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Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States
Court No. 05-00613 Slip Op. 09-55 (CIT June 15, 2009)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand order from the Court of International Trade (the Court) in Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 09-55 (June 15, 2009) (Habas II). In the remand order, the Court remanded to the Department the issue of the appropriate cost averaging period in the calculations performed for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas). Specifically, the Court directed the Department to reanalyze whether it is appropriate to use quarterly or review-period average costs for Habas in this case, and in so doing to "clarify, clearly articulate, and properly explain and support whatever methodologies, tests, or standards it determines to be applicable to evaluate the relationship between quarterly costs and sales prices in this case."

In accordance with the remand order, the Department has analyzed the issue of using Habas' quarterly costs in its dumping margin calculations. As a result, we have recalculated the margin for Habas using its quarterly cost data.

B. BACKGROUND

On June 15, 2009, the Court remanded to the Department its final results in the 2003-2004 antidumping duty administrative review on certain steel concrete reinforcing bars (rebar) from Turkey. See Habas II, Slip Op. 09-55; Certain Steel Concrete Reinforcing Bars From

Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (Nov. 8, 2005), and accompanying Issues and Decision Memorandum (Final Results). The antidumping duty order in this proceeding was published in the Federal Register on April 17, 1997. See Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 18748 (April 17, 1997). The period of review (POR) covers the period April 1, 2003, to March 31, 2004.

In its remand order, the Court directed the Department to "clarify, clearly articulate, and properly explain and support whatever methodologies, tests, or standards it determines to be applicable to evaluate the relationship between quarterly costs and sales prices in this case (weighing, *inter alia*, Habas' arguments here, the agency's past practice, and any other appropriate considerations and developments), and to apply those methodologies, tests, or standards to the evidence herein (fully articulating the rationale for its determination and supporting it with substantial evidence in the record)." See Habas II at 55.

Pursuant to the Court's remand instructions, we have analyzed the information on the record of this administrative review, reconsidered that information in light of developments in recent Department determinations and concluded that it is appropriate to use quarterly-average costs for Habas in this case. Thus, for purpose of this remand redetermination, we have recalculated Habas' dumping margin using Habas' quarterly costs.

C. ANALYSIS

The matter at issue for purposes of this remand redetermination is the Department's calculation of Habas' cost of production (COP). Habas argued in its Brief to the Court, as it did in the underlying administrative review, that its costs should be calculated on a quarterly-average basis, rather than a single average POR COP. In the Final Results, the Department calculated a single average cost for the POR. Habas argued that this created a mismatch between sales and costs which distorted the comparisons between U.S. prices and normal value (NV). Habas stated that when the COP was calculated on a POR-average basis, the surge in scrap costs in the fourth quarter of the POR significantly increased the COP when compared to a first and second quarter average cost.

a. The Department's Established Practice Is To Calculate a Respondent's COP on an Annual Basis

It is the Department's practice to normally calculate a respondent's COP on an annual average basis. The calculation of COP is relevant in determining which sales of merchandise in the foreign market will be used to compare to sales in the U.S. market to determine dumping margins. Pursuant to section 771(34) of the Act, dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the NV of the merchandise. Section 771(35)(A) of the Act defines the dumping margin as the amount by which the NV exceeds the export price (EP) or constructed export price (CEP) of the subject merchandise. In calculating NV, the Department will consider only those sales in the comparison market that are in the "ordinary course of trade." Generally, sales are in the "ordinary course of trade" if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. See section 771(15) of the Act.

Sales disregarded under section 773(b)(1) of the Act are defined by section 771(15)(A) of the Act as outside the "ordinary course of trade." Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as:

> an amount equal to the sum of –
>
> (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;
>
> (B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and
>
> (C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

As can be seen above, the Act does not dictate the method of calculating COP during the POR, nor does it provide a definition for the term "period" in calculating COP. The Department has, therefore, adopted a consistent and predictable approach in using annual-average costs over the entire POR - the result being a normalized, average production cost to be compared to sales prices covering the same extended period of time. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations). See also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (Sept. 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). As the Department explained in those cases, the result of this approach normally evens out swings in production costs that a respondent may have experienced over short periods (i.e., months or quarters) of time.

Moreover, the Department prefers to calculate costs on an annual weighted-average basis in an antidumping context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons contrary to Department preference. Therefore, the Department's standard questionnaire requests that respondents report their costs on an annual-average basis over the entire POR. See, e.g., Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, (collectively Pasta from Italy) and Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (collectively Wire Rod from Canada) (where the Department explains its practice of computing a single weighted-average cost for the entire period).

b. The Department Practice When Deviating from the Normal Annual Average Cost Methodology

As the Court noted in its decision, the Department has nonetheless departed from its normal annual average COP methodology in a limited number of past cases. See Habas II at 11. The Department has articulated in those past proceedings that the use of an alternative cost averaging period may be appropriate in situations where reliance on our normal annual weighted- average cost methodology would be distortive due to significant cost changes. These situations include high inflation and raw material cost volatility. See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (Nov. 7, 2001); and Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands, 65 FR 742, 746-748 (Jan. 6, 2000) (Brass Sheet & Strip from the Netherlands). As directed by the Court, the Department has therefore taken into consideration those past determinations and other appropriate considerations and developments when reevaluating the record evidence of this case. See Habas II at 55.

In several recent cases, the Department considered whether to deviate from our normal annual average cost methodology due to significant changes in the COM throughout the cost reporting period. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218 (Nov. 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (Rebar from Turkey); Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398, 75399 (Dec. 11, 2008), and accompanying Issues and Decisions Memorandum at Comment 4 (SSPC from Belgium); Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (Feb. 9, 2009), and accompanying Issues and Decisions Memorandum at Comment 5 (SSSSC from Mexico); and Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31242 (June 30, 2009), and accompanying Issues and Decisions Memorandum at Comment 1 (SS Pipe from Korea). The Department recognized in each of those decisions the importance of having a consistent and definitive approach to analyzing significant changes in the COM during the cost reporting period and determining when to deviate from its normal annual average cost methodology. Accordingly, the Department refined its methodology for determining when the use of shorter cost averaging periods would be more appropriate than the established practice of using annual cost averages, due to the occurrence of significant cost changes throughout the period of investigation (POI) or review.

To assure that it considered all the various challenges such a refinement might entail, on May 9, 2008, the Department solicited comments on this issue from the public with the explicit caveat that it would continue to regard its practice of using annual cost averages in proceedings as generally the most appropriate methodology, deviating from this practice only under limited, unusual circumstances. See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364, 26366 (May 9, 2008) (Quarterly Request for Comment). In its request for comment, the Department noted the potential distortion caused by periods of significant cost changes under the agency's normal practice, but also acknowledged that relying on shorter cost reporting periods might be distortive as well and result in an average cost that does not relate to the sales that occurred during the same shorter period. In light of these competing considerations, the Department invited the public to comment and provide suggestions on the factors to consider, tests to apply, and thresholds to apply when deciding whether to rely on cost averaging periods of less than one year. The Department received comments from nine parties on June 23, 2008, and considered this input in refining its methodology in Rebar from Turkey, SSSSC from Mexico, SSPC from Belgium, and SS Pipe from Korea.

In the various determinations listed above, the Department reaffirmed that the two most important factors in considering whether to deviate from our normal average cost methodology was 1) whether the cost changes throughout the POI or POR were significant, and 2) whether sales during the shorter cost averaging period could be reasonably linked with the COP during the same averaging period. As explained further below, we have applied the same standards to this remand as in Rebar from Turkey, SSSSC from Mexico, SSPC from Belgium, and SS Pipe from Korea. The only difference between our past practice and the approach taken in these recent decisions is that in these decisions we more clearly defined the significance and linkage thresholds. As a result, pursuant to the Court's direction, we have addressed the various factors considered by the Department in determining to use a shorter cost averaging period in this case.

1. Significance of Cost Changes

The Court directed the Department to reconsider on remand the substantive merits of its determination of whether the cost changes throughout the POR were significant. See Habas II at 36. In SSSSC from Mexico, SSPC from Belgium, Rebar from Turkey, and SS Pipe from Korea, we established a threshold of a 25 percent change in COM from the low cost quarter to the high cost quarter. In other words, the Department concluded that the threshold for when the change in production costs is significant enough to consider deviating from the agency's normal annual average cost methodology is 25 percent.

This particular percentage amount was determined appropriate in light of the Department's long-standing practice for high inflationary economies. In high inflation cases, the Department has established a threshold of 25 percent annual inflation which is used to determine when the Department deviates from its normal methodology of calculating an annual weighted-average cost. This threshold is based upon generally accepted accounting standards set forth in International Accounting Standard (IAS) 29, an International Financial Reporting Standard (IFRS). IAS 29 provides that an entity should depart from IFRS accounting standards and adopt an alternative methodology when the existing methodology (i.e., historical costing) will result in distortions. Under IAS 29, an economy is considered hyperinflationary if the cumulative inflation rate over three years approaches or exceeds 100 percent. Approaching or exceeding 100 percent inflation over a three year period equates to approximately a 25 percent annual inflation rate. If the annualized rate of inflation exceeds 25 percent, to be consistent with IAS 29, the Department will determine that the associated country experienced high inflation during the POI or POR and will resort to an alternative cost averaging methodology in order to avoid the distortive effect of inflation on our comparison of costs and prices.[1]

The distortive impact of high inflation on our normal annual weighted-average cost calculation methodology is similar to that resulting from a significant change in costs. The primary difference is that in high inflationary economies, many COM cost components typically rise from month to month whereas in non-high inflationary economies, significant cost changes are usually driven by one or two main inputs. For high inflation situations, we expect production costs and prices for all products generally to increase significantly. Thus, we are able to look to a published index like the producer price index (PPI) or wholesale price index (WPI), specific to a country, in quantifying the degree of currency devaluation over a given period, and can make a threshold decision for the company as a whole. When the significant cost change is driven by one or two main inputs, the extent to which production costs change may vary widely from product to product because each product typically requires different quantities of a given input. As such, the cost change should normally be analyzed on a product-specific basis. Furthermore, in high inflationary situations, the PPI or the WPI typically trend upward. Thus, calculating the percent increase in the index from the beginning to the end of the POI/POR provides a good

[1] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73169-73171 (Dec. 29, 1999); Silicomaganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (Mar. 24, 2004), and accompanying Issues and Decision Memorandum at Comment 4 (Silicomanganese from Brazil); Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47876, 47878 (Aug. 6, 2004), unchanged in Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review, 70 FR 6834 (Feb. 9, 2005); Certain Steel Concrete Reinforcing Bar from Turkey; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 73 FR 66218 (Nov. 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2; and Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390 (Apr. 13, 2004), unchanged in Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (Sept. 2, 2004).

measure of the magnitude of change during the period. In the situation where significant cost change is driven by one or two main inputs, the cost of the inputs driving the change may be increasing, decreasing, or trending in both directions throughout the period. Even though the change in costs from the beginning to the end of the POI/POR may not be significant, the change within the period may be significant.

Recognizing the similarities of the impact of high inflation and significant cost changes due to one or two main inputs on the cost-based antidumping computations, and taking into account the above noted differences between the two situations, we refined our methodology to measure the cost change and significance threshold. See SSPC from Belgium at Comment 4, Rebar from Turkey at Comment 2, SSSSC from Mexico at Comment 5, and SS Pipe from Korea at Comment 1. In determining whether the change in production costs is significant, we analyzed, on a product-specific basis, the extent to which each COM changed during the POR. We did this by analyzing, on a control number- (CONNUM-) specific basis, the percentage difference between the low quarterly-average COM and the high quarterly-average COM, as a percentage of the low quarterly-average COM. Thus, under the Department's refined methodology, if the percentage difference exceeds 25 percent, we will normally consider the significant cost change threshold to be met. Also, consistent with our approach in SSPC from Belgium, Rebar from Turkey, SSSSC from Mexico, and SS Pipe from Korea we have analyzed for Habas the difference in COM for the five most frequently sold CONNUMs in the home market for purposes of this remand redetermination. Based on our analysis, we found that the difference between the low quarterly average COM and the high quarterly average COM exceeded the 25 percent threshold. See Memorandum from Gina Lee to Neal Halper, Adjustments to the Cost of Production and Constructed Value Pursuant to the Second Remand

Redetermination – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S., August 19, 2009 (Remand Cost Calculation Memo). We acknowledge that in the Final Results of this case, we analyzed cost changes by comparing the quarterly averages to the annual average cost in order to establish whether such changes were significant. However, as explained above, our practice has been refined since the Final Results, and we have since adopted a high-to-low quarter approach that more closely follows our high inflation methodology and the related 25 percent threshold.

2. Linkage Between Costs and Sales Prices

The Court also directed the Department to explain and support its analysis evaluating the relationship between quarterly costs and sales prices with respect to Habas' transactions and the Department's seemingly inconsistent tests for linkage in past cases. See Habas II at 55 and 43, n. 24. Normally, if the Department finds changes in costs to be significant in a given investigation or administrative review, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POI or POR. In three recent determinations the Department explained that its definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company. See SSPC from Belgium at Comment 4, SSSSC from Mexico at Comment 5, and SS Pipe from Korea at Comment 1. Being able to reasonably link sales prices and costs during a shorter cost period is an important factor for the Department to consider in deciding whether to depart from its normal annual average cost methodology.

A review of past Department determinations reveals that the Department has approached its consideration of linkage between sales and costs in various ways and to varying levels of precision. In Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 and 8925-8926 (Feb. 23, 1998) (SRAMs from Taiwan), for example, we did not require any linkage between price and costs but rather agreed with the parties that because both price and costs consistently trended downward due to expected technological advancements, we would use quarterly data. However, in Brass Sheet & Strip from the Netherlands, we examined the correlation between sales prices and cost during the shorter cost averaging periods and found that the information on the record revealed that the sales prices and costs for the subject merchandise correspondingly and consistently changed during the POR. See Brass Sheet and Strip from the Netherlands, 65 FR at 746-48. We found in this case that the sales prices and costs were directly linked because the respondent purchased the raw material input on the customer's behalf and then billed the customer for the cost of the metals, the terms of which were set forth on the finished products' sales invoice along with the associated processing costs as a separate item describing this factual situation as a pass-through. Id. Thus, a review of past determinations reveals that the Department has accepted varying degrees of correlation between sales and costs.

In recent cases, such as SSSSC from Mexico and SSPC from Belgium, we found reasonable linkage due to the fact that the companies operated using an alloy surcharge mechanism. That is, they made sales with a provision that allowed them to pass on any increase in the cost of their main inputs to their customers. See SSSSC from Mexico at Comment 5 and SSPC from Belgium at Comment 4. Habas, unlike the respondents in SSPC from Belgium and SSSSC from Mexico, does not have an alloy surcharge mechanism in place. Therefore, we looked to other correlative elements to determine whether sales and costs were reasonably linked.

There is no requirement of direct traceability between specific sales and their specific production costs to prove linkage in the Department's practice. Correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales data, inventory turnover ratios, price and cost trend analysis, and pricing mechanisms used in the normal course of business (e.g., surcharges, raw material pass through devices). In other words, for the Department to find linkage in a given case depends highly on the facts of the record before the agency.

For this remand redetermination, the Department analyzed a comparison, by quarter, of the weighted-average sales prices for Habas' five most frequently sold CONNUMs in the home market and the weighted-average direct material costs (i.e., steel scrap input). This analysis revealed that, with the exception noted below, the changes in quarterly prices trended consistently with the change in quarterly costs. The analysis in the Remand Cost Calculation Memo compiles the data for the four quarters of the POR and shows the relative trend of the sales prices and the material costs. For four of the five CONNUMs examined, we found that when the average quarterly material costs increased, the average quarterly price increased, and when the average quarterly material costs decreased, the average quarterly price decreased. For the other CONNUM, prices and costs either increased or decreased together from quarter to quarter, with the exception of one instance where prices and costs moved in opposite directions across two quarters of the POR. As our concern is whether there is a reasonable correlation that can be found between trends in material costs and sales prices, these charts depict that there is indeed such a correlation during the POR.

In addition, the Department considered another factor for purposes of determining if sufficient evidence of linkage existed for Habas, the inventory turnover period for raw material inputs and finished goods. Habas submitted its average overall POR inventory turnover for raw material inputs (i.e., billets) and for finished goods (i.e., rebar). See Memorandum to the File; re: Habas' February 1, 2008 comments on the Draft Results of Redetermination pursuant to the (first) Court Remand in Habas vs. United States (August 18, 2009) (the information appears on page 24 of Habas' comments). The short average raw material inventory turnover period shows that Habas purchases its inputs relatively frequently and uses it in the production of merchandise under consideration also relatively quickly. The short finished goods inventory turnover period tells us that Habas also sells its production in a small amount of time, and, therefore, costs in the quarter are reasonably representative of the sales that occurred within the same quarter. Habas' quick inventory turnover allows Habas to revise its prices in response to the highly volatile material costs and allows current costs to be reflected quickly in its COM. In summary, these correlative elements, taken together, are sufficient to establish a reasonable link between the changes in Habas' COM and the changes in sales prices.

3. The Elimination of the Window Period for Price-to-Price Comparisons

For the antidumping duty margin recalculation in this remand redetermination, we have eliminated the window period sales for price-to-price comparisons. We have done this because the Department's use of a shorter cost averaging period without elimination of the window period would result in further distortions of Habas' antidumping calculations. We have made this change because it is an integral part of the Department's refined shorter cost averaging period methodology and an integral part of our response to the Court's order to fully articulate the rationale for our redetermination. See Habas II at 55. See also SS Pipe from Korea at Comment 1, where this issue was fully addressed by the Department.

In administrative reviews, the Department generally bases NV for the POR on monthly weighted-average prices and compares them to individual EPs or CEPs. See 19 CFR 351.414(c)(2). Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted-average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the "90/60" day contemporaneity guideline, and is codified in the Department's regulations at 19 CFR 351.414(e)(2). Where costs and prices are changing significantly due to high inflation, the Department has in the past eliminated the "90/60" day window period and limited comparisons of U.S. price to home market sales made during the same month in which the U.S. sale occurred (i.e., the sales "contemporaneity" period was modified to conform with the shortened cost averaging period). See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067, 69071 (Dec. 31, 1996), (wherein the Department reasoned that such a methodology minimized the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales). See also Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42946, 42505-42506 (Aug. 7, 1997).

In this remand we have determined that the changes in Habas' COM throughout the POR due to fluctuating raw material input prices are significant enough to depart from our normal annual average costing methodology. As in inflationary economies, these significant changes in costs lead to distortions in the Department's sales-below-cost test, as well in the overall margin calculation when our normal methodologies are used. When significant cost changes have occurred during the POR, these same conditions are accompanied by changes in prices as the market reacts to changing economic conditions. In this situation, we find that price-to-price comparisons should be made over a shorter period of time to lessen the distortive effects of changes in sales prices which result from significant changes in costs. See SS Pipe from Korea at Comment 1. In other words, we find that using a 90/60 day window period may either understate or overstate margins simply due to the timing of price comparisons.

U.S. sales should be compared with contemporaneous NVs in the ordinary course of trade which have been established in the sales-below-cost test. We note that, although 19 CFR 351.414(d)(3) is applicable to the average-to-average methodology, we find that the principle pertaining to the use of a shorter period for averages is relevant to the average-to-transaction method for purposes of the averaging aspect of that methodology. Accordingly, we find that it is appropriate in this case to match sales only within the same period (i.e., quarter) as the shortened cost period. Further, we maintain here the average-to-transaction preference for matches within the "month during which the particular U.S. sale under consideration was made." 19 CFR 351.414(e)(2)(i).

Comparing U.S. sales to NVs outside the quarter would result in comparisons with NVs that are not reflective of market conditions at the time of the U.S. sale in that the NVs would not reflect the increasing or decreasing prices due to the significant changes in costs. While minor price fluctuations are normal and do not typically have a significant effect on our price comparisons and subsequently calculated margins, substantial changes in costs and prices as evidenced in this case can lead to distorted results when margins are calculated on noncontemporaneous price comparisons. Id. Since we have recognized significant cost changes have occurred during the POR which have led us to depart from our normal annual average cost methodology to limit the distortion, these same conditions have led to changes in prices as the market reacts to the changing economic conditions. Moreover, the limitation of price-to-price comparisons to the same quarter not only lessens the distortive effects of comparing U.S. sales prices with NVs that are not reflective of market conditions when the U.S. sales are made, but it also ensures that any difference-in-merchandise adjustments[2] for comparisons of non-identical products are calculated based on variable manufacturing costs (which include costs attributable to the significantly changing material input) from the same quarter.

Accordingly, we have determined it appropriate to make price-to-price comparisons over a shorter period of time to lessen the distortive effect of the significantly changing costs. We have not made comparisons outside of a quarter for the remand because of our above-noted concerns regarding the calculation of difference-in-merchandise adjustments and the fact that significant costs changes are typically accompanied by significant price changes.

4. The Cost Recovery Test

For the antidumping duty margin recalculation, we have also adopted an alternative methodology for the recovery-of-cost test that we determine complies with the statute's weighted-average costs requirements while taking into account the distortive effect of significant cost changes. We have done this because the Department's use of a shorter cost averaging period without the adoption of an alternative methodology for the recovery of cost test would result in further distortions of Habas' antidumping calculations. We have made this change because it is an integral part of the Department's refined shorter cost averaging period

[2] When comparing a U.S. sale with a foreign market sale that does not have the same physical characteristics, the Department makes an adjustment to NV to account for differences in variable costs associated with the physical differences. See CFR 351.411(a) and (b).

methodology and an integral part of our response to the Court's order to fully articulate the rationale for our redetermination. See Habas II at 55. See also SSSSC from Mexico at Comment 4 and SS Pipe from Korea at Comment 1 (where this issue was fully addressed by the Department once the Department elected to apply the 25 percent threshold). Section 773(b) of the Act provides that sales may be disregarded in the determination of NV if those sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Section 773(b)(2)(D) of the Act further defines the recovery-of-cost requirement by stating that if prices which are below the per-unit COP at the time of the sale (i.e., sales below cost) are above the weighted-average per-unit COP for the POI or POR, such prices shall be considered to provide for the recovery of costs within a reasonable period of time (i.e., the recovery of cost test). In performing the sales-below-cost and recovery-of-cost tests in situations where the COM is changing significantly throughout the cost reporting period, it is important to adopt an approach that addresses the distortive impact that a significantly changing COM has on the annual average cost calculation in order to achieve a fair and reasonable result. See SSSSC from Mexico at Comment 4 and SS Pipe from Korea at Comment 1. In this case, we have determined that the changes in Habas' COM throughout the POR are significant and have therefore departed from the use of our normal annual average cost methodology in conducting the sales-below-cost test. As to the recovery-of-cost test, we have adopted an alternative methodology that we determine complies with the statute's weighted-average costs requirements while taking into account the distortive effect of significant cost changes.

As discussed above, the Department has determined for purposes of the sales-below-cost test in this case that the use of an alternative cost averaging method is appropriate due to the significant changes in COM during the POR. We find that indexing the significantly changing raw material costs to a common end-of-period cost level, calculating a POR-specific weighted-average material cost for Habas, and then indexing the weighted-average annual per-unit cost for the input to the appropriate period (similar to the Department's high inflation methodology), addresses the statute's requirement of weighted-average costs for the period (i.e., recovery of cost test) while preserving the indexed differences between quarters and the end of the period resulting from the significant price level changes. See SSSSC from Mexico at Comment 4 and SS Pipe from Korea at Comment 1.

The purpose of section 773(b)(2)(D) of the Act is to allow for the recovery of costs in a reasonable period of time for those sales which were made below cost at the time of sale. Normally, the calculation of an annual weighted-average per-unit cost for the cost period smoothes out any non-significant variations in costs that may occur during the course of the cost period. As long as the producer's or exporter's sales price is above that annual weighted-average per-unit cost, the costs are considered to be recovered. In other words, the sales prices account for non-significant fluctuations in costs throughout the cost reporting period.

In the Department's calculation for Habas on remand, however, the calculation of an unadjusted annual weighted-average per-unit cost would not smooth out the fluctuations in costs to provide for cost recovery but would rather result in significant distortions in the application of the cost recovery test. Habas' raw material costs in this case changed significantly throughout the cost period. The Department has, therefore, based the sales-below-cost test on an alternative cost-averaging method which takes into consideration only those raw material cost fluctuations that occur within a particular quarter. If the Department were to then use an unadjusted weighted-average per-unit cost for the POR for purposes of the cost recovery test, sales prices which were determined to be below cost may be erroneously considered to have recovered costs based simply on the timing of the sale. For example, a sale that occurred in the last quarter of the POR that failed the cost test based on the alternative cost-averaging method would pass the cost recovery test because lower costs from the beginning of the period offset the higher costs at the end of the period in the unadjusted annual cost calculation. In light of the possible distortions that may arise in using unadjusted annual average costs for cost recovery purposes, we have adopted a POR-specific average cost calculation approach for the cost recovery test that incorporated an indexing methodology in order to adjust for the distortive effects the significant change raw material costs would have on the calculations. See SSSSC from Mexico at Comment 4 and SS Pipe from Korea at Comment 1. Likewise, the Department has adopted the same approach in this remand. The Department finds that this approach satisfies the requirements set forth in section 773(b)(2)(D) of the Act and fully addresses the Court's direction to fully articulate the rationale for our redetermination. See Habas II at 55.

D. COMMENTS

On August 19, 2009, we released the Draft Remand Results to the parties to this proceeding for comment. Comments on the Draft Remand Results were received from the domestic interested parties on August 25, 2009. Habas submitted rebuttal comments on August 26, 2009. The Department has addressed these comments below.

Comment 1: Deviation from an Annual Cost Averaging Methodology

Domestic Interested Parties' Arguments

The domestic interested parties dispute the Department's use of quarterly cost averaging periods to calculate Habas' COP. Citing SS Pipe from Korea at Comment 1 and Quarterly

Request for Comment, 73 FR at 26366, the domestic interested parties point out that the Department, since it began to develop a refined test for the use of alternative cost averaging periods, has clearly articulated its preference for calculating the COP on an annual average basis. For example, the domestic interested parties note that in its Quarterly Request for Comment, the Department stated that "we continue to regard our practice of using annual cost averages in proceedings as generally the most appropriate methodology." See Quarterly Request for Comment, 73 FR at 26366. Moreover, the domestic interested parties argue that in SS Pipe from Korea at Comment 1, the Department confirmed its preference for the calculation of an annual weighted-average COP, and defined the following factors that would justify deviating from an annual cost averaging period: 1) cost changes during the period that were significant; and 2) sales during the shorter cost averaging period that could be reasonably linked with the COP during the same averaging period.

With regard to the second factor, the domestic interested parties recognize that the Department has explained that linkage between costs and sales may rely on certain elements that would indicate a reasonable correlation between the two and does not require direct traceability between sales prices and costs. However, the domestic interested parties argue that "*no* such correlative elements exist in this case." See domestic interested parties' August 25, 2009, Comments at 2 (emphasis added). The domestic interested parties assert that the Department recognized that correlative elements could be "measured in a number of ways depending on the associate industry, the overall production process, inventory tracking systems, company-specific sales data, inventory turnover ratios, price and cost-trend analysis, and price mechanisms used in the normal course of business." See SS Pipe from Korea at Comment 1. The domestic interested parties contend that the Department's Draft Remand Results analysis only compares prices and costs over time, and that the Department's linkage determination requires more of an analysis. According to the domestic interested parties, the Department should look to the other correlative elements discussed in SS Pipe from Korea to determine whether sales prices and costs are reasonably linked. The domestic interested parties further note that the Department has relied on a variety of other factors in other administrative reviews to establish linkage, including technological advancements, direct pass-through of costs to customers through requiring customers to purchase input materials, and alloy-surcharge mechanisms. See SSSSC from Mexico at Comment 4. In sum, the domestic interested parties argue that the Department, consistent with its past practice, should require evidence beyond mere trends or correlation to determine whether costs and prices are linked for such an analysis to be methodologically sound.

The domestic interested parties point out that the Department, in its Draft Remand Results, compared the weighted average sales prices for Habas' five most frequently sold home market CONNUMs with quarterly input prices for steel scrap and determined that prices and costs were reasonably correlated. The domestic interested parties further note that the Department determined that Habas' short inventory turnover period allowed Habas to revise its prices in response to changing material costs, thereby allowing current costs to be reflected quickly in COM. However, the domestic interested parties suggest that the Department should require additional evidence beyond the mere trending of prices and costs together over time. According to the domestic interested parties, the fact that two variables have a linear relationship does not indicate a causal relationship between them. Based on their own analysis of Habas' price and cost trends, the domestic interested parties assert that a comparison of such trends reveals that prices and costs did not always trend up or down together. See the domestic interested parties' August 25, 2009, comments at Exhibit 1. Further, with respect to the

Department's use of Habas' inventory turnover ratio to confirm correlation, the domestic interested parties argue that short inventory holding periods can only confirm a causal connection between costs and prices when such costs and prices experience similar trends within each quarter. However, the domestic interested parties argue that in this instance evidence on the record serves to undermine the conclusion in the Draft Remand Results that there is a causal relationship between Habas' prices and costs within each quarter. See the domestic interested parties' August 25, 2009, comments at 7. The domestic interested parties argue that, in the absence of *any* correlative elements to determine whether sales and costs were reasonably linked, the Department cannot be certain that quarterly cost averaging periods eliminate distortions resulting from the use of an annual cost averaging period. Therefore, the domestic interested parties conclude that the Department should accordingly adhere to its preference for the use of an annual cost averaging period.

Habas' Arguments

Habas supports the Department's use of a quarterly cost methodology in this proceeding. Habas disagrees with the domestic interested parties' assertion that prices and costs are required to be causally linked. Citing Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review, 74 FR 39285, 39288-9 (Aug. 6, 2009), Habas points out that the Department has determined in recent cases that what is required is merely a reasonable correlation between cost and price rather than a proof of a causal relationship.

Department's Position:

As articulated above, when deciding whether to depart from its normal practice of calculating COP on an annual average basis, the Department considers: 1) whether the cost changes throughout the POI or POR were significant, and 2) whether sales during the shorter cost averaging period can be reasonably linked with the COP during the same averaging period. For purposes of this remand determination, the Department conducted an analysis of information on the record with respect to fluctuations in Habas' COM throughout the POR and determined that the cost changes were significant. The Department also determined that sales prices and costs were reasonably correlated during the shorter cost averaging periods, based on an analysis of cost and price trends in relation to each other, as well as a review of Habas' inventory turnover period for raw materials and finished goods. See Remand Cost Calculation Memo at 3 and Attachment 4.

The domestic interested parties, however, contend that the cost/price trend analysis undertaken by the Department for purposes of its Draft Remand Results is insufficient to establish a linkage between prices and costs. As noted above, the domestic interested parties assert that additional evidence must exist to link costs and prices and confirm a correlative, as well as causative relationship, between the two. However, in several recent determinations where the Department has discussed this issue, the agency has clearly articulated in each that the linkage between costs and prices may be evaluated in terms of a number of possible correlative elements. See SSPC from Belgium at Comment 4, SSSSC from Mexico at Comment 5, and SS Pipe from Korea at Comment 1. The Department has stated that these "correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales data, inventory turnover ratios, price and cost trend analysis, and price mechanisms used in the normal course of business. See SS Pipe from Korea at Comment 1.

Despite the Department's clearly articulated analysis described in its draft remand results, however, the domestic interested parties assert that "no such correlative elements exist" in this case. <u>See</u> domestic interested parties' August 25, 2009, comments at 2. As discussed in detail above, the Department examined evidence on the record of this case and determined that two of the correlative elements used to establish linkage between sales and costs (<u>i.e.</u>, cost and price trends, and inventory turnover periods) were in fact present. This clearly contradicts the domestic interested parties' assertion that "there are no such correlative elements in this case." <u>See</u> domestic interested parties' August 25, 2009, comments at 2. Moreover, the results of the domestic interested parties' own cost/price analysis only confirms the existence of one of the "correlative elements" which they assert do not exist on the record of this case. Their cost/price trend analysis reveals that, for several CONNUMs (together representing a large majority of Habas' total production), sales prices and costs did in fact trend together throughout the POR. <u>See</u> the domestic interested parties' August 25, 2009, comments at Exhibit 1. As noted above, the domestic interested parties acknowledge that the Department has recognized that the cost/price trends is one of the correlative elements the Department has looked for to establish linkage. <u>See</u> the domestic interested parties' August 25, 2009, comments at 4. Therefore, despite the domestic interested parties' claims, these correlative elements do exist and are sufficient to establish a link between sale prices and costs for Habas during the POR.

As to the domestic interested parties' argument that cost and price trends are not sufficient to establish linkage because prices and costs did not *always* move together during the POR, a finding of linkage does not require sales prices and costs follow each other for every quarter for every CONNUM.[3]

Regarding the domestic interested parties' assertion that additional evidence must exist to make the link between costs and prices and confirm a correlative as well as *causative*

[3] Due to the proprietary nature of this analysis, for a further discussion of this issue see Memorandum from Gina Lee to Neal Halper, <u>Adjustments to the Cost of Production and Constructed Value Pursuant to the Second Remand Redetermination (Final Results) – Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.</u>, September 8, 2009.

relationship, while there may be instances where underlying costs and final sales prices can be directly linked through the existence of a pass-through mechanism such as an alloy surcharge (see, e.g., SSSSC from Mexico at Comment 5), the Department has not required a demonstrated relationship between costs and prices as a condition for establishing a link between them. In fact, the Department has previously acknowledged that requiring too strict a standard for linkage (and indeed a "causative" relationship would be such a standard) would unreasonably preclude this remedy for commodity-type products where it may be difficult to precisely link production costs to sales. See SS Pipe from Korea at Comment 1. The Department maintains that a correlation based on record evidence between sales prices and costs (whether that be established through price/trend analysis, or any of the other "correlative elements" identified above) provides a reasonable basis for concluding that a respondent's sales prices reflect changes that are related to the significantly changing costs of inputs during a period (i.e., that they are "linked"). For purposes of this remand redetermination, consistent with the approach in SS Pipe from Korea, the Department analyzed sales price and direct material cost data for five of Habas' home market CONNUMs[4] for the POR, and concluded that the prices and costs trended consistently (i.e., generally moved in tandem with each other) throughout the POR. See Remand Calculation Memo at 3 and Attachment 4. The Department concluded based on its analysis that the correlative relationship between costs and prices, and additionally Habas' relatively quick inventory turnover period for raw materials and finished goods, indicated that sales prices and costs were reasonably linked during the shorter cost averaging period.

For purposes of this final remand redetermination, the Department has continued to rely on the analysis set forth in the Draft Remand Results regarding Habas' cost and price trends, in addition to the company's inventory turnover period, in order to establish linkage between sales

[4] These CONNUMs accounted for a large majority of Habas' home market sales during the POR.

prices and costs. Furthermore, as articulated above, based on an analysis of information on the record of this proceeding, the Department has concluded that the change in Habas' COM during the POR was significant and that sales prices and costs during the shorter averaging periods were reasonably linked, and we have accordingly employed a quarterly cost methodology for these final results of redetermination.

Comment 2: Alternative to the Use of Quarterly Cost Averaging Periods

Domestic Interested Parties' Arguments

The domestic interested parties argue that, should the Department continue to find a reasonable correlation exists between costs and price in this case, the agency should nonetheless reject Habas' request to calculate costs on a quarterly basis. The domestic interested parties note that the law does not dictate the method for calculating the COP during a period, nor does it define "period" as that term pertains to the calculation of COP and/or CV. In light of this, the domestic interested parties argue that the Department has found that it may define the cost averaging period to best eliminate distortions in its margin calculations. The domestic interested parties assert that the cost and price fluctuations and any resulting distortions are not uniformly best addressed through quarterly averaging periods. According to the domestic interested parties, the Department should instead evaluate the data in each case to determine the most appropriate cost averaging period, rather than assume that using a quarterly cost methodology is the only alternative. Citing SS Pipe from Korea at Comment 1, Rebar from Turkey at Comment 2, and Thai Pineapple Canning Indus. Corp. v. United States, 24 CIT 107, 109 (2000) (Thai Pineapple), the domestic interested parties point out that the Department has recognized that there will be cases which necessitate the use of different cost averaging periods.

Based on their own analysis of Habas' price and costs fluctuations between individual quarters, the domestic interested parties suggest an alternative methodology for defining the cost averaging periods in this case. See the domestic interested parties' August 25, 2009, comments at 9-12. The domestic interested parties advocate combining the first two quarters into a single period while maintaining quarterly cost periods in the third and fourth quarters. The domestic interested parties contend that longer cost averaging periods are preferable over shorter, multiple periods because, in the absence of significant cost changes that can be correlated with price changes, the use of shorter cost averaging periods may emphasize minor, short-term cost and price fluctuations where, in contrast, a longer cost averaging period smoothes these distortions while accurately capturing the cost of production over time. The domestic interested parties assert that nothing in the law or past precedent precludes the use of alternative cost averaging periods. The domestic interested parties further argue that their proposed shorter cost averaging periods would serve the statute's overall goal of calculating the most accurate dumping margins as possibly better than the quarterly methodology which Habas advocates. Moreover, the domestic interested parties argue that their suggested methodology for defining cost averaging periods could be easily implemented in the Department's margin calculation program.

Habas' Arguments

Habas urges the Department to reject the domestic interested parties' proposal to amend the quarterly cost averaging methodology to combine the first two quarters into a single period, while maintaining quarterly cost periods for the third and fourth quarters. Habas asserts that the domestic interested parties' proposal would serve to undermine the Department's recent efforts to apply a consistent, principled, and transparent methodology in cases where shorter cost averaging periods are used. By establishing a clear rule, Habas argues, the Department gives notice to respondents as to how they can lawfully price their U.S. sales so as to be in compliance with the antidumping law. Habas further argues that the domestic interested parties do not point to a single instance among the recent cases involving shorter cost averaging periods where the Department has used irregular cost periods.

Department's Position:

The Department has continued to use quarterly cost averaging periods to calculate Habas' COP. As the domestic interested parties correctly point out, the law does not dictate the precise method of calculating a respondent's COP, nor does it provide a definition for the term "period" in calculating COP. See SS Pipe from Korea at Comment 1. As noted above, while the Department prefers to calculate costs on an annual weighted-average basis, the agency has articulated in several recent determinations that relying on a single annual weighted-average cost would be distortive in light of significant cost changes occurring throughout the cost reporting period. See, e.g., SS Pipe from Korea at Comment 1, SSSSC from Mexico at Comment 5, and SSPC from Belgium at Comment 4. In these determinations, the Department established the practice of resorting to quarterly cost averaging periods in order to minimize the distortion significantly changing costs have on the normal annual average cost calculations. In those determinations, the Department chose to use quarters as the shortened cost averaging period because a quarter represents a sustained cost period for a reasonable length of time rather than an isolated month or two while still addressing the distortion which we determined results from an annual average cost.

We recognize that absent direct pass-through type of documentation, there is no exact matching of prices and costs. No matter how you divide the annual cost reporting period into segments, there is no certainty that you end up with a more or less accurate margin calculation.

As such, absent strong evidence showing that quarterly averaging periods are distortive, our practice is to use quarterly average cost periods when we determine it appropriate to deviate from our normal annual-average methodology due to significantly changing costs. In this case, domestic interested parties have only provided a general presumption that using three rather than four cost averaging periods would reduce the possibility of distortion in the margin calculation. However, the substantial evidence on the record does not support this claim.

As noted above, the use of quarter periods represents a reasonable time frame for calculating costs. While it is true that the Department is not bound by the statute to calculate COP for any defined period of time, the agency maintains that the use of quarterly average costs in this case furthers our ultimate goal to calculate accurate dumping margins, while at the same time using an alternative methodology that is consistent and transparent.

The domestic interested parties, citing Thai Pineapple and Rebar from Turkey, assert that the Department has recognized that there will be instances where different averaging periods are necessary. However, the underlying circumstances and issues in those cases are not particularly relevant with respect to this argument. In Thai Pineapple, the Department calculated costs separately for two fiscal years falling within an 18-month administrative review period. See Thai Pineapple, 24 CIT 107, 109 (2000). In Rebar from Turkey, the Department used the respondent's annual production costs from a prior administrative review to test whether home market sales made before the POR were at prices below their COP. See Rebar from Turkey at Comment 2. The issue in those cases was not, as it is here, the manner in which a single annual cost reporting period should be divided into shorter cost averaging segments.

For purposes of this remand determination, in analyzing the magnitude of cost changes for raw material inputs during the POR, the Department examined Habas' quarterly COM for five CONNUMs sold in the home market. See Remand Calculation Memo at 2. As noted above, the Department has adopted a methodology for determining significance that relies on a comparison of COM on a quarterly basis. The Department's analysis for Habas reveals that the percentage difference between the high and low quarterly COM exceeded the significance threshold of 25 percent for each of the products examined. As the cost changes for Habas during the POR meet the significance threshold (based on the analysis of quarterly COMs), the Department has determined that it would be distortive to rely on an annual weighted-average COP for calculating Habas' margin. Where costs are changing significantly, as in this case, a shorter cost averaging period should be used. Therefore, the Department has determined for purposes of this remand determination that calculating COP on a quarterly basis effectively mitigates such distortion.

It is also important to note that the Department has continued to use the normal annual average cost methodology for all other elements of cost except for the inputs experiencing a significant change. Therefore, this approach (i.e., the use of annual average conversion costs), accounts for any erratic production levels, monthly cost accruals, and year-end adjustments.

For purposes of this final remand redetermination, therefore, the Department has continued to use quarterly cost averaging periods in its margin calculations for Habas.

E. CONCLUSION

After taking a fresh look at the case evidence in accordance with the Department's recent refinement of its cost period methodology, the Department has reconsidered Habas' arguments, as well as domestic interested parties' comments, and determined that, due to the significant change in Habas' COM of rebar during the POR, and the fact that its costs and prices were reasonably linked during the shorter cost averaging periods, it is appropriate to deviate from the normal annual average cost methodology in this case and instead compute Habas' COM using an alternative cost calculation methodology. As such, we have used the alternative cost-averaging methodology used in SSSSC from Mexico, SS Plate from Belgium, and SS Pipe from Korea to calculate COP for purposes of recalculating Habas' dumping margin. Further, the Department has included in the remand redetermination a discussion of certain additional calculation changes which are necessary as a result of the reliance on quarterly costs (i.e., the elimination of the window period for price-to-price comparisons, and an adjustment to the methodology for the cost recovery test) because these issues are integrally part of the shorter cost averaging period methodology and are necessary to avoid distortions in the antidumping duty margin calculation. See Remand Cost Calculation Memo for the details of the alternative calculation methodology used in this remand redetermination for Habas.

FINAL RESULTS OF REDETERMINATION

As directed by the Court, the Department has reexamined the issue of Habas' COP. Based on the above analysis, the Department finds that Habas' COP should be based on an alternative cost calculation methodology using a shorter cost averaging period as supported by substantial evidence on the record and otherwise in accordance with law. Therefore, the Department has recalculated the dumping margin for Habas. See Remand Cost Calculation

Memo at Attachment 5. Accordingly, for these final results, the weighted-average margin for Habas for the period April 1, 2003, through March 31, 2004, is 5.58 percent.

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Ronald K. Lorentzen
Acting Deputy Assistant Secretary
  for Import Administration

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(Date)