuilder. Examining a company’s business activities helps us assess whether an input supplier’s production is “dedicated almost exclusively to the production of a higher value-added product” in the manner suggested by the *Preamble* such that the purpose of any subsidy provided to the company would be “to benefit the production of both the input and downstream products.”⁶⁶ As discussed in the Draft Remand, Nur’s primary business is shipbuilding, which involves the production of a product that is much further downstream than the downstream products produced by Kaptan Demir, most notably rebar.⁶⁷ Upon a review of Nur’s business activities, which consist largely of shipbuilding, we find that the production processes involved in shipbuilding are far removed from Kaptan Demir’s downstream production processes, especially given the extremely limited transactions between the two companies. Therefore, we find that Nur’s business activity is not “dedicated almost exclusively to the production of a higher value-added product” in the manner suggested by the *Preamble*. Simply put, the facts on the record do not support the premise that subsidies given to a shipbuilder would be given to “benefit the production of both the input and downstream products.”

V. INTERESTED PARTY COMMENTS

On June 26, 2023, we released our Draft Remand to interested parties.⁶⁸ On June 30, 2023, we extended the deadline for interested parties to submit comments on the Draft Remand until July 7, 2023.⁶⁹ On July 7, 2023, we received comments from Kaptan Demir and the

⁶⁶ See *Preamble*, 63 FR at 65401.

⁶⁷ See, e.g., Draft Remand at 4.

⁶⁸ See Draft Remand.

⁶⁹ See Memorandum, “Extension of Deadline to Submit Comments on Draft Remand Redetermination,” dated June 30, 2023.

petitioner.⁷⁰ In addition, Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively, Colakoglu) submitted a letter in lieu of comments on the Draft Remand noting that as a non-selected company under review *2018 AR Final Results*, it will be assigned the non-selected company rate, which is based solely on Kaptan Demir's rate.⁷¹

Comment 1: Commerce's Determination Regarding Nur

Kaptan Demir's Comments

- Kaptan Demir disagrees with Commerce that: (1) the nature of steel scrap, as an individual factor, is not relevant; and (2) that the “by-product nature” analysis results in a finding that steel scrap is merely a link in the overall production chain.⁷²
 - The essential character of steel scrap is that it is not produced or purposely generated. Here, it is only generated as a result of ship production.⁷³
 - Section 351.525(b)(6)(vi) of Commerce's regulations does not define the term “production.” The best source for interpreting this term is the *Preamble*, which the Court has recognized as Commerce's own interpretation of its regulations.⁷⁴
 - By examining the *Preamble* and Commerce's cases, several defining points are clear regarding the term “production.” First, the term refers to the input suppliers' actual production of the input product and not the sales of the input product without production by the input supplier. Second, it refers to both the input supplier's entire production (*i.e.*, the nature of the supplier's operation) and input production itself (*i.e.*, nature of the input).⁷⁵
- Steel scrap generation may only fall within the meaning of “production” under the regulation in a unique set of circumstances, not present here.⁷⁶
 - Specifically, the by-product nature of steel scrap and that it is normally an ancillary and unintentional aspect of a company's business do not fall within the meaning of production.⁷⁷

⁷⁰ See Kaptan Demir's Letter, “Comments on Draft Remand,” dated July 7, 2023 (Kaptan Demir Draft Remand Comments); see also Petitioner's Letter, “Comments on Draft Results of Redetermination,” dated July 7, 2023 (Petitioner's Draft Remand Comments).

⁷¹ See Colakoglu's Letter, “Letter in Lieu of Comments on Draft Remand Redetermination Pursuant to Court Record,” dated July 7, 2023.

⁷² See Kaptan Demir Draft Remand Comments at 2.

⁷³ *Id.*

⁷⁴ *Id.* (citing *Preamble*, 63 FR at 65348; *Pasta Zara S.p.A. v. United States*, 35 CIT 620, 624 (2011); *Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297, 1321 (CIT 2014); and *Light-walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67703, 67707 (November 30, 2007) (explaining “{w}ith respect to Jiaqi, this company is a trading company and does not produce any merchandise. Instead, it purchased and provided inputs to ZZPC during the POI. Because it is not an input producer, we are not treating Jiaqi as an input supplier as described in 19 CFR 351.525(b)(6)(iv) (which refers to subsidies received by the input producer.”)).

⁷⁵ *Id.* at 2-4 (citing *FEBS from Germany* IDM at Comment 14).

⁷⁶ *Id.* at 4.

⁷⁷ *Id.* at 4 (citing *Preamble*, 63 FR at 65401).

- Further, the *Preamble* explains that 19 CFR 351.525(b)(6)(vi) is looking at instances where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value-added product – the type of input product that is merely a link in the overall production chain.⁷⁸
- In the case of Nur, its generation of steel scrap comes from the production of a much higher value product (*i.e.*, ships) than the subject rebar, and, thus, is not contemplated by the *Preamble*.⁷⁹
- Therefore, Nur’s generation of steel scrap cannot be viewed as merely a link in the production chain for Kaptan Demir’s downstream products. This position is echoed in the *Nucor Remand*, where Commerce disagreed with Nucor’s assertion that the business operations of the input supplier are not relevant in determining whether an input is primarily dedicated.⁸⁰
- Commerce made two errors in examining Nur’s business activities.⁸¹
 - First, rather than focus on Nur’s actual shipbuilding activities, Commerce focused on vertical integration and affiliation structure.⁸²
 - The *Preamble* does not use “vertically integrated” to define whether a product is primarily dedicated and merely a link in the production chain, because such a relationship is always present in a 19 CFR 351.525(b)(6)(vi) analysis.⁸³
 - Further, Kaptan Demir’s relationship with its other affiliated steel scrap suppliers cannot make its relationship with Nur rise to the level of cross-ownership.⁸⁴
 - Last, Commerce did not address the Court’s request to explain why the steel scrap is primarily dedicated to the downstream product, especially when record evidence demonstrates this input was used to produce products other than the subject merchandise.⁸⁵
 - Second, Commerce attempted to examine Nur’s business activities by evaluating the number of transactions with affiliates, generally. Specifically, Nur’s tax returns show most of its affiliated transactions are service and financial related, with no purchase of goods and only the sales of a small amount of goods (*i.e.*, steel scrap) to Kaptan Demir.⁸⁶
- Overall, when Commerce analyzes whether an input supplier is cross-owned, the *Preamble* and practice demonstrate that the business activities of the input supplier are relevant, while vertical integration is not since it always exists when there are affiliated input transactions.⁸⁷

⁷⁸ *Id.*

⁷⁹ *Id.* at 4-5 (citing *Preamble*).

⁸⁰ *Id.* at 5 (citing *Nucor Corporation v. United States*, Slip Op. 22-116 (CIT October 5, 2022) (*Nucor Remand*) at 27-28).

⁸¹ *Id.* at 6.

⁸² *Id.* at 6-7.

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 7-8.

⁸⁵ *Id.* at 8 (citing *Remand Opinion and Order* at 13-14).

⁸⁶ *Id.* at 8-10 (citing *Glass Containers from China* and *FEBs from Germany*).

⁸⁷ *Id.* at 11.

- In *FEBs from Germany*, Commerce determined that steel scrap is not a “one purpose” input for downstream steel products, and should do so here as well.⁸⁸
- In the *Gujarat Remand*, the Court rejected Commerce’s cross-ownership determination where it relied on the fact that the respondent was an affiliated input supplier’s only customer to meet the primarily dedicated language in 19 CFR 351.525(b)(6)(vi).⁸⁹
- In *Refrigerators from Korea*, Commerce found that none of the inputs provided by certain companies were primarily dedicated to the production of downstream product.⁹⁰
- Contrary to Commerce’s claim in the Draft Remand, in *Glass Containers from China*, Commerce determined that the affiliated suppliers’ broad scope of business activities that were unrelated to the production of the downstream product showed that the provision of this machinery was not “primarily dedicated.”⁹¹
- The nature of Nur’s steel scrap is identical to the scenario described in *FEBs from Germany*, where steel scrap was generated as an ancillary by-product and sold in small quantities to the subject merchandise producer. Further, in both cases the business activities of the input suppliers were varied and not merely a link in the production of downstream product.⁹²

Petitioner’s Comments

- Commerce correctly determined that the steel scrap provided by Nur to Kaptan Demir was primarily dedicated to production of the downstream product regardless of the amount of steel scrap purchased. This treatment has been upheld by the Court.⁹³
- Commerce’s Draft Remand addresses the Court’s concerns in the *Remand Opinion and Order*. Specifically, Commerce’s Draft Remand addressed the specific record of this case, prior cases in which steel scrap was not found to be primarily dedicated to downstream production, and why Nur’s steel scrap was a link in Kaptan Demir’s overall production chain.⁹⁴
 - Regarding the record of the 2018 administrative review, Commerce explained that: (1) Nur and other steel scrap providing affiliates sold the steel scrap they generated exclusively to Nur; (2) there is a clear vertically integrated steel scrap supply process to which multiple affiliates provide this input to Kaptan Demir to produce downstream goods; and (3) steel scrap is critical to produce downstream goods.⁹⁵

⁸⁸ *Id.* (citing *FEBs from Germany*).

⁸⁹ *Id.* at 11-13 (citing *Gujarat Fluorochemicals Limited v. United States*, Slip Op. 23-9 (CIT January 24, 2023) (*Gujarat Remand*) at 27-28).

⁹⁰ *Id.* at 13-14 (citing *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at 2).

⁹¹ *Id.* at 14-15 (citing *Glass Containers from China* IDM at Comment 12).

⁹² *Id.* at 15 (citing *FEBs from Germany* IDM at Comment 14).

⁹³ See Petitioner’s Draft Remand Comments at 2 (citing 19 CFR 351.525(b)(6)(vi); *Preliminary Results PDM* at 9; *2018 AR Final Results IDM* at 25-27; and *Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. v. United States*, 498 F. Supp. 3d 1345, 1364 (CIT 2021)).

⁹⁴ *Id.* at 2-3 (citing *Remand Opinion and Order*).

⁹⁵ *Id.* at 3-4.

- Regarding prior cases in which it treated steel scrap differently, Commerce explained why it reached a different decision in *CTL Plate from Korea*.⁹⁶
- Further, Commerce explained why even though Nur’s “main business” is shipbuilding, the facts of this record support finding that Nur is a cross-owned input supplier. In fact, Commerce concluded that the factual situation here is very similar to the cross-owned input supplier determination in *OCTG from Turkey*.⁹⁷
- Last, Commerce’s Draft Remand addressed why this case is different from *CTL Plate from Korea* and *Glass Containers from China*, where we found the by-product nature of steel scrap or “broad business scope” of an input supplier as relevant to cross-ownership and attribution.⁹⁸
- Overall, based on its consideration of the above facts, Commerce has addressed the Court’s concerns and explained how the facts of this case support finding Nur to be a cross-owned input supplier and differs from other cases, where we did not make cross-ownership findings.⁹⁹
- There are additional facts on the record that support Commerce’s treatment of Nur. Specifically, early in the review, Kaptan Demir conceded that certain other affiliates satisfied cross-ownership criteria based on providing inputs used in the production of downstream product in similar amounts to Nur and with similar business activities.¹⁰⁰

Commerce’s Position:

We reviewed the comments submitted for the final results of redetermination and, upon further consideration of those comments and the facts present on the record, agree with Kaptan Demir that the record demonstrates that Nur is not a cross-owned input supplier whose production of steel scrap is primarily dedicated to Kaptan Demir’s downstream production pursuant to 19 CFR 351.525(b)(6)(iv). When remanding this issue, the Court ordered Commerce to further explain and review its decision that Nur was a cross-owned input supplier of inputs primarily dedicated to the production of downstream products. Considering the Court’s concerns, we reviewed the facts on the record of this case and other past CVD cases. In the Draft Remand, we explained how the facts of this record reasonably supported our conclusions based on our assessment of Commerce’s regulations, the *Preamble*, as well as past CVD cases

⁹⁶ *Id.* at 4.
⁹⁷ *Id.* at 4-5.
⁹⁸ *Id.* at 5.
⁹⁹ *Id.* at 5-6.
¹⁰⁰ *Id.* at 6-7.

involving our primarily dedicated analysis. Specifically, we found that Nur produced and exclusively sold steel scrap to Kaptan Demir that was used in the production of the downstream product and subject merchandise and that it was part of a vertically integrated production chain that fed it into downstream steel production.¹⁰¹ As such, we concluded that the steel scrap produced by Nur was dedicated exclusively to Kaptan Demir's downstream steel production.

As explained above, Kaptan Demir raised arguments in its comments for the final remand results of redetermination that have caused us to revisit these non-exhaustive factors and conclude that the steel scrap produced by Nur is not a primarily dedicated input in this case. Commerce has previously found steel scrap to be an input that is not primarily dedicated to downstream steel production and, thus, this case is not an outlier when reviewed in the light of Commerce's past determinations.¹⁰²

As explained in our Draft Remand:

rather than explicitly defining what qualifies as an input supplier relationship with a downstream producer, the *Preamble* provides two examples: stumpage subsidies on timber that is used in lumber production and subsidies to semolina primarily dedicated to pasta production. "We believe that in situations such as these, the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products."¹⁰³

At the same time, we cautioned against including all the cross-owned input producers in a CVD case. Specifically, Commerce stated in the *Preamble* that:

Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the

¹⁰¹ See Draft Remand at 18-19.

¹⁰² See, e.g., *Cold-Rolled Steel from Korea* IDM at Comment 2; see also *FEBS from Germany* IDM at Comment 14.

¹⁰³ See Draft Remand at 23 (quoting *Preamble*, 63 FR at 65401).

upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer.¹⁰⁴

In its comments on the Draft Remand, Kaptan Demir raised certain case-specific facts that Commerce should analyze in determining whether Nur's steel scrap is primarily dedicated to Kaptan Demir's downstream production. These factors include the business activities of the input supplier (*i.e.*, Nur), whether Nur's relationship with Kaptan Demir constitutes a vertically integrated supply chain, and the extremely limited nature of the transactions between Nur and Kaptan Demir during the POR.¹⁰⁵ It is important to note that the significance of the limited nature of these transactions is not based upon volume, as Kaptan Demir argues, but instead, an analysis of the totality of the facts contained within the transactions between Nur and Kaptan Demir. Upon consideration of Kaptan Demir's arguments, we find that facts on the record do not support a finding that the steel scrap generated by Nur is primarily dedicated to Kaptan Demir's downstream production.

We agree with Kaptan Demir that the Draft Remand placed too much weight on the corporate grouping and affiliation structure of Kaptan Demir and its affiliates when evaluating Nur's vertical integration. As explained in our Draft Remand, whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer and whether the production of the inputs by the input producers is exclusively for the overall production chain is one of several factors we examine when determining whether a particular input is primarily dedicated to the production of downstream product. In the Draft Remand, we explained that Nur's 2016-2018 tax returns shed light on the extent to which group company resources are vertically integrated.¹⁰⁶ We also pointed to Kaptan Demir's Affiliation

¹⁰⁴ See *Preamble*, 63 FR at 65401.

¹⁰⁵ See, *e.g.*, Kaptan Demir Draft Remand Comments.

¹⁰⁶ See Nur's IQR at Exhibits 7, 8, and 9.

Response, where Kaptan Demir reported that the group companies were owned and controlled by members of the Cebi family.¹⁰⁷ Among these group companies, the affiliates that generated steel scrap as part of their production processes sold the steel scrap as inputs exclusively to Kaptan Demir, which transformed the steel scrap into billet, the input for rebar.¹⁰⁸

Upon further review of this analysis, we do not find that an analysis of other affiliated companies is appropriate when carrying out a cross-owned input analysis. As explained above and demonstrated by the language of Commerce’s regulations, the statute, and the *Preamble*, an analysis of whether a company provides an input that is “primarily dedicated” to the production of downstream product is focused on two primary considerations. First, the term “primarily dedicated” normally refers to the input suppliers’ actual production of the input product and not the sales of the input product without production by the input supplier. Second, “primarily dedicated” usually involves an analysis of both the input supplier’s entire production (*i.e.*, the nature of the supplier’s operation) and input production itself (*i.e.*, nature of the input). As Kaptan Demir argues in its comments, an analysis of the relationship between other affiliates and Kaptan Demir does not relate to either of these considerations and, thus, Kaptan Demir’s relationship with other affiliates, or input suppliers, as put forth by the petitioners in their comments,¹⁰⁹ are not appropriate to consider as a part of our analysis regarding whether Nur’s production of steel scrap is primarily dedicated to Kaptan Demir’s downstream production.

Kaptan Demir specified that it acts as the group’s sole producer of billet and subject rebar.¹¹⁰ In addition to producing subject merchandise, Kaptan Demir also produces other downstream steel products (*e.g.*, non-subject rebar, other types of bars, and angle profiles), all of

¹⁰⁷ See Affiliation Response at 4.

¹⁰⁸ *Id.* at 5-7 and Exhibits 1, 2, and 3.

¹⁰⁹ See Kaptan Demir Draft Remand Comments at 7-8.

¹¹⁰ See Affiliation Response at 5.

which involve the melting of steel scrap in a meltshop for use as critical inputs into downstream steel production. As such, multiple companies are involved in the provision of steel scrap to Kaptan Demir. However, as explained above, the relationship being examined is the relationship between Nur's production of scrap and Kaptan Demir's downstream production. Thus, an analysis of other affiliates, under the particular facts present in this proceeding, does not relate to our analysis of whether the steel scrap provided by Nur to Kaptan Demir is primarily dedicated to Kaptan Demir's downstream production.

Furthermore, our reference to *Lined Paper from Indonesia* in the Draft Remand focused too heavily on one factor discussed in that decision, without adequate comparison to the facts present on the record of this proceeding. In *Lined Paper from Indonesia*, we based our decision on the finding that both pulp logs and pulp only serve one purpose, as inputs to paper, and further that the paper products described by the respondents "were not as disparate as automobiles and appliances."¹¹¹ As we explained above, this analysis relates to two separate aspects of our primary dedicated analysis. First, *Line Paper from Indonesia* relates to our analysis regarding whether downstream producers in the overall production chain are the primary users of the inputs produced by the input producers and whether the production of the inputs by the input producers is exclusively for the overall production chain. Second, as the above quote from *Lined Paper from Indonesia* reflects, a separate factor is whether or not the input at issue is merely a link in the overall production chain, as stumpage is to lumber production or semolina is to pasta production as described in the *Preamble*, or whether the input is a common input among a wide variety of products and industries and is not the type of input that is merely a link in the overall production chain, as plastic is to automobiles. While the facts on the record show that Nur

¹¹¹ See *Lined Paper from Indonesia* IDM at Comment 3.

exclusively provided its steel scrap to Kaptan Demir, the facts on the record do not support a finding that the nature of the provision of steel scrap between the two companies is such that it is merely a link in the overall production chain. As we stated in the *Nucor Remand*, “unprocessed scrap is a common input among a variety of products and industries.”¹¹²

Next, in the Draft Remand, we stated that an examination of Nur’s business activities indicates that even though its main business is selling ships, all steel scrap generated by Nur and other group companies is sold exclusively to Kaptan Demir to produce downstream steel products. However, we now find that this analysis, based on the facts contained on this record, did not properly consider Nur’s business activity as it relates to the input product in question, and was also inconsistent with our findings in *Glass Containers from China* and *CTL Plate from Korea*. As a part of our analysis, and by means of explaining how the facts on the record of this proceeding differ from other proceedings, in the Draft Remand we also explained how our conclusion is distinguishable from *CTL Plate from Korea*. However, Kaptan Demir’s comments highlighted several inconsistencies in our analysis in this proceeding compared to our analysis in other proceedings involving similar facts, most notably *CTL Plate from Korea* and the *Nucor Remand*. As stated above, the *Nucor Remand* is not a final determination and is still pending review by this Court in another proceeding, but we address our analysis in that case in response to Kaptan Demir raising the matter in its comments on the Draft Remand. While it is true that Nur has exclusively provided its steel scrap to Kaptan Demir, whereas the company in *CTL Plate from Korea* did not, we find that this fact alone does not support a finding that the steel scrap is primarily dedicated to Kaptan Demir’s downstream production, given the other facts on the record of this proceeding.

¹¹² See *Nucor Remand* at 60.

We also find that the distinction we drew between this case and *CTL Plate from Korea* does not withstand scrutiny given the particular facts of this proceeding. As we explained in *Glass Containers from China*, an input supplier’s broad business scope can serve as evidence that the input supplier’s production is not “dedicated almost *exclusively* to the production of a higher value-added product.” Specifically, we stated:

Commerce disagrees with {the respondent} that suppliers of machinery could never meet the intent of the attribution regulations with regard to input suppliers. As the petitioner correctly notes, we have determined in past cases that equipment and machinery can be considered a primarily dedicated input depending on the facts and circumstances of the case. However, in the instant case, the record evidence does not support a finding that the glass machinery provided by Company A should be considered a primarily dedicated input such that it would meet the attribution criteria set forth in 19 CFR 351.525(b)(6)(iv) Specifically, *Company A’s business license indicates that the range of its business are broad Company A is engaged in “{p}roduction and sales: glass machinery; import and export of goods and technology permitted by the state; assembly and sales: glass machinery, rubber machinery, winery equipment, reducers, other mechanical equipment and parts and related technical consulting services; software development.”*¹¹³

Likewise, in the *Nucor Remand*, we explained that POSCO Plantec’s primary business activity, the construction of industrial plants, reflected a “variety of industrial construction business activities of a scope beyond those related to steelmaking or constructing steel-making plants” and, therefore, was not dedicated almost exclusively to POSCO’s higher-value added steel production.¹¹⁴

In the Draft Remand, we argued that these cases were distinguishable from the facts of this proceeding because Nur is not involved in a broad range of activities unrelated to steelmaking; however, we now find, upon further consideration, that this was an overly narrow interpretation of how we review a company’s business activity in our primarily dedicated analysis. While a broad scope of business activities can constitute evidence of an input

¹¹³ See *Glass Containers from China* IDM at Comment 12 (emphasis added).

¹¹⁴ See *Nucor Remand* at 30.

supplier's production process not being dedicated almost exclusively to the production of downstream product, this is not the only aspect of a company's business activity that Commerce considers as a part of this analysis. As Kaptan Demir points out, and we explained in setting forth the factors we were considering, the primary focus of this analysis is on whether an input supplier's production is "dedicated almost exclusively to the production of a higher value-added product" in the manner suggested by the *Preamble* such that the purpose of any subsidy provided to the company would "benefit the production of both the input and downstream products." Upon further consideration, the facts on the record indicate that Nur's production of ships is sufficiently removed from Kaptan Demir's production of downstream products, including rebar, such that it cannot be considered "dedicated almost exclusively to the production of a higher value-added product."

Likewise, a closer analysis of the primary business activity of the input supplier in *OCTG from Turkey*, wherein we found that an input supplier provided steel scrap to the mandatory respondent to produce intermediate products, also shows the significance of a company's business activity as it relates to our primarily dedicated analysis. While we did not reference primary business activity in our decision from *OCTG from Turkey*, we find it significant for the purposes of the arguments raised by the parties to this proceeding that the primary business activity of the input supplier at issue in that case, Tosyali Demir, involved the production of steel angles and profiles.¹¹⁵ While we found the steel scrap in *OCTG from Turkey* to be primarily dedicated to downstream production, our finding in *OCTG from Turkey* does not necessitate that we likewise must find the steel scrap generated by Nur, which Nur produced as a part of a much

¹¹⁵ See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at the section, "Attribution of Subsidies".

further removed production process in shipbuilding, is primarily dedicated to Kaptan Demir's downstream production. Likewise, as explained above, while it is true that Nur's production of steel scrap is exclusively provided to Kaptan Demir, as was the case in *OCTG from Turkey*, this alone does not support a finding that Nur's provision of steel scrap is primarily dedicated to Kaptan Demir's downstream production given other facts on the record.

Finally, the Court requested that Commerce further address and explain why in some prior decisions, we considered factors such as the by-product nature of steel scrap, and why we declined to do so here.¹¹⁶ While Kaptan Demir also raised arguments regarding the by-product nature of steel scrap, as we explained in the Draft Remand, we do not consider the by-product nature of steel scrap as an individual factor when determining whether cross-ownership exists under 19 CFR 351.525(b)(6)(iv). Where we examined the by-product nature of steel scrap, we have done so in the context of determining whether steel scrap is merely a link in the overall production chain. For example, in *CTL Plate from Korea* and the *Nucor Remand*, we considered a range of case-specific factors, including an analysis of the by-product nature of the steel scrap as it relates to an input supplier's overall production process, the fact it was sold through an intermediary, the scope of business of the steel scrap input supplier, and the nature of other services provided by the input supplier in determining whether the materials and inputs provided were primarily dedicated to downstream production.¹¹⁷ Based on the totality of the circumstances, we then determined that the steel scrap was not primarily dedicated to downstream products. In this proceeding, we continue to find that the by-product nature of an input, by itself, is not evidence that a product is not primarily dedicated to the production of downstream products. Instead, whether an input is a by-product must be considered in relation

¹¹⁶ See *Remand Order* at 14.

¹¹⁷ See *CTL Plate from Korea* IDM at Comment 2.

to the business activity of the input supplier and the nature of the input in question as that input relates to the downstream producer's production process.

Conclusion


Having reviewed the record again and analyzed the totality of the facts on the record, we find the steel scrap produced by Nur was not primarily dedicated to the production of Kaptan Demir's downstream steel products for the reasons specified above. To summarize, according to the facts present on the record of this proceeding, we find that: (1) Nur produced the steel scrap; (2) the steel scrap Nur produced could be, and was, used in the production of downstream steel products including subject merchandise; (3) Kaptan Demir was the primary, and exclusive, user of the inputs produced by Nur; (4) the steel scrap provided by Nur is not merely a link in the overall production chain, but is, instead, a common input that is used in a wide variety of products and industries; and (5) Nur's primary business activity in shipbuilding does not indicate that Nur's production is "dedicated almost exclusively to the production of a higher value-added product" in the manner suggested by the Preamble such that any subsidy provided to the company would "benefit the production of both the input and downstream products." Based on our analysis of all these factors, we find that the steel scrap Nur provided to Kaptan Demir is not primarily dedicated to Kaptan Demir's production of downstream steel product, including rebar.

VI. FINAL RESULTS OF REDETERMINATION

In accordance with the Court's remand mandate, Commerce reexamined its analysis and determinations with respect to finding that Nur was Kaptan Demir's cross-owned input supplier during the POR and provided additional explanation for its determinations on this issue. For the purposes of these final results of remand redetermination, Commerce no longer finds that Nur was Kaptan Demir's cross-owned input supplier during the POR. As a result, we revised the

subsidy calculations, as appropriate.¹¹⁸ Therefore, the CVD rates for Kaptan Demir and its cross-owned affiliates and the non-selected companies under review (*i.e.*, Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S.) from the *2018 AR Final Results* for the period January 1, 2018, through December 31, 2018, are now *de minimis* (*i.e.*, 0.18 percent).

7/24/2023

X 

Signed by: ABDELALI ELOUARADIA
Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

¹¹⁸ See Memorandum, “Final Remand Results Calculations,” dated concurrently with this memorandum.