

Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States
Consol. Court No. 16-00206, Slip Op. 17-142 (CIT October 16, 2017)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (the Court) in *Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States Consol. Court No. 16-00206, Slip Op. 17-142* (CIT October 16, 2017) (*Remand Opinion and Order*). These final remand results concern *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR Turkey Final Determination*), and the accompanying Issues and Decision Memorandum (IDM), as amended by *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 81 FR 62874 (September 13, 2016). In its remand order, the Court held that, if the Department chooses to maintain its Land for Less than Adequate Remuneration (LTAR) benchmark calculation on remand, it must explain the following: (1) why the high prices for the Istanbul and Yalova Altinova (Yalova) land parcels are not aberrational, and how a simple average of all the land parcel prices used in the land benchmark calculation (*i.e.*, the dataset) successfully moderates the price disparities; (2) whether the Istanbul and Yalova land parcels are located in more highly developed areas of Turkey and how that affects the Department’s analysis; and (3) why the future usage of the land parcels (*i.e.*, “investment land

for industrial usage”) is relevant under the applicable provisions of the statute and the regulations.

As set forth in detail below, pursuant to the Court’s *Remand Opinion and Order*, the Department has determined that there is a reasonable basis for treating the Istanbul and Yalova land parcels as outliers because (1) the prices of these parcels deviate substantially from the other prices in the dataset, and, consequently, (2) the average price of the land parcels in the benchmark is skewed if the Istanbul and Yalova land parcels are not removed from the dataset. Although the Department generally avoids selectively removing prices from datasets, it has occasionally done so after finding certain data to be clearly aberrational or unreliable.¹ In removing the two parcels at issue from the benchmark, we find that the other issues raised by the Court, namely the relative levels of development of the land parcels in the benchmark, the importance of a land parcel’s future usage in the Department’s benchmark selection, and issues involving comparability, are moot. Therefore, we have not addressed these issues in this final remand redetermination.

II. REMANDED ISSUE

Aberrational Prices of Yalova and Istanbul Parcels

A. Background

In the Court’s *Remand Opinion and Order*, the Court found that, with regard to how the high prices of the Istanbul and Yalova land parcels deviated substantially from the other prices in the land benchmark dataset, Ozdemir had raised at least a “colorable claim that the data Commerce is considering is aberrational.”² Specifically, the Court stated that the Istanbul and

¹ See, e.g., *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016), and accompanying IDM at 27.

² See *Remand and Opinion Order* at 42.

Yalova parcel prices are 571 percent and 340 percent, respectively, of the average of all 14 parcel prices in the dataset.³ Additionally, the Court found that in the *HWR Turkey Final Determination*, the Department neither provided a reasoned explanation as to why the data in the land benchmark are reliable and non-distortive, given the disparities between these two land parcels and the other land parcels, nor explained how calculating a simple average of land parcel prices in this case offsets the potentially distortive data used to derive the land benchmark price.⁴ Therefore, the Court remanded the case for the Department to explain why the prices associated with the Istanbul and Yalova parcels are not aberrational and how an average price derivation (using the land parcel prices at issue) successfully moderates the land parcel price disparities.⁵

B. Analysis

Selection of Land Parcels

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed by hierarchical order of preference: (1) market-determined prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. In this investigation, the Department chose the first, and most preferred, method in the final determination, and used the methodology from a previous proceeding to calculate the provision of land for LTAR in this case.⁶

³ *Id.*

⁴ *Id.* at 43.

⁵ *Id.* at 44.

⁶ See Memorandum to the File, "Countervailing Duty Investigation of Heavy Walled Rectangular Pipes and Tubes from the Republic of Turkey: Additional Information," dated December 15, 2015 (Additional Information Memorandum).

Notably, in the 2011 countervailing duty administrative review of circular welded carbon steel pipes and tubes (CWP) from Turkey (*CWP Turkey CVD Review*), the Court remanded the Department's land benchmark calculation for land parcels acquired by the mandatory respondent, Toscelik Profil ve Sac Endustrisi AS (Toscelik), in 2008 and 2010.⁷ Although the Istanbul and Yalova parcels were included in the land benchmark, the central issues in the *CWP Turkey CVD Review* differed from the land benchmark issue in this case.⁸ Specifically, in its remand order for the *CWP Turkey CVD Review*, the Court instructed the Department to restore the land benchmark and amortization schedule established in the prior administrative review for Toscelik's receipt of the parcel under a 2008 grant, or to explain why doing so "would be clearly erroneous and would work a manifest injustice."⁹ The Department complied with the Court's order and reverted to the dataset used in the prior administrative review for the 2008 land subsidy, which did not include the Yalova and Istanbul parcel prices. Additionally, Toscelik's 2010 land subsidy was derived entirely from 2010 prices, thereby excluding the Istanbul and Yalova parcel prices, which were from 2009. Accordingly, in the *CWP Turkey CVD Review*, whether the Istanbul and Yalova prices should be included in the land benchmark became a moot point.

Nevertheless, in the countervailing duty investigation of welded line pipe from Turkey (*WLP from Turkey*), the Department determined not to use the benchmark data from the remand redetermination of *CWP Turkey CVD Review* and employed a more robust land benchmark comprising a larger number of data points, including the Istanbul and Yalova parcels.¹⁰ In the

⁷ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Toscelik Profil ve Sac Endustrisi AS v. United States* Court No. 13-00371; Slip Op. 14-126 (CIT 2014) (*Toscelik Profil ve Sac Endustrisi AS*) at 5.

⁸ *Id.*

⁹ See *Toscelik Profil ve Sac Endustrisi AS* at 12.

¹⁰ See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying IDM at 18-19.

HWR Turkey Final Determination, the Department used the same land benchmark dataset used in *WLP from Turkey*.¹¹ The Department determined that the land which the Zonguldak Organized Industrial Zone (OIZ) sold to Ozdemir in 2008 constituted a financial contribution that provided a benefit within the meaning of section 771(5)(E)(iv) of the Tariff Act of 1930, as amended (the Act).¹² Because the land sale occurred in the same year as the free allocation of land to Toscelik, the 2008 land benchmark from *WLP from Turkey*, comprising 2009 and 2010 prices indexed to 2008, was used to calculate Ozdemir's benefit.¹³

In its case brief, Ozdemir argued that the Department should use the company's two private land acquisitions from 1999 as the benchmark instead of the Yalova and Istanbul parcels. Ozdemir claimed that it began making payments on the parcels subject to the Provision of Land for LTAR program in 1999 and that the 2008 benchmark was not comparable to the company's Zonguldak OIZ land.¹⁴ However, the Department found that record evidence demonstrated that the effective purchase date for the Zonguldak OIZ land was in 2008, when the final terms of purchase were fixed.¹⁵ Therefore, the Department decided to continue using the 2008 land benchmark established in *WLP from Turkey* in its calculations.

In each of the prior proceedings, *CWP Turkey CVD Review* and *WLP from Turkey*, the substantial price differences between the Istanbul and Yalova land parcels and the rest of the parcels in the dataset either became moot or were not challenged by an interested party. As the question of whether these price points are aberrational is the central issue in this remand, upon reconsideration, the Department finds that it is reasonable to treat these two data points as

¹¹ See *HWR Turkey Final Determination*, 81 FR at 47349, and the accompanying IDM at 15.

¹² *Id.*

¹³ See Additional Information Memorandum at Attachment 2. The Department used 2009 and 2010 prices indexed to 2008 because there were no prices from 2008 on the record.

¹⁴ *Id.* at 27.

¹⁵ See Ozdemir's Nov. 30, 2015, Supplemental Questionnaire Response at 5-6 and 211-212.

outliers and to remove them from our land subsidy rate calculation for Ozdemir. In particular, the prices of the Istanbul and Yalova parcels deviate substantially from the other prices in the dataset. As the Court noted in its remand order, the Istanbul and Yalova parcel prices are 571 percent and 340 percent of the average of all the parcel prices.¹⁶ The Court also notes that the Istanbul and Yalova parcel prices are 763 percent and 454 percent of the next-highest-priced parcel.¹⁷ The Department agrees that it is reasonable to treat the Istanbul and Yalova prices as aberrational components in the dataset in this case and to remove them from the dataset to avoid a possible distortion in the resulting benchmark.

III. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

We requested comments in response to the November 22, 2017, draft results of redetermination no later than November 29, 2017.¹⁸ We stated that we would address any comments received in our final results of redetermination pursuant to the Court remand.¹⁹ The Department did not receive any comments.

IV. RESULTS OF FINAL REDETERMINATION

Consistent with the *Remand Opinion and Order*, we have determined to exclude the two land parcels at issue from the 2008 land price benchmark dataset. Based on the foregoing explanations, recalculating Ozdemir's subsidy rate for the Land for LTAR program during the POI, with the Istanbul and Yalova parcels removed from the benchmark dataset, yields a rate of 0.12 percent *ad valorem*.²⁰ Accordingly, Ozdemir's total subsidy rate for the POI changes to 14.66 percent. In addition, we have recalculated the all others rate based on the amended final

¹⁶ See *Remand and Opinion Order* at 42.

¹⁷ *Id.*

¹⁸ See Draft Results of Redetermination Pursuant to Court Order *Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States*, Consol. Court No. 16-00206, Slip Op. 17-142 (CIT October 16, 2017) (Draft Results).

¹⁹ *Id.* at 6.

²⁰ See Memorandum to the File from Janae Martin, "Remand Redetermination Calculations for Ozdemir Boru San. Ve Tic. Ltd. Sti.," dated November 22, 2017 (Remand Calculation Memorandum).

determination weighted-average margin for MMZ Onur Boru Profil utretim San Ve Tic. A.S. (MMZ)²¹ and the redetermination weighted-average margin for Ozdemir,²² using the publicly-ranged values for U.S. exports of subject merchandise reported by MMZ and Ozdemir. Accordingly, the revised all others rate is 12.36 percent.²³

12/11/2017

X 

Signed by: GARY TAVERMAN

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

²¹ See Memorandum to Irene Darzenta Tzafolias from Aqmar Rahman, “Amended Calculation of the ‘All Others Rate’” (August 19, 2016).

²² See Remand Calculation Memorandum.

²³ See Memorandum to Rebecca Trainor from Brian Smith, “Remand Redetermination Calculation of the ‘All Others’ Rate” (December 8, 2017).