Eregli Demir ve Celik Fabrikalari T.A.S., et al. v. United States,
Consol. Ct. No. 16-00218, Slip Op. 18-27 (March 22, 2018)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND

I. SUMMARY

These final results of redetermination (*Final Remand Results*) were prepared by the Department of Commerce (Commerce) pursuant to the decision and remand order issued by the U.S. Court of International Trade (CIT or Court) on March 22, 2018.[1] This action arises from the *Final Determination* in the sales at less-than-fair-value investigation of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey).[2] The Court remanded three issues, and directed Commerce to: (1) reconsider or further explain its treatment of Ergeli Demir ve Celik Fabrikalari T.A.Ş. (Erdemir)'s home market date of sale; (2) reconsider Çolakoğlu Metalurji A.S. and Colakoglu Dis Ticaret A.S. (collectively, Colakoglu)'s request for a duty drawback adjustment; and (3) reconsider or further explain Commerce's rejection of Colakoglu's corrections to international ocean freight expenses presented at verification.[3]

Pursuant to the Court's opinion, Commerce has reconsidered the record evidence for the three remanded issues, and finds it appropriate to: (1) use the click date of the *pro-forma* invoice as the date of sale for Erdemir's home market sales; (2) grant Colakoglu's request for a duty drawback adjustment; and (3) continue to reject Colakoglu's corrections, which were presented and rejected at verification, to its reported international ocean freight expenses.

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[1] *See Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, Consol. Ct. No. 16-00218, Slip Op. 18-27 (March 22, 2018) (*Remand Order*).
[2] *See Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016), and accompanying Issues and Decision Memorandum (IDM) (*Final Determination* IDM).
[3] *See Remand Order* at 53.

In light of the Court's remand order, on June 28, 2018, Commerce released a draft version of these *Final Remand Results* to interested parties for comment.[4] On July 10, 2018, the petitioners, Erdemir, and Colakoglu submitted comments on the draft version of these *Final Remand Results*.[5] Complete responses to the petitioners', Erdemir's and Colakoglu's comments received are provided below, following these *Final Remand Results*.

II. REMANDED ISSUES

A. Date of Sale for Erdemir's Home Market Sales

1. Legal Framework

Commerce's applicable regulation, 19 CFR 351.401(i) states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." However, 19 CFR 351.401(i) provides that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

The CIT has held that the burden is on the party seeking to establish a date of sale other than invoice date to "satisfy" Commerce that an alternate date is more appropriate.[6] Alternatively, Commerce may exercise its discretion to rely on a date other than the invoice date if Commerce "provides a rational explanation as to why the alternative date 'better reflects' the

[4] *See* Memorandum, "Draft Results of Redetermination Pursuant to Remand: Hot-Rolled Steel Flat Products from Turkey, Eregli Demir ve Celik Fabrikalari T.A.S., et al. v. United States, Consol. Ct. No. 16-00218, Slip Op. 18-27," dated June 28, 2018 (*Draft Remand Results*).
[5] *See* Erdemir's Letter, "Hot-Rolled Steel Flat Products from Turkey; Erdemir Comments on Draft Results of Redetermination on Remand," dated July 10, 2018 (Erdemir's Comments); *see also* the petitioners' Letter, "Remand of the Original Investigation of Hot-Rolled Steel Flat Products from Turkey – Petitioners' Comments on the Department's Draft Results of Redetermination Pursuant to Remand," dated July 10, 2018) (the Petitioners' Comments); *see also* Colakoglu's Letter, "Hot-Rolled Steel Flat Products from the Republic of Turkey: Colakoglu's Comments on Draft Results of Redetermination Pursuant to Remand," dated July 10, 2018 (Colakoglu's Comments).
[6] *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

date when 'material terms' are established."[7] The date of sale is generally the date on which the parties establish the material terms of the sale,[8] which normally includes the price, quantity, delivery terms, and payment terms.[9] For the purposes of this remand, Commerce interprets "key terms of sale" as meaning the material terms as articulated by the Court in *USEC Inc. v. United States* (*i.e.*, as including, *inter alia*, price, quantity, delivery, and payment terms).[10]

2. Background

In the *Final Determination*, Commerce determined that invoice date reflected the date of sale for Erdemir's home and U.S. market sales of hot-rolled steel.[11] In citing *Allied Tube and Conduit Corp.*, Commerce underscored that the CIT has held that "{o}nce a party's records reveal that it identifies the invoice date as the date of sale, the party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' {Commerce} that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[12] Based on Commerce's analysis of Erdemir's home market sales documentation, including the "DIRCREDITH" field reported for Erdemir's home market sales, Commerce determined that "there were differences in the material terms of sale between {Erdemir's} order date and sales invoice date."[13] In its questionnaire response, Erdemir explained that it added the field, DIRCREDITH, to report the fee that it charges customers for an extension of credit.[14] During verification, Commerce determined that "the total credit extension amount and per unit amount reported in {the DIRCREDITH field was} established and finalized

[7] *See SeAH Steel Corp. v. United States*, 25 CIT 133, 135, 2001 WL 180259, *2 (CIT 2001).
[8] *See* 19 CFR 351.401(i).
[9] *See Sahaviriya Steel Industries Public Co., Ltd. v. United States*, 714 F. Supp. 2d 1263, 1278 (CIT 2010) (*Sahaviriya*); *see also USEC Inc. v. United States*, 498 F. Supp. 2d 1337 (CIT 2007).
[10] *Id.*
[11] *See Final Determination* IDM at 26-27.
[12] *Id*.
[13] *Id*.
[14] *See* Erdemir's December 4, 2015 Section B Questionnaire Response (Erdemir's December 4, 2015 BQR) at 42.

in the home market sales invoices."[15] Accordingly, Commerce determined that Erdemir failed to demonstrate, and the record did not support, selecting a date other than invoice date for Erdemir home market sales.[16]

3. Remand Order

The CIT held that Commerce failed to explain why allowing Erdemir's customers to pay by cash or credited payment when the merchandise is ready to be shipped represents a change to the material terms of sale given that this payment option is expressly permitted in the "Terms and Conditions" of the sales contract, and Erdemir considers both payment options to be economically equivalent.[17] Additionally, the Court found that Commerce's attempt to distinguish the fact pattern in this case from *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 625 F. Supp. 2d 1339, 1372-73 (CIT 2009) was unpersuasive.[18] Specifically, the Court stated that in *Habas*, Commerce reversed its decision, on remand, and found that contract date represented the appropriate date of sale despite a post-contract billing adjustment (*i.e.*, late delivery fee) that was established in the sales contact.[19] The Court stated that it sustained Commerce's determination in *Habas* because "the contractual nature of the late delivery fee meant that the material terms of sale had not changed."[20] Finally, the Court found that there was no evidence on the record that the material terms of Erdemir's home market sales remained negotiable or that "Erdemir's customers changed their minds and were accommodated by Erdemir."[21] Accordingly, the Court remanded Commerce's home market date of sale

[15] *See Final Determination* IDM at 26.
[16] *Id.*
[17] *See Remand Order* at 13-14.
[18] *Id.* at 15.
[19] *Id.*
[20] *Id.*
[21] *Id.* at 16.

determination for reconsideration or further explanation.[22]

4. Analysis

After reconsidering the record evidence regarding Erdemir's home market date of sale, we agree with Erdemir that the "click date" (*i.e.*, the acceptance date) of the *pro-forma* invoice date represents the proper date of sale for its home market sales. The CIT and Federal Circuit Court of Appeals have affirmed Commerce's use of delivery and payment terms in addition to price and quantity as material terms of sale in our date of sale analysis.[23] Regarding the payment terms of Erdemir's home market sales, the record shows that customers elect to pay cash or credited payment when they receive notice that the merchandise is ready is for pick up.[24] Although this payment option is selected after the "click date" of the *pro-forma* invoice, this option is already specified in the "Terms and Conditions," and agreed to by the parties at the date of issuance of the pro forma invoice.[25] Therefore, the payment terms of Erdemir's home market sales are established at the date of issuance of the *pro-forma* invoice and are not subject to change when the customer decides whether to pay by cash or credited payment.

Additionally, although the record shows that the late fee Erdemir charges its home market customers for an extension of credit (*i.e.*, reported in DIRCREDITH field) is established and finalized at the time of the home market sales invoice,[26] this does not reflect a change to the payment terms, but an enforcement mechanism of the "Terms and Conditions" contained in the sales contract. Accordingly, we have revised Erdemir's home market date of sale to the "click date" of the *pro-forma* invoice date because this represents the date when the material terms of

[22] *Id.*
[23] *See Sahaviriya*, 714 F. Supp. 2d at 1280; *aff'd*, 649 F.3d 1371 (Fed. Cir. 2011)
[24] *See* Erdemir's December 4, 2015 BQR at 28.
[25] *See* Erdemir's November 17, 2015 Section A Questionnaire Response (Erdemir's November 17, 2015 AQR) at 20-21 and Exhibit A-8.
[26] *See* Erdemir's December 4, 2015 Section B Questionnaire Response at 42.

sales are established.

B. Colakoglu's Request for a Duty Drawback Adjustment

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.[27] However, Commerce does not require that the imported material be traced directly from importation through exportation.[28]

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 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.[29] Notably, respondents

[27] *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; *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.
[28] *Id.*
[29] *See, e.g., Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed Cir. 2011); *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*); *Allied 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); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

bear the burden of establishing the support that both prongs of the test have been satisfied, and thus, their entitlement to a duty drawback adjustment is warranted.[30]

2. Background

In the *Final Determination*, Commerce determined that there was insufficient information on the record to determine whether Colakoglu qualified for a duty drawback adjustment.[31] Specifically, Commerce found that the documentation provided by Colakoglu failed to establish a link between the imported inputs and the duties exempted upon export because there was no evidence that the inputs subject to the Inward Processing Regime (IPR) were used to manufacture the exported subject merchandise.[32] Additionally, due to incomplete translations and the illegibility of some of the documents on the record, Commerce could not determine if the slabs imported by Colakoglu were the types of slabs necessary for the production of hot-rolled steel.[33] Commerce also found that Colakoglu's documents could not be tied to an official Turkish government source, and, therefore, did not substantiate Colakoglu's claim that the subject merchandise was exported to claim a drawback under the above-mentioned program.[34]

Furthermore, Commerce determined that even if it relied on the legible information contained in the worksheets provided in Exhibit SBC-13c, the worksheets could not be reconciled with the information in the IPR documents, submitted in Exhibit SBC-13a.[35] Commerce found that although Exhibit 13a and Exhibit 13c appeared to convey information regarding Colakoglu's imports of material inputs and exports of hot-rolled steel under the

[30] *See Allied Tube II*, 374 F. Supp. 2d at 1261.
[31] *See Final Determination* IDM at 5.
[32] *Id.* at 4-5.
[33] *Id.* at 5.
[34] *Id*.
[35] *Id.*

Turkish duty drawback program, there were notable discrepancies between the amounts reported in these documents for the relevant IPRs.[36]

Finally, Commerce disagreed with Colakoglu's argument that it should have issued another supplemental questionnaire with respect to Colakoglu's duty drawback questionnaire responses, or have accepted the information presented at verification for two primary reasons.[37] First, Colakoglu had ample opportunity to submit information needed to substantiate its duty drawback claim in its initial questionnaire response, supplemental Section C questionnaire response, and supplemental Section D questionnaire response, but failed to do so.[38] Second, the information Colakoglu attempted to provide at verification was too deficient to overcome the deficiencies of the information reported in its questionnaire response, and, thus, not capable of verification.[39]

3. <u>The Remand Order</u>

The Court found that Commerce failed to articulate a clear standard by which it determines whether the first prong of the two-prong test has been met, and that Commerce's reasons for determining that Colakoglu failed to qualify for a duty drawback adjustment were not supported by substantial evidence.[40] The Court stated that there is a "difference between demonstrating that imports are *used* to produce exports of subject merchandise, and demonstrating that imports *are suitable for producing subject merchandise*."[41] Therefore, the Court found that Commerce's analysis and citations to prior cases failed to apprise the Court of the standard it applied in this case and whether that standard was consistent with case

[36] *Id.*
[37] *Id.* at 7.
[38] *Id.*
[39] *Id.*
[40] *See Remand Order* at 28.
[41] *Id.* at 29.

precedent.[42] Additionally, the Court held that although a respondent has the burden of establishing its eligibility for a duty drawback adjustment, in accordance with section 782(d) of the Act, if Commerce identifies a deficiency in a party's response to a request for information, then Commerce must inform the party of the nature of the deficiency and, to the extent practicable, provide the party with an opportunity to remedy the deficiency.[43] The Court found that Commerce failed to meet the requirements of section 782(d) of the Act because, after identifying discrepancies in Colakoglu's questionnaire response regarding its request for a duty drawback adjustment, Commerce did not allow Colakoglu to explain or remedy the deficiencies.[44]

Additionally, the Court found that although Commerce referred to discrepancies in the quantities and values of the legible and translated portions of the IPR closing documents submitted by Colakoglu, Commerce failed to explain the materiality of these discrepancies, and how these discrepancies precluded Commerce from determining whether the imported merchandise could have been (or was) used to produce the subject merchandise.[45] Finally, the Court held that Commerce's refusal to verify Colakoglu's request for a duty drawback adjustment was based on Commerce's failure to adhere to its statutory obligation under section 782(d) of the Act of providing Colakoglu with an opportunity to remedy or otherwise address the deficiencies in its request for a duty drawback adjustment.[46] Accordingly, the Court remanded, for reconsideration, Commerce's denial of Colakoglu's request for a duty drawback adjustment.[47]

[42] *Id*. at 30.
[43] *Id.* at 31-32.
[44] *Id.* at 32-33.
[45] *Id.* at 34.
[46] *Id.* at 35-36.
[47] *Id*. at 36.

4. Analysis

In accordance with the Court's *Remand Order*, we requested additional information from Colakoglu regarding its participation in the Turkish government's duty drawback program in order to re-evaluate whether a duty drawback adjustment is warranted. Specifically, Commerce re-opened the record of the investigation to request additional information, as well as clarification of the information already on the record, regarding Colakoglu's participation in the duty drawback program.[48] Additionally, Commerce requested, and Colakoglu provided, legible and translated copies of the IPR documentation previously on the record, as well as additional information regarding how the Government of Turkey (GOT) monitors the company's participation in the duty drawback program.[49] Based on the information provided in Colakoglu's supplemental questionnaire response, Commerce is now able to perform the two-prong test to determine if the company qualifies for a duty drawback adjustment.

Commerce finds that Colakoglu meets the first prong of the test (*i.e*. that the import duty paid and the duty exemption are directly linked to, and dependent upon, one another), based on the information in its IPR permits, and subsequent correspondence received from the GOT. Specifically, the closing documents for IPR permit numbers 484, 2923, 3091, 4246, 4354, and 6400 issued by [

].[50] In addition, Commerce finds that Colakoglu meets the second prong (*i.e*. that there were sufficient import duties incurred for the imported raw material to account for the amount of the duty drawback received upon the export of the subject merchandise) based on the reported allowable usage/waste ratio as well as the closed IPR permit documents. Colakoglu explained in

[48] *See* Commerce's May 23, 2018 Supplemental Questionnaire.
[49] *See* Colakoglu's June 1, 2018 Remand SQR at 1-7 and Exhibits 1-6.
[50] *Id*. at Exhibit 5.

its supplemental response that the company's raw materials usage/waste ratios are determined by the Turkish Chambers and Exchanges Union (Turkiye Odalar ve Borsalar Birligi or TOBB) based on the company's production capacity.[51]

According to Colakoglu, the GOT relies on the TOBB capacity reports for each facility to determine accurate usage/waste ratios and to determine that the exports made are sufficient to account for all raw materials imported duty free. The TOBB calculated a [ ] percent usage/waste ratio for Colakoglu's production of hot-rolled steel from slab.[52] These TOBB reports are in turn submitted to the Turkish Ministry of Economy (MOE) and are accessible from the MOE's IPR system. Colakoglu then uses the MOE system to declare the quantity of imports it intends to use under its IPR permits, as well as the corresponding export commitment using the imported inputs. The MOE system only approves IPR permits if the import-to-export usage/waste ratios are equal to or less than the ratio in the applicants' capacity report. Colakoglu provided excerpts from the MOE system for its IPR permits showing raw material input usage as well as the corresponding usage/waste ratio.[53] This information confirms that the quantity of imported raw materials and the import duties incurred because of their importation account for amount of the duty drawback or exemption granted and, therefore, pass the second prong of our test.

Given that Colakoglu has satisfied the criteria set forth in the two-prong test, we are granting it a duty drawback adjustment consistent with Commerce's practice.[54] Under this methodology, Commerce has made an upward adjustment to Colakoglu's EP and CEP sales,

[51] *Id*. at 1.
[52] *Id*. at 2 and Exhibit 2.
[53] *Id*. at Exhibit 1.
[54] *See, e.g., Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014) and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (*Rebar 2013*).

based on the amount of the import duty that should have been imposed on the input and that was not collected on the export of the subject merchandise, by properly allocating the amount not collected to all production for the relevant period, based on the cost of the material inputs during the period of investigation (POI).[55] This ensures that the amount included in both sides of the comparison of EP or CEP with NV is equitable, *i.e.*, duty neutral, and consistent with the purpose of the adjustment as affirmed in *Saha Thai*.[56] Based on the clarification provided by Colakoglu in its supplemental response, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POI, including imputed import duty costs for imported material inputs which were exempted from import duties through the duty drawback program, properly accounts for the amount of import duties imposed, as required by section 772(c)(1)(B) of the Act.

C. Commerce's Rejection of Colakoglu's Corrections to International Ocean Freight Expenses Presented at Verification

1. Background

At the start of verification, Colakoglu presented revisions to its reported international ocean freight expenses, but Commerce refused to accept these corrections, finding that the corrections were not minor, and affected most of Colakoglu's U.S. sales.[57] Consequently, Commerce rejected Colakoglu's corrections, and did not include them as part of its verification findings.

Further, when verifying Colakoglu's international ocean freight expense calculation, Commerce identified no discrepancies with the ocean freight expense amounts paid, and was

[55] *See* Commerce Memorandum, "Redetermination Pursuant to Remand of Hot-Rolled Steel Products from the Republic of Turkey: Draft Remand Calculation Memorandum for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S.," (dated concurrently with this Remand) (Colakoglu Remand Calculation Memorandum).
[56] *See Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1344 (Fed. Cir. 2011) (*Saha Thai*).
[57] *See Final Determination* IDM at 10.

also able to verify the total amount of ocean freight in Colakoglu's books and records, which were based on actual freight invoices.[58] Therefore, in the *Final Determination*, Commerce relied on the international ocean freight expenses that Colakoglu reported in its section C questionnaire response, excluding the corrections that Colakoglu presented at verification.[59]

2. Remand Order

The Court held that Commerce's refusal at verification to accept corrections to Colakoglu's international ocean freight expenses was not supported by substantial evidence.[60] Specifically, the Court found that neither Commerce's Sales Verification Report nor its Issues and Decision Memorandum substantiated the nature of the corrections to Colakoglu's international ocean freight expenses, and only reiterated the basis for Commerce's rejection of the corrections.[61] The Court stated that "{a}lthough Commerce has discretion to reject substantial new factual information submitted after the deadline for submission of such information . . . the court must have some basis upon which to review Commerce's decision that the corrections were not minor."[62] Accordingly, the Court remanded, for reconsideration or further explanation, Commerce's rejection of the corrections to Colakoglu's international ocean freight expenses presented at verification.

3. Analysis

In light of the Court's remand instructions, Commerce requested additional information to re-evaluate whether the corrections that Colakoglu attempted to submit at verification would have resulted in minor corrections to its reported international ocean freight expenses.[63] In

[58] *Id.*
[59] *Id.*
[60] *See Remand Order* at 51.
[61] *Id.*
[62] *Id.*
[63] *See* Commerce May 23, 2018 Supplemental Questionnaire.

response to Commerce's supplemental questionnaire, Colakoglu explained that the personnel who reported ocean freight expenses in its initial and supplemental questionnaire responses reported the gross amount of the international freight charges. However, in preparation for verification, Colakoglu's legal advisors noted that certain international freight invoices had been discounted.[64] Specifically, Colakoglu stated that [ ] of its [ ] POI U.S. sales (encompassing [ ] out of a total [ ] metric tons) were affected by the ocean freight corrections at issue.[65] Colakoglu further stated that the discounts resulted in a decrease of international ocean freight expenses from [ ]USD to [ ]USD.[66] Additionally, Colakoglu noted that [ ] out of the total [ ] international ocean freight invoices paid during the POI were discounted by the ocean freight provider.[67]

Notably, in its sales verification agenda, submitted to Colakoglu prior to verification, Commerce stated that:

> New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.[68]

Commerce finds that Colakoglu's corrections to its international ocean freight expenses meet none of the criteria listed above. Specifically, the need for information regarding Colakoglu's international ocean freight expenses was apparent when Colakoglu submitted its initial section C questionnaire response. Additionally, the corrections impact over [ ] percent of its reported U.S. sales, and, thus, does not constitute a minor correction.[69] Although Colakoglu's

[64] *See* Colakoglu's June 1, 2018 Remand SQR at 8.
[65] *Id*.
[66] *Id*.
[67] *Id* at 8-9.
[68] *See* Commerce letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Verification Outline," dated March 28, 2016.
[69] *See* Colakoglu June 1, 2018 Remand SQR at 8.

total reported international ocean freight expenses would have only decreased from [ ]USD to [ ]USD, Commerce's conclusion that these corrections were not minor was based on the number of sales transactions impacted by the corrections, and the amount of new factual information Commerce would need to accept at verification to review the correction.[70] Furthermore, [ ] out of the total [ ] international ocean freight invoices paid during the POI were discounted by the ocean freight provider. This means more than 50% of the invoices individually contained mistakes.[71] Therefore, to completely verify Colakoglu's international freight corrections, Commerce determined that it would have needed to verify that the international freight discounts were correctly reported for [ ] of Colakoglu's [ ] POI U.S. sales.[72] Finally, these corrections do not corroborate, support, or clarify the information already on the record because the information contained in the corrections was part of the original information that Colakoglu should have reported as international ocean freight. Accordingly, in light of the additional information on the record regarding Colakoglu's proffered corrections to its international ocean freight expenses, Commerce continues to find that the corrections are not minor in nature, and were properly rejected at verification.

III. FINAL RESULTS

In accordance with the Court's *Remand Order*, we have reconsidered and, as discussed above, revised certain aspects of the estimated weighted-average dumping margins calculated for Erdemir and Colakoglu. Based on these changes, the estimated weighted-average dumping margins for Erdemir and Colakoglu for the POI, July 1, 2014, through June 30, 2015, for hot-rolled steel from Turkey are listed in the chart below. Given that the estimated weighted-average

[70] *Id*.
[71] *Id.*
[72] *Id.*

dumping margins for Erdemir and Colakoglu have been revised, we are also recalculating the "All Others" rate.

Exporter or Producer	Estimated Weighted-Average Dumping Margin from Final Determination (percent)	Estimated Weighted-Average Dumping Margin for Final Redetermination (percent)
Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S.[73]	6.77	5.70
Eregli Demir ve Celik Fabrikalari T.A.S./Iskenderun Demir Ve Celik[74]	4.15	2.73
All Others	6.41	5.29

IV. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

Issue 1: SAS Programming Error in Erdemir's Home Market Program

Erdemir's Comments

- Commerce added DIRCREDITH to home market price, but failed to set the value to zero for downstream sales.[75] Therefore, the downstream sales have missing net prices, and all of them fail the cost test.[76]
- Erdemir requests that Commerce correct this error in the final redetermination on remand.[77]

[73] As in the *Preliminary Determination*, the Department continues to find that Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. are a single entity. *See* "the "Affiliation and Collapsing" section of the Preliminary Decision Memorandum.
[74] As in the *Preliminary Determination*, the Department continues to find that Eregli Demir ve Celik Fabrikalari T.A.S. and Iskenderun Demir Ve Celik are a single entity. *See* the "Affiliation and Collapsing" section of the Preliminary Decision Memorandum.
[75] *See* Erdemir's July 10, 2018 letter, "Hot-Rolled Steel Flat Products from Turkey; Erdemir comments on draft results of redetermination on remand" (Erdemir's July 10, 2018 Draft Remand Comments).
[76] *Id.* at 1.
[77] *Id.*

Commerce's Position

For these *Final Remand Results*, we corrected the programming error with respect to DIRCREDITH for downstream sales.[78]

Issue 2: Erdemir's Date of Sale

The Petitioners' Comments

- Notwithstanding the Court's analysis, Commerce correctly determined in its final determination that the invoice date was the proper date of sale for Erdemir's home market sales.[79] Erdemir's terms and conditions for sales in the home market leave open a material term of sale, the payment terms, which are not finally established until after the customer selects one of the multiple payment options offered by Erdemir at the time of order.[80]
- Additionally, [

  ].[81] Therefore, the record supports a determination that the material terms of sale were not established by the "click date" or *pro-forma* invoice date.
- A determination that the material terms of sale were not finally established by the "click date" would be consistent with CIT precedent and the *Preamble* to Commerce's date of sale regulation.[82]
- Commerce should modify its Draft Remand Results to rely on the commercial invoice

[78] *See* Memorandum, "Final Results of Redetermination Pursuant to Remand of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Amended Final Calculation Memorandum for Eregli Demir ve Celik Fabrikalari T.A.S. and its Affiliates," dated concurrently with this memorandum.
[79] *See* the petitioners' July 10, 2018 letter, "Remand of the Original Investigation of Hot-Rolled Steel Flat Products from Turkey – Petitioners' Comments on the Department's Draft Results of Redetermination Pursuant to Remand" (The petitioners' July 10, 2018 Draft Remand Comments).
[80] *Id.* at 4.
[81] *Id.*, citing Erdemir's Sales Verification Report at Exhibits 7 and 9.
[82] *Id.*, citing *Seah Steel Corp. v. United States*, Ct. No. 04-00157, Slip Op. 01-20 at 11 (February 23, 2001) (*Seah Steel*); *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348 (May 19, 1997) (*Preamble*).

date as the date of sale for Erdemir's home market sales.[83]

Commerce's Position:

We have continued to treat the *pro-forma* invoice date as the date of sale for Erdemir's home market sales. The record demonstrates that customers select to pay from pre-designated cash or credit payment options when they receive notice that the merchandise is ready for pick up.[84] Although this payment option is selected after the "click date" of the *pro-forma* invoice, this option, as well as other possible payment options not selected by the customer, are already specified in the "Terms and Conditions," and agreed to by the parties at the date of the *pro forma* invoice.[85] Additionally, if the date on which the customer selects from among pre-established payment options is the time at which the payment terms are finally set and the date of sale is established, then the date on which a customer decides to pay for the merchandise would automatically be the date of sale. In the event that payment is made on credit, the sale date would then postdate the commercial invoice and shipment. Commerce finds such a definition of "payment terms" to be nonsensical.

Additionally, the petitioners' reliance on *Seah Steel* is unpersuasive. In *Seah Steel*, the respondent acknowledged that the payment terms changed after the contract date for one of its orders.[86] The petitioners are correct that certain [

]. However, given that this payment option is one of the payment terms, *i.e.*, cash (on the date of shipment) or credit (at some point in time after shipment), expressly permitted in the "Terms and Conditions" of the sales contract and *pro forma* invoice, the selection of cash or credit payment when the merchandise is ready is for pick up does not

[83] *See* the petitioners' July 10, 2018 Draft Remand Comments at 4-5.
[84] *See* Erdemir's December 4, 2015 BQR at 28.
[85] *See* Erdemir's November 17, 2015 Section A Questionnaire Response (Erdemir's November 17, 2015 AQR) at 20-21 and Exhibit A-8.
[86] *See Seah Steel*, 25 CIT at 134.

constitute a change to the payment terms and the material terms of sale after the "click date." Finally, regarding the petitioners' quote from the *Preamble*, that "in many industries, even though a buyer and seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoiced," [87] we note that the Court stated that "there is no evidence that terms remained negotiable or that Erdemir's customers changed their minds and were accommodated by Erdemir."[88]

Issue 3: Colakoglu's Duty Drawback Adjustment

The Petitioners' Comments

- Commerce's duty-neutral drawback adjustment for Colakoglu is consistent with its methodology used in *Wire Rod from Turkey*.[89]
- In accordance with section 772 of the Act, Commerce has wide discretion in developing a methodology to implement the statutory provision for making an adjustment to EP and CEP for 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.[90]
- If Commerce does not use its current approach and determines that "it must grant the full allowable amount of drawback as an upward adjustment to EP or CEP, it must make a circumstance-of-sale adjustment to normal value to ensure a duty-neutral comparison."[91]

[87] *See Preamble*, 62 FR at 27348.
[88] *See Remand Order* at 16.
[89] *See* Petitioners' Comments at 6-7, citing *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) and accompanying Issues and Decision Memorandum at 9-12 (*Wire Rod from Turkey*).
[90] *See* the petitioners' July 10, 2018 Draft Remand Comments at 8.
[91] *Id*. at 9.

Colakoglu's Comments

- Commerce erred by only granting a partial adjustment to U.S. price and allocating the adjustment over total production, contrary to section 772(c)(1)(B) of the Act.[92]
- The CIT and the Federal Circuit made clear that the entire amount of duty drawback granted is to be reflected in an increase to U.S. price and that NV remains unaffected.[93]
- The Federal Circuit has also affirmed that a duty drawback adjustment is causally related to exports and should thus only be allocated over U.S. sales.[94]
- The CIT found in both *Toscelik* and *Uttam* that allocating exempted import duties over total production is inconsistent with the statute because "allocating duty drawback to total production encompasses home market . . . sales, which could not earn duty drawback, and fails to adequately connect the adjustment to duties forgiven 'by reason of'. . . exportation to the United States."[95]

Commerce's Position:

We continue to find that the duty-neutral approach used in the Draft Remand Results is reasonable, satisfies the statutory requirement that U.S. prices be adjusted for the full amount of the duty drawback, and results in a duty-neutral comparison of EP or CEP with NV. As

[92] *See* Colakoglu's July 10, 2018 letter, "Hot Rolled Steel Flat Products from the Republic of Turkey: Colakoglu's Comments on Draft Results of Redetermination Pursuant to Remand" (Colakoglu's July 10, 2018 Draft Remand Comments).
[93] *Id*., citing *Rebar Trade Action Coal. v. United States*, Ct. No. 14-00268, 2016 WL 5122639, at *4, *10 (Sept. 21, 2016) (*Rebar Trade II*); *Saha Thai* 635 F.3d at 1342; *Wheatland Tube Co. v. United States*, 414 F. Supp. 2d 1271, 1288 (2006), *rev'd on other grounds* 495 F.3d 1355 (Fed. Cir. 2007), citing *Avesta Sheffield, Inc. v. United States*, 838 F. Supp. 608, 612 (1993); *ArcelorMittal USA Inc. v. United States*, Ct. No. 06-00085, Slip Op. 08-52 (May 15, 2008), citing *Mittal Steel USA, Inc. v. United States*, Ct. No. 05-00308, Slip Op. 07-117, 31 (August 1, 2007).
[94] *Id*., citing *Saha Thai* 635 F.3d at 1338.
[95] *Id.*, citing *Tosçelik Profil Ve Sac Endüstrisi A.S. v. United States*, Consol. Ct. 17-18, Slip Op. 18-66, at 12 (June 6, 2018); *Uttam Galva Steels Ltd. v. United States*, Consol. Ct. 16-162, Slip Op. 18-44, at 14 (April 18, 2018) (*Uttam*).

explained under the "Remanded Issues" section above and in Colakoglu's Remand Calculation Memorandum, we calculated Colakoglu's duty drawback adjustment based on the total amount of import duties imposed on its input imports during the POI, for which the import duty liability had been extinguished (*i.e.*, exempted) by the closing of the IPR certificates during the POI.[96] These import duties formed the basis for our duty drawback adjustments to U.S. price and normal value (NV).[97] In the Draft Remand Results, the total amount of the exempted duties, which equals the total amount of duty drawback, was then divided by the aggregated, POI total cost of manufacture (RTOTCOM) for hot-rolled steel products.[98] This rate was then multiplied by the total cost of manufacture for each product control number (CONNUM) in order to calculate the amount of imputed import duties. This amount was then included in the total cost of production because Colakoglu did not include import duties in its books and records since the IPR scheme is an exempted duty drawback program. Finally, the EP or CEP was adjusted by the amount of the drawback adjustment reported by Colakoglu, but limited by the amount of the import duties included in the COP of the subject merchandise.

Contrary to Colakoglu's argument that section 772(c)(1)(B) of the Act requires Commerce to allocate the amount of duty drawback over total exports, the statute is silent regarding how the adjustment for duty drawback is to be calculated. When a respondent uses a mix of imported and domestic inputs (as Colakoglu does), Commerce's allocation methodology is a reasonable exercise of its discretion, fulfilling the statutory purpose of calculating an accurate, tax neutral, dumping margin.[99] If Congress had intended to limit Commerce's discretion in performing the EP/CEP duty drawback calculation, as Colakoglu contends,[100] the

[96] *See* Colakoglu's Remand Calculation Memorandum at 2.
[97] *Id*. at 3.
[98] *Id*.
[99] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.* 467 U.S. 837, 843 (1984).
[100] *See* Colakoglu's July 10, 2018 Draft Remand Comments at 2-10.

statute would have explicitly stated how to calculate the amount that the EP/CEP shall be increased to account for the amount of duty rebated or not collected by reason of exportation of the subject merchandise. However, section 772(c)(1)(B) of the Act does not contain such explicit guidelines.

Commerce agrees with Colakoglu that the existence of duty drawback is caused by the importation of an input for the production of the subject merchandise. This is the first prong of Commerce's two-prong test to establish whether an adjustment for duty drawback is warranted. As described above, Commerce has found that Colakoglu has satisfied both prongs of this test.

We disagree, however, with Colakoglu's reliance on *Toscelik* and *Uttam* to support its claim that Commerce should not include costs in the denominator to calculate its duty drawback adjustment. First, those decisions failed to acknowledge that the statute is silent on the issue of the allocation of duties. As a result, we respectfully disagree with those decisions, and we maintain, as described above, that Commerce's duty drawback calculation methodology is based on a permissible construction of the statute.[101] Under Commerce's normal costing methodology, the cost to produce a given product is exactly the same, regardless of whether the product is sold domestically or is exported. Further, in *Uttam*, the Court incorrectly limited the applicability of the *Saha Thai* holding to the facts of that case. Although *Saha Thai* did not address an adjustment to the denominator of the EP/CEP side of the equation, the "matching" or tax neutrality principle that the Court discussed applies equally to Commerce's duty neutral methodology.[102] Moreover, Commerce's application of the premise articulated in *Saha Thai* in its current methodology accords with the basic principle of the antidumping statute that "a fair comparison shall be made between the export price or constructed export price and normal

[101] *See Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1346-47 (Fed. Cir. 2017).
[102] *See Saha Thai* 635 F.3d at 1342-43.

value."[103] Thus, Commerce continues to use this duty-neutral approach to account for the Turkish duty drawback system.

Issue 4: Commerce's Continued Rejection of Colakoglu's Corrections to International Ocean Freight Expenses

The Petitioners' Comments

- Colakolgu's responses to Commerce's questions concerning the (1) number of transactions, (2) volume of sales, and (3) percentage of international freight invoices and providers that were affected by the corrections to its international ocean freight expenses supports Commerce's determination that the corrections were not minor.[104]

Colakoglu's Comments

- Commerce continues to mischaracterize the nature of the ocean freight discounts and their effect on reported U.S. sales because these discounts represent [ ] percent of the total freight costs and less than [ ] percent of total U.S. sales value, and are, by definition "minor."[105]
- Commerce has accepted new information when "the information makes minor corrections to information already on the record," and the corrections at issue meet this standard.[106]
- Commerce accepted every correction that increased the margin, but refuses to accept a correction that would reduce the margin.[107]

[103] *See* section 773 of the Act.
[104] *See* Petitioners' July 10, 2018 Draft Remand Comments at 9.
[105] *See* Colakoglu's July 10, 2018 Draft Remand Comments at 9.
[106] *Id.* citing *CITIC Trading Co., Ltd. v. United States*, Ct. No. 01-00901, Slip Op. 03-23 (March 4, 2003) (*CITIC Trading Co*).
[107] *Id.*

Commerce's Position:

We continue to find that Colakoglu's corrections to international ocean freight are not minor. Even though Colakoglu argues that the corrections are minor because they represent [ ] percent of the total freight costs and less than [ ] percent of total U.S. sales value, the fact remains that in order to implement these corrections, Commerce would need to ascertain which of the [ ] corrected invoices affected each of the [ ] POI sales.

Additionally, Commerce applied the same standard to each correction presented by Colakoglu at verification, without considering whether the correction had the potential to increase or decrease Colakoglu's estimated weighted-average dumping margin. Furthermore, unlike in *CITIC Trading Co.*, Commerce did not determine to apply facts available, with an adverse inference, for Colakoglu's failure to report information regarding its international freight expenses.[108] Instead, Commerce relied on the international freight expenses Colakoglu reported in its questionnaire response, and during verification Commerce reconciled the reported information with Colakoglu's books and records.[109]

7/20/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
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performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[108] *See CITIC Trading Co.*, 2003 WL 158709 at *12.
[109] *See* Final Determination IDM at 10.