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Investigation Remand
Public Document

Tosçelik Profil ve Sac Endustrisi, A.S. and Tosyali Dis Ticaret A.S./Çayirova Boru Sanayi Ve Ticaret A.S./Yucel Boru Ithalat-Ihracat ve Pazarlama A.S. v. United States
Consol. Court No. 15-00339, Slip Op. 17-107 (CIT August 22, 2017)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Commerce or the Department) has prepared these final results of redetermination pursuant to the opinion and order from the Court of International Trade (the Court or CIT) in *Tosçelik Profil ve Sac Endustrisi, A.S. v. United States*, Slip Op. 17-107 (CIT August 22, 2017) (*Tosçelik*). In its order, the Court granted Commerce's request for a voluntary remand to reexamine the respondents' duty drawback adjustments. In accordance with the Court's order, Commerce has now done so.

In this redetermination, we continue to find that it is appropriate to limit the duty drawback adjustment to information contained only on import certificates (also known as DIIBs) that have been closed during the period of investigation (POI). As a result, we have not changed the weighted-average dumping margins established in the final determination of the underlying less-than-fair-value (LTFV) investigation on welded line pipe (WLP) from Turkey.

B. BACKGROUND

On October 13, 2015, Commerce published the final determination in the LTFV investigation on WLP from Turkey, covering the period October 1, 2013, to September 30, 2014.[1] There were two participating respondents in the LTFV investigation, Tosçelik Profil ve

[1] *See Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61,362 (October 13, 2015) (*Final Determination*), and the accompanying Issues and Decision Memorandum (IDM).

Sac Endustrisi, A.S. and Tosyali Dis Ticaret A.S. (collectively, Tosçelik), and Çayirova Boru Sanayi Ve Ticaret A.S. and Yucel Boru Ithalat-Ihracat ve Pazarlama A.S. (collectively, Çayirova),[2] both of which claimed a duty drawback adjustment.

In making their original claims for a duty drawback adjustment, Çayirova and Tosçelik provided calculations along with a proposed methodology for determining an adjustment to U.S. price. Both companies based their claims on information taken from inward processing certificates, *i.e.*, DIIBs, that they characterized as "viable," and they limited their requests to these DIIBs so as to "not distort the calculation of the adjustment."[3] Çayirova and Tosçelik defined a "viable" DIIB as one which was both: 1) active during the POI; and 2) "closed"[4] *during the POI*.[5] Based on this methodology, Çayirova claimed duty drawback using only one DIIB,[6] while Tosçelik claimed duty drawback using four DIIBs.[7] Subsequently, Tosçelik revised its calculation to include information shown on two additional DIIBs that closed after the POI.[8] Tosçelik justified this revision by stating that these two additional DIIBs "had abundant activity inside the POI and complete usage data are now available."[9]

[2] Çayirova and Tosçelik are also hereinafter collectively referred to as "the respondents."
[3] *See* Çayirova's February 11, 2015, sections B-C response (Çayirova BCQR), at 71 and Tosçelik's January 28, 2015 Sections B-C response (Tosçelik BCQR), at pages 70-74.
[4] Tosçelik defined a "closed" DIIB as one that had been "completed." *See* Tosçelik BCQR, at page 74. In a supplemental questionnaire response, Tosçelik identified the completion date as the date the DIIB expired. *See also* Tosçelik's May 1, 2015, Supplemental response at 2 and Exhibit 1. Later, at verification, both Çayirova and Tosçelik explained that, when the DIIB certificate expires, the DIIB holder can no longer apply additional imports or exports to the DIIB after this date. *See* Çayirova sales verification report, at pages 15-16 and Tosçelik sales verification report, at 17.
[5] *See* Çayirova BCQR, at 71 and Tosçelik BCQR, at pages 70-74.
[6] *See* Çayirova BCQR, at Exhibit 11. Çayirova also reported information related to an additional DIIB which it characterized as not "viable" because it was not closed during the POI. *See* Çayirova BCQR, at 71.
[7] *See* Tosçelik BCQR, at Exhibit 14.
[8] *See* Tosçelik's April 22, 2015 Sections B-C supplemental response (Tosçelik SBCQR), at pages 3-4, and exhibit 6.
[9] *Id*.

In the preliminary determination, we accepted Çayirova's and Tosçelik's claims, subject to the following conditions: 1) we allowed only claims "closed"[10] during the POI; and 2) the import certificates must have reflected U.S. exports of WLP.[11] We added duty drawback, limited in this manner, to U.S. price.[12] We then verified the information used in the preliminary determination, as well as the additionally reported, but unused, information.

At verification, we discovered that Çayirova's sole "viable" DIIB contained no U.S. exports of subject merchandise (*i.e.*, WLP "subject" to this investigation) that were made during the POI.[13] We also found that one of Tosçelik's four "viable" DIIBs similarly contained no subject exports of WLP during the POI, and another contained no U.S. exports of WLP at all.[14] Çayirova subsequently filed an administrative case brief, in which it argued that Commerce should expand the definition of a "viable" DIIB to include all DIIBs active during the POI and

[10] Commerce has consistently defined a DIIB as closed on the date that the Turkish government no longer permits the company to add import or export information to the DIIB. *See Final Determination*, and accompanying IDM at Comment 1. For purposes of this investigation and remand redetermination, we accepted the respondents' definition of closure (the date the DIIB expired). However, Commerce's practice has since evolved, and it now defines a DIIB as closed on the date the DIIB holder applies for closure of the DIIB with the Turkish Government. *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), (*HWR from Turkey)* and accompanying IDM at Comment 4. Thus, in future segments of this proceeding we intend to consider the DIIB to be closed on the date the exporting company applies for approval of the DIIB to the Turkish government, consistent with our current practice.
[11] *See Welded Line Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29617 (May 22, 2015) and accompanying Preliminary Decision Memorandum at 15.
[12] *Id*. Subsequent to the final determination, Commerce changed its practice with respect to duty drawback, and we have since applied a proportionate amount of duty to both the normal value and U.S. price. *See HWR from Turkey* IDM at Comment 3.
[13] *See* Memorandum, "Verification of the Sales Response of Çayirova Boru Sanayi ve Ticaret A.Ş. (Çayirova Boru) and Yücel Boru Ithatlat-Ihracat ve Pazarlama A.Ş. (YIIP) (collectively, Çayirova) in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated July 22, 2015 (Çayirova sales verification report) at 2.
[14] *See* Memorandum, "Verification of the Sales Responses of Tosçelik Profil ve Sac Endustrisi A.S. (Tosçelik Profil) and Tosyali Dis Ticaret A.S. (Tosyali) (collectively, Tosçelik) in the Antidumping Duty Investigation of Welded Line Pipe from Turkey," dated July 16, 2015 (Tosçelik sales verification report) at 2.

closed with U.S. exports of WLP during an "information gathering period" (*i.e.*, at any point during the investigation).[15]

In the *Final Determination*, Commerce continued to accept duty drawback claims only where they were based on information contained on DIIBs that were "closed" during the POI.[16] We further continued to limit our reliance on these DIIBs to those which Çayirova and Tosçelik had closed, in part, using exports of WLP subject to the investigation (*i.e.*, subject merchandise). Based on our findings at verification, we concluded that Çayirova had no DIIBs meeting these criteria, and Tosçelik had two DIIBs meeting these criteria.[17]

The respondents challenged this approach at the CIT, maintaining that Commerce should have also accepted DIIBs closed after the POI and that Commerce's failure to explain adequately why it did not do so rendered its determination arbitrary, capricious, and unsupported by substantial evidence.

On September 23, 2016, the United States requested that the Court remand Commerce's *Final Determination* with respect to the duty drawback adjustment, so that it could further explain, or reconsider, the determination to limit the respondents' requests for a duty drawback adjustment to information contained on DIIBs closed during the POI.[18] On August 22, 2017, the

[15] *See, e.g.*, Çayirova's August 6, 2015, administrative case brief, at 2 and 9. We note that, while Tosçelik did not include this argument in its administrative case brief, it stated in a supplemental questionnaire response that a change was necessary to its original definition of "viable" DIIB to include DIIBs that closed subsequent to the POI for which complete usage data had become available during the course of the proceeding. *See* Tosçelik SBCQR at 3-4.
[16] *See Final Determination*, and accompanying IDM at 4.
[17] *See* Memorandum, "Final Determination Calculation for Çayirova Boru Sanayi ve Ticaret A.Ş. and its affiliated exporter, Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş. (collectively, Çayirova)," dated October 5, 2015 at 2; and Memorandum, "Final Determination Calculation for Tosçelik Profil ve Sac Endustrisi A.S./ Tosyali Dis Ticaret A.S. (Tosçelik)," dated October 5, 2015 (Tosçelik Final Calc Memo) at 2 and Attachment I.
[18] *See* United States' brief to the Court, "Defendant's Response In Opposition To Plaintiffs' Motions For Judgment Upon The Agency Record," dated September 23, 2016.

Court remanded to Commerce its duty drawback determination for further consideration.[19]

On November 13, 2017, Commerce issued the draft results of redetermination to all interested parties, in which we explained that relying on DIIBs closed during the POI reduces the possibility of manipulation of dumping margins, and promotes ease of administration of dumping proceedings from segment to segment. We invited interested parties to comment on the draft results, and Çayirova and Tosçelik filed timely comments on November 27, 2017. After considering these comments, as well as re-evaluating the information on the administrative record, we have reconsidered our preliminary conclusion contained in the draft results of redetermination with respect to manipulation. Nonetheless, for the remaining reasons stated in the draft results, as well as on other grounds, we have continued to limit our duty drawback adjustment to DIIBs closed during the POI. As a result, because Çayirova had no DIIBs meeting the criteria and Tosçelik had two DIIBs meeting the criteria, we made no changes to our calculations from the *Final Determination* for purposes of this final remand redetermination.

C. ANALYSIS

Section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) directs Commerce to increase export price by "the amount of any import duties imposed by the country of exportation . . . which have not been collected, by reason of the exportation of the subject merchandise to the United States." In implementing this provision of the Act, Commerce applies a two-prong test to determine whether a duty drawback adjustment is appropriate.[20] This test has been upheld by the Court of Appeals for the Federal Circuit (CAFC);[21] it requires foreign

[19] *See Tosçelik*, Slip Op. 17-107, at 3-4, 8.
[20] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006) (*Duty Drawback Methodology*); *see also Final Determination*, and accompanying IDM at Comment 1.
[21] *See Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

exporters to demonstrate that: 1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and 2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.[22]

Furthermore, our practice with regard to the Turkish inward processing regime (IPR), which is the official mechanism for applying for exemption from import duties, is to grant a duty drawback adjustment if a respondent demonstrates that it sufficiently met the requirements of the IPR to be entitled to exemptions on import-related duties and taxes based on exports.[23] In the *Final Determination*, we evaluated Çayirova's and Tosçelik's duty drawback claim using the two-prong test and, consistent with this practice, considered only closed DIIBs (*i.e.*, import certificates to which the company was no longer permitted by the government of Turkey to add import or export information) for purposes of calculating a duty drawback adjustment. We further limited our analysis to only POI-closed DIIBs, in accordance with our general practice of examining costs and expenses during the POI. Based on our analysis, we found that a portion of Tosçelik's request met the requirements of this test; however, Çayirova's request did not because its sole closed DIIB, finalized during the POI, contained no exports of subject merchandise. As a result, we accepted Tosçelik's claim, in part, and denied Çayirova's.

Specifically, our *Final Determination* states:[24]

> We are modifying our preliminary duty drawback calculations to follow the methodology used in *OCTG from Turkey*,[25] and thus we are only allowing claims

[22] *Id*. *See also Duty Drawback Methodology*, 71 FR at 61723.
[23] *See, e.g., Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014) (*OCTG from Turkey)* and accompanying IDM at Comment 1.
[24] *See Final Determination,* and accompanying IDM at Comment 3.
[25] *See OCTG from Turkey* and accompanying IDM at page 17, where we stated that
> For Borusan we are granting the duty drawback adjustment as it was reported. Specifically, for

related to reported U.S. sales with respect to both respondents.

> Consistent with this limitation, we revised the respondents' duty drawback adjustments to use the uncollected duties reflected on DIIBs both closed during the POI and containing reported U.S. exports of welded line pipe. Because Çayirova had no such DIIBs, we made no addition to its U.S. prices for duty drawback or to its cost of production. For Tosçelik, we are now including in its adjustment only those two DIIBs which meet the above criteria.
>
> With respect to Tosçelik, we revised Tosçelik's duty drawback adjustment calculation for the final determination. Section 772(c)(1)(B) of the Act states that the U.S. price should be increased by the amount of import duties that have not been collected by reason of the exportation of subject merchandise to the United States. The volume of welded line pipe exports to the United States used by Tosçelik to close the relevant DIIBs represents only a portion of the volume of its reported sales of welded line pipe to the United States. Accordingly, for this final determination, we find that Tosçelik is only entitled to a duty drawback adjustment equal to the amount of any import duties imposed by the Turkish government which were not collected by reason of the portion of its reported U.S. welded line pipe exports.

In accordance with the Court's remand order, we have reexamined our treatment of duty drawback, and continue to find it appropriate to rely exclusively on DIIBs which were closed during the POI. Section 772(c)(1)(B) of the Act directs Commerce to increase U.S. price by the amount of import duties that have not been collected by reason of the exportation of subject merchandise. However, neither the Act nor the legislative history provides guidance on the methodology to be used in determining the amount of these uncollected duties. In the absence of such guidance, Commerce may develop reasonable methodologies to fill gaps in the statute.[26]

> Borusan's CEP sales, we are not making any adjustments to Borusan's calculation, because the calculation is already on as specific a basis as possible. Borusan calculated the adjustment amount it reported by matching the inward processing certificate to the exports of CEP sales of merchandise under investigation to derive the actual amount of duty drawback claimed on those exports to each CEP company separately. However, because it was not possible to tie each export from Borusan to each sale made by the CEP companies to the final customer, Borusan allocated the total adjustment amount for each CEP company over all sales the CEP company made to the final customer.

[26] *See, e.g.*, *Apex Frozen Foods Private Limited v. United States*, 862 F.3d 1322, 1330 (Fed. Cir. 2017) (*Apex*) (finding, where Congress provided no guidance on how to perform a particular analysis, "we ask whether Commerce's exercise of its gap-filling authority and its explanation are reasonable").

Here, we determine that allowing duty drawback adjustments only for DIIBs closed during the POI is reasonable because, under the Turkish duty drawback system, Turkish companies are liable for the amount of duties forgone until satisfying the export requirements under a DIIB, and there is no certainty that this has occurred until the DIIB is closed. Furthermore, looking at the actual duty liability extinguished to a Turkish company during the POI is consistent with our general practice of examining costs and expenses during the POI. Finally, computing duty drawback in this manner is more administrable for Commerce. The facts underlying our conclusion, as well as the reasons for it, are set forth below.

Turkey maintains a substitution duty drawback system, whereby the Turkish government allows companies to import raw materials without paying import duties as long as they export a sufficient quantity of goods produced using equivalent materials.[27] The record indicates that Çayirova and Tosçelik opened import certificates, or DIIBs, that identified projected import quantities of specific raw materials, as well as projected export volumes of goods classified under specific Harmonized Tariff Schedule (HTS) customs categories at the 8-digit level.[28] Once the Turkish government approved the opening of the DIIB, Çayirova and Tosçelik applied imports and exports in the HTS categories shown on the DIIB against the projected quantities from the open DIIB.[29] Çayirova and Tosçelik closed the DIIBs when the DIIB modification period expired (*i.e.*, nine months from the date of the first import, and extendable up to an additional four months and 15 days).[30] After this date, Çayirova and Tosçelik were no longer

[27] *See* Çayirova BCQR, at Exhibit 10 and Tosçelik BCQR at Exhibit 13 (containing Turkey's Resolution No. 2005/8391 Concerning Inward Processing Regime).
[28] *Id. See also, e.g.*, Çayirova sales verification report at Exhibit 18 and Tosçelik sales verification report at Exhibit 19.
[29] *See e.g.*, Çayirova sales verification report at Exhibit 18 and Tosçelik sales verification report at Exhibit 19.
[30] *See e.g.*, Çayirova sales verification report at Exhibit 18.

able to make changes to the DIIBs; however, Turkish customs took up to three months to finalize the export figures, after which point, Çayirova and Tosçelik submitted the final closure application to the Turkish government.[31] Çayirova and Tosçelik informed Commerce that final approval by the government can take up to four years.[32]

In this investigation, the administrative record shows that none of Tosçelik's DIIBs used in its duty drawback claim had been officially approved by the Turkish government.[33] Similarly, for Çayirova, there is no record evidence that the DIIB used in its duty drawback claim was officially approved by the government. However, as in the *Final Determination*, we are not rejecting respondents' duty drawback claims out of hand on that basis.[34] Instead, we considered all DIIBs for which the modification period had expired during the POI (*i.e.*, "closed" DIIBs) as a valid source of duty drawback information. We find that, when closed, these DIIBs were sufficiently finalized so as to provide a reliable source for the respondents' duty drawback experience during the POI. For purposes of this final redetermination, we have continued to limit our duty drawback adjustment to DIIBs closed during the POI. As discussed above, under the Turkish duty drawback system, Turkish companies are liable for the amount of duties forgone until satisfying the export requirements under a DIIB and there is no certainty that this has occurred until the DIIB is closed. Specifically, the Resolution Concerning Domestic Processing Regime, which governs Turkey's duty drawback program, stipulates that Turkish companies are liable to pay any export duties forgone where:

> the taxes not collected for the goods which were imported under the Conditional Immunity System but whose exportation as processed products was not realized

[31] *See* Çayirova sales verification report at 15; and Tosçelik sales verification report at 17.
[32] *Id.*
[33] *See* Tosçelik's May 1, 2015, Supplemental response at 2 and Exhibit 1.
[34] *See Final Determination*, and accompanying IDM at Comment 1.

> in accordance with the requirements of the Certificate/Authorization… shall be collected in accordance with the Provisions of Article 22.[35]

Accordingly, no benefit is accrued to the respondent under a DIIB until that DIIB is closed. Because the respondents' remaining DIIBs containing exports of subject merchandise remained open after the POI, we find that the respondents remained liable for the duties forgone under those DIIBs until after the end of the POI. Furthermore, no benefit accrued to the respondents on those remaining DIIBs during the POI. Given these considerations, we find it would be inappropriate to grant a duty drawback adjustment related to them as we calculate respondents' dumping margin during the POI. This determination to limit duty drawback to the actual duty liability extinguished for a Turkish company during the POI is consistent with Commerce's general practice in other areas of the dumping calculation. For example, Commerce has a longstanding practice of collecting POI cost of production (COP) data,[36] even though companies may have produced certain products -- sold in the U.S. or foreign markets during the POI -- only in prior periods. In such cases, instead of collecting pre-POI cost data for the non-produced products, Commerce assigns them the COPs of the most physically-similar merchandise produced during the POI.[37] Given that the transactions at issues here relate to duties on imported raw materials, and that raw materials are among the costs included in COP, we find that limiting

[35] *See* Çayirova BCQR, at Exhibit 10 and Tosçelik BCQR at Exhibit 13 (containing Turkey's Resolution No. 2005/8391 Concerning Inward Processing Regime).

[36] *See, e.g.*, Commerce's standard cost questionnaire at I.C., issued to Tosçelik on December 8, 2014, and to Çayirova on January 5, 2015, which directs respondents to calculate "reported COP and CV figures based on the actual costs incurred by your company during the {POI}, as recorded under your company's normal accounting system." (emphasis added)

[37] *See, e.g., Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015) and accompanying IDM, at Comment 2 ("It is the Department's practice to rely on the reported costs of a similar product in instances where a respondent did not manufacture a product during the reporting period."); *see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany*, 67 FR 3159 (January 23, 2002), and accompanying IDM, at Comment 13 (relying on reported costs of the most similar product produced during the POI in an antidumping duty investigation).

the drawback of those duties to amounts earned during the POI to be particularly appropriate.

Similarly, our determination to limit duty drawback to the actual duty liability extinguished during the POI is consistent with Commerce's general practice of collecting allocated expense data covering the POI for sales adjustment purposes. For example, Commerce computes indirect selling expenses using data recognized and recorded in a company's books during the POI,[38] and the courts have upheld this methodology.[39] As the respondents recognize, duty drawback is an allocated amount, rather than a transaction-specific one,[40] and, thus, we find it similarly appropriate to consider only duties forgone/liabilities extinguished during the POI in the antidumping analysis. In other words, because a Turkish company's liability for duties under a DIIB is not extinguished until the DIIB is closed, and because we have a practice of considering data for the POI, *e.g.*, data recorded in a company's books (including costs, expenses, benefits accrued, and liabilities extinguished), we are only looking only at DIIBs that are closed during the POI.

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[38] *See, e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part*, 75 FR 41813 (July 19, 2010) and accompanying IDM at Comment 5, which states (footnotes omitted):

> It is the Department's practice to include in its calculations all indirect expenses that are recognized and recorded during the POR {period of review}. While the Liberty Group argues that the Department should parse these expenses into POR and non-POR components, such an analysis would introduce a level of complexity that is outside of the Department's practice. It is our practice to examine the dates on which certain expenses are incurred as recorded in a company's books and records. Because the write-off in question was recorded in LFF's audited financial statements (for the year ending March 31, 2008) during the POR, we are continuing to include the entire amount of the write-off in our calculations.

[39] *See Liberty Frozen Foods Private Limited, et al. v. United States*, Consol. CIT Court No. 10-00231, Slip Op. 12-22 (February 21, 2012).

[40] *See* Çayirova's and Tosçelik's Comments on the Draft Remand at 9, where the respondents state. "the duty drawback adjustment is not a transaction-specific calculation like inland freight, for example, or discounts; it is, by nature, an allocation."

Furthermore, despite the respondents' arguments to the contrary, reliance only on DIIBs closed during the period being examined, *i.e.,* in this investigation the POI, promotes administrability of dumping proceedings from segment to segment. Reliance on DIIBs closed as of a fixed point in time has three advantages. First, it permits Commerce to evaluate the sufficiency and accuracy of the data early enough in a particular segment of a proceeding to notify respondents of any deficiencies in those data.[41] Second, considering DIIBs closed during a distinct time period in each segment avoids the potentially complicated exercise of adjusting drawback claims for drawback already accounted for in a previous segment of the proceeding, eliminating the possibility of double counting claims in multiple segments. Third, Commerce's methodology provides predictability and transparency in Commerce's administration of duty drawback claims.

In summary, in this final redetermination, Commerce continues to find that the methodology of limiting the drawback calculation to those duty drawback certificates which have been closed as of the end of the POI is appropriate. Such a methodology is consistent with Commerce's general practice of examining costs and expenses during the POI, and it fosters predictability and transparency. Further, it allows Commerce fully to analyze the claims within the limited, statutory time frame allotted to complete a segment of an antidumping duty proceeding, and it eliminates the possibility of double counting claims in multiple segments. For the foregoing reasons, we made no changes to the final dumping margins computed for Çayirova and Tosçelik in this remand redetermination.

[41] DIIBs closed during the POI are, by their nature, closed before an LTFV investigation begins and, therefore, are available for timely reporting in response to Commerce's questionnaire.

D. INTERESTED PARTY COMMENTS

On November 13, 2017, Commerce released the draft results of redetermination to all interested parties, and we invited interested parties to comment. Çayirova and Tosçelik filed timely comments on November 27, 2017. In the draft redetermination, we preliminarily found that the respondents could potentially manipulate the information reflected on the DIIBs prior to their closure; after reviewing the comments received with respect to this finding, as well as re-evaluating the information on the administrative record with respect to it, we have reconsidered our preliminary conclusion. As a result of our consideration of parties' comments and re-evaluating information on the record, we no longer take the position as stated in the draft remand redetermination with respect to manipulation.[42] We have addressed the remainder of the respondents' comments below.

Comment 1: Administrability Considerations

As noted above, in the draft redetermination, Commerce found that its policy of relying on DIIBs closed during the POI has three advantages: 1) it affords Commerce sufficient time to analyze the data and notify respondents of any deficiencies; 2) it avoids the potential for the double counting of claims in multiple segments; and 3) it provides predictability and transparency in the administration of duty drawback claims. Çayirova and Tosçelik disagree that

[42] Nonetheless, we do not concede that manipulation of the duty drawback adjustment is still not possible, were Commerce to adopt the respondents' suggested approach. The record of this proceeding, for example, shows that the per-unit duty drawback on individual DIIBs can vary widely, with the per-unit amount of uncollected duties on the lowest-value DIIB significantly less than the per-unit amount of uncollected duties on the highest-value DIIB. *See* Tosçelik Final Calc Memo, at Attachment 1. Thus, the order in which DIIBs are closed can impact the final duty drawback claim made by a respondent—and, if we were to accept DIIBs closed after a petition had been filed, a potential respondent could choose to close a DIIB with a higher per-unit amount of uncollected duties that met all other relevant criteria so as to impact its dumping margin in an ongoing investigation. In this case, we agree with the respondents that there is no evidence of actual manipulation with respect to their drawback claims; we do not agree, however, that such manipulation in other, future proceedings cannot occur.

any of these considerations is valid. Therefore, the respondents request that Commerce recompute their duty drawback adjustments using information from all closed DIIBs contained on the administrative record.

With respect to the first point (*i.e.*, sufficient time for analysis), Çayirova and Tosçelik maintain that Commerce's decision rule is too restrictive, given that Commerce could, at a minimum, rely on DIIBs closed as of the due date for questionnaire responses and lose no analysis time.[43] Further, the respondents note that this rule is inconsistent with Commerce's prior practice, both with respect to duty drawback and in other areas. For example, the respondents state that Commerce has accepted DIIB data as late as verification in other cases,[44] and, during the course of a proceeding, it routinely requires respondents to update their reported information, such as by submitting copies of financial statements finalized after the date of the initial response or by providing payment dates for sales previously unpaid.[45] The respondents claim that Commerce's rule is particularly inapposite in the present case, in light of the fact that: 1) Çayirova submitted all relevant duty drawback information in its initial questionnaire response; and 2) Tosçelik provided most of its duty drawback data in its original questionnaire response, and it supplemented these data with two additional DIIBs three months later.[46] The respondents assert that Commerce asked for further information regarding the latter DIIBs in a supplemental questionnaire, and it verified this information.[47] Therefore, the respondents argue that there is nothing to suggest that Commerce could not consider all the reported DIIBs in this case.

[43] *See* Çayirova's and Tosçelik's Comments on the Draft Remand at 7.
[44] *Id*. (citing *OCTG from Turkey* IDM at 16).
[45] *Id*. (citing the respondents' submission of their own financial statements close in time to the start of verification).
[46] *Id*. at 8.
[47] *Id*.

With respect to the second point (*i.e.*, potential for double counting), Çayirova and Tosçelik argue that Commerce's argument is similarly flawed. According to the respondents, there is no reason that DIIBs considered in one segment should not be considered in the next if U.S. exports in two successive periods of review were reported on the same DIIB,[48] and, they argue that, indeed, Commerce must consider the DIIB twice in order to capture all of the drawback earned by the company. Çayirova and Tosçelik contend that, because the same ratio of imports to exports exists for all exports on a given DIIB, Commerce can easily avoid double counting by simply reducing the numerator of the per-unit drawback calculation by the drawback already received and the denominator by the exports already made.[49]

Finally, with respect to the third point (*i.e.*, predictability and transparency), Çayirova and Tosçelik disagree that either is enhanced by limiting the DIIBs examined to those closed during the POI.[50] According to Çayirova and Tosçelik, Commerce's process is already transparent, regardless of the cutoff date for DIIBs, and allowing respondents to update their DIIB data subsequent to the original submission does not compromise that transparency. Further, Çayirova and Tosçelik argue that predictability cannot be a goal standing alone, otherwise Commerce could simply rewrite all drawback claims to zero, achieving perfect predictability, and that would not be supported by law.

In sum, Çayirova and Tosçelik maintain that their duty drawback claim accurately measures the amount of duties remitted to each company by reason of their exportation of

[48] *Id*. at 9 (citing to Draft Redetermination at 9).

[49] *Id*. at 10.

[50] *Id*.

subject merchandise to the United States, and Commerce should use the adjustments as reported and verified.[51]

Commerce Position:

As noted above, Commerce finds that Turkish companies carry liability related to import duties until a DIIB is closed, and, thus, they do not have a viable duty drawback claim until that point. Thus, Commerce's determination to rely exclusively on DIIBs closed during the POI is not, as the respondents suggest, based largely on the degree to which this determination lessens administrative burden. Rather, consistent with our statements in the draft redetermination, we find that this practice has certain noteworthy advantages.

First, we continue to find that relying on DIIBs closed during the POI affords Commerce sufficient time to analyze fully a respondent's duty drawback claim and permit Commerce to identify deficiencies in their claim and, to the extent practicable, provide respondents an opportunity to remedy any deficiencies, as required by section 782(d) of the Act. We disagree with Çayirova and Tosçelik that analyzing "updates" to a company's duty drawback claim is a formulaic exercise, requiring little additional time or thought. At the outset, we note that our regulations contemplate that Commerce will not accept updates to factual information throughout the course of the proceeding.[52] Indeed, when promulgating its regulation dealing with the submission of factual information, 19 CFR 351.301, Commerce explained why it is important to receive information early in a proceeding:

> although the commenters may perceive that the Department has adequate opportunity to consider factual information in an investigation or a review, this is a misperception of the operational procedures required to complete an investigation or review. For instance, Department officials must make certain internal decisions much earlier than the due date of the preliminary determination or preliminary results, in order to issue questionnaires, supplemental

[51] *Id.* at 11.
[52] *See* 19 CFR 351.301.

> questionnaires, consider all allegations, determine whether critical factual information is missing from the record, conduct a complete and thorough analysis of all the factual information on the record as well as making a myriad of individual decisions with respect to the treatment of each of the facts on the record in relation to applicable regulatory, statutory, and case and legal precedent…. Given the necessity of allocating Department resources as efficiently as possible, the Department must complete the record for an issue when that issue arises, so that the parties and the Department are presented with all of the record facts to present their arguments and to analyze those arguments in light of the record facts, respectively.[53]

Commerce went on to explain that the submission of new information can generate the submission of rebuttal, clarifying, or correcting information.[54] Thus, Commerce concluded that "both the parties and the Department have an interest in finalizing the record at a stage in the segment of the proceeding when there is adequate opportunity to sufficiently analyze the record facts."[55] All of these considerations remain at play with the continual submission of factual information, including new DIIBs that have closed.

Although Commerce may determine, in the course of an investigation (such as *OCTG from Turkey*,[56] as discussed by respondents) or administrative review, to request or accept updated information from a respondent, it does so on a case-by-case basis, when it deems the information necessary for its analysis and practicable to analyze at that later stage in the proceeding. It would be impracticable for Commerce to rely on information concerning DIIBs closed after the POI that is submitted throughout the course of an investigation or administrative review. Each time a change is made to the duty drawback claims set forth by respondents, and newly-closed claims are submitted, Commerce must review numerous spreadsheets, duplicate

[53] *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21247 (April 10, 2013) (*Factual Information Preamble*).
[54] *Id.*
[55] *Id.*
[56] *See OCTG from Turkey* IDM at 16; *see also* Çayirova's and Tosçelik's Comments on the Draft Remand at 7.

and confirm calculations set forth by the respondents and analyze them for errors, and conduct a new analysis to determine whether the revised data meet Commerce's two-prong test.[57] Here, Commerce has relied on timely-submitted information concerning DIIBs closed during the POI and has not considered information submitted later in the investigation concerning newly closed DIIBs, affording Commerce sufficient time to analyze the duty drawback claims. That Commerce may, in a particular case, determine that it has the need to request additional information from a respondent, or the ability to accept updated information from a respondent, does not require it to do so in other proceedings, or in other segments of the same proceeding.

Second, we disagree with Çayirova and Tosçelik that Commerce's double counting concern is unfounded. It is by no means a foregone conclusion that double counting will not occur. In order to prevent counting the same DIIB in multiple segments of a particular proceeding, Commerce would need a DIIB tracking system which could track, not only when particular DIIBs had been closed, but also whether they were accepted as part of a duty drawback calculation in a previous segment of the same proceeding (and the portion of duty drawback from the DIIB at issue already accounted for in a prior duty drawback calculation), which adds an additional element of complexity from segment to segment.

Finally, we agree with Çayirova and Tosçelik that Commerce's administration of the AD law is transparent, and that predictability in this instance is not a stand-alone goal. However, we continue to find that the acceptance of DIIBs closed as of a particular date, known to respondents and Commerce alike, lends additional transparency and predictability to the administration of the antidumping law.

[57] Moreover, the fact that Commerce may accept financial statements later in a proceeding is irrelevant to its determination not to accept DIIBs submitted later in a proceeding because, unlike duty drawback, financial statements do not create or extinguish a liability.

In any event, beyond the administrability considerations, Commerce maintains its overarching and broader concern: because Turkish companies carry liability related to import duties until a DIIB is closed, it would be inconsistent with Commerce's practice to look at liabilities extinguished for a respondent outside of the POI to determine the companies' POI dumping margins. For the foregoing reasons, we continue to find that accepting DIIBs closed during the POI enhances the administrability of antidumping investigations.

Comment 2: Accuracy Considerations

Çayirova and Tosçelik argue that Commerce's interest in accuracy should prevail over administrative convenience. To support their assertion, the respondents note that Tosçelik's original duty drawback claim, submitted in its initial questionnaire response, was for approximately $100 per metric ton (MT), while its "updated" figure was closer to $80/MT.[58] The respondents state that they assume that Commerce would find the latter adjustment to be more accurate.

According to Çayirova and Tosçelik, the goal of the process should be accuracy, and this is best achieved by considering all information available during the time the procedure is underway.[59] Indeed, the respondents contend that the law requires accuracy in the calculation of margins. As support for this assertion, Çayirova and Tosçelik cite *Shanxi DMD Corp. v. United States*, 821 F.3d 1345, 1354 (Fed. Cir. 2016); and *Albemarle Corp. v. United States*, 821 F. 3d 1345, 1354 (Fed. Cir. 2016) (stating that "accuracy and fairness must be Commerce's primary objectives"). The respondents argue that, if Tosçelik received remission of duties of $80/MT,

[58] *See* Çayirova's and Tosçelik's Comments on the Draft Remand at 8.

[59] *Id*. at 11.

but was granted less than this amount, then the goal of accuracy has unlawfully been overtaken by administrative convenience.

Commerce Position:

In its simplest form, dumping occurs when a company prices a product sold to the United States at a lower level than it prices the same, or a comparable, product in its own market.[60] The bases for Commerce's dumping calculations are found in the Act and the regulations, which direct Commerce to determine a "starting price" (*i.e.*, generally the gross unit price shown on an invoice to an unaffiliated customer), and then to adjust this price for various costs, expenses, or adjustments.[61] The result of this calculation is to put the prices in both markets on a comparable basis, in order to measure dumping within the meaning of the Act.[62]

We agree with the respondents that a goal of the dumping calculation is to measure dumping accurately, and discuss the meaning of accuracy below. However, in this case, the respondents have asked Commerce to increase their POI U.S. prices by the amount of duties eventually not collected by the Turkish government, but for which they remained liable at the time that they sold the products to the United States—and for which they remained liable until the DIIB on which the export was reflected was closed. It is unclear how, under the above framework, adding the amount of duties for which liability is extinguished only *after* the POI increases the accuracy of the dumping calculation, which otherwise focuses on activity *during* the POI.

[60] *See* section 771(35) of the Act, which defines the term "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise."
[61] *See* sections 772(c)-(d) and 773(a) of the Act and 19 CFR 351.402.
[62] For example, section 773(a)(6)(C) of the Act directs Commerce to increase or decrease (as the case may be) normal value by any "differences in the circumstances of the sale."

Indeed, in making their arguments, the respondents appear to equate the degree to which this adjustment is accurate with the size of the drawback adjustment.[63] However, Commerce's concern is whether the respondent is entitled to an adjustment based on record evidence (independent of the amount of that adjustment). In this case, we find that the relevant figure should be derived from DIIBs closed during the POI, for the reasons stated above; thus, our focus is on the time period related to the adjustment, and not its size.

According to the CAFC, the term "accuracy" when considered in the antidumping duty context "must be considered against what the antidumping statutory scheme demands."[64] Further, "a Commerce determination (1) is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence."[65]

As noted in the "Analysis" section, above, section 772(c)(1)(B) of the Act directs Commerce to increase U.S. price by the amount of import duties that have not been collected by reason of the exportation of subject merchandise. However, neither the Act nor the legislative history provides guidance on the methodology to be used in determining the amount of these uncollected duties. In the absence of such guidance, Commerce may develop reasonable methodologies to fill gaps in the statute.[66] In doing so, we have explained the reasons for our decision to rely only on DIIBs closed during the POI, and we have demonstrated how this adjustment is supported by record evidence. Also, in the underlying investigation, we

[63] *See* Çayirova's and Tosçelik's Comments on the Draft Remand at 8, where the respondents note that Tosçelik's revised duty drawback claim was reduced by $20/MT, and state "Tosçelik would think that the Department would prefer the accuracy of the latter figure."
[64] *See Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1333 (Fed. Cir. 2016).
[65] *Id.* at 1334.
[66] *See, e.g.*, *Apex*, 862 F.3d at 1330 (finding, where Congress provided no guidance on how to perform a particular analysis, "we ask whether Commerce's exercise of its gap-filling authority and its explanation are reasonable").

determined the duty drawback adjustment using a method for adjusting US price different from the method Commerce currently uses.[67] Because Commerce's former duty drawback methodology was still in place at the time of the final determination in this investigation, and because that methodology was not challenged as part of this litigation, we have not revised the drawback calculation here to reflect Commerce's current practice. Accordingly, Commerce's determination is correct as a mathematical and factual matter, and it is based on record information and consistent with the duty drawback adjustment calculation methodology in place at the time of the underlying investigation.[68] Therefore, we disagree with the plaintiffs that our reliance on only DIIBs closed during the POI yielded inaccurate dumping margins, or that increasing the company's drawback adjustment to post-POI uncollected duties (for which they remained liable at the end of the POI) furthers the goal of accuracy.

[67] After the *Final Determination* in the underlying investigation, Commerce revised its duty drawback calculation methodology to address an imbalance in the margin calculation created when a respondent sources its inputs from both foreign and domestic sources. To correct this imbalance, Commerce now makes an upward adjustment to U.S. price based on the amount of the duty imposed on the input incorporated in the subject merchandise by allocating the amount rebated or not collected to all production that consumed the input for the relevant period. This ensures that the amount added to both sides of the dumping calculations is equal, i.e., duty neutral. *See HWR from Turkey* IDM at Comment 3.
[68] *See supra* footnote 68.

E. FINAL RESULTS OF REDETERMINATION

As directed by the Court in *Tosçelik*, we have reexamined the respondents' duty drawback adjustments and have provided further explanation as to why we limited Çayirova's and Tosçelik's requests for a duty drawback adjustment to DIIBs closed during the POI. For the reasons stated above, and because we made no changes, we did not recalculate the weighted-average dumping margins established for Çayirova and Tosçelik in the final determination of the underlying LTFV investigation of WLP from Turkey.

3/1/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
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