



C-489-502

Administrative Review
POR: 1/01/10 – 12/31/10
Public Document
Office 3: KJ

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Melissa G. Skinner
Director
for Antidumping and Countervailing Duty Operations, Office 3

RE: Countervailing Duty (CVD) Order on Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: 2010 Administrative Review

SUBJECT: Issues and Decision Memorandum: Notice of Rescission of CVD Administrative Review, In Part, for Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (ERBOSAN)

SUMMARY

On December 20, 2011, we published the notice of preliminary rescission of this CVD administrative review with respect to ERBOSAN, and invited parties to comment. See Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Intent to Rescind Countervailing Duty Administrative Review, In Part, 76 FR 78886 (December 20, 2011) (Preliminary Rescission). We received comments from Wheatland Tube Company (the Petitioner) and ERBOSAN.

We analyzed the comments submitted and present the Department's response to the issues raised below. We recommend that you approve the positions described in this memorandum.

Comment 1: Opposition to the Rescission

Both Petitioner and ERBOSAN oppose the rescission of ERBOSAN's administrative review. Petitioner notes that the Department has the authority to rescind annual reviews when there are no entries of subject merchandise. However, in this case, Petitioner asserts that there were entries; they were simply misclassified as non-subject merchandise by ERBOSAN's importer.

In its comments, ERBOSAN states that in support of its entries of subject merchandise during the CVD period of review (POR), it submitted commercial invoices, bills of lading, importer security filing data entry forms, and letters from MAERSK stating that the merchandise

listed in the bills of lading were cleared by the customer.¹ ERBOSAN adds that it explained to the Department that because it was not the importer of record and all the sales to the United States were to an unrelated importer, ERBOSAN does not have any entry documentation issued by U.S. Customs and Border Protection (CBP). ERBOSAN states that it is in communication with the importer to obtain the appropriate entry documentation for the sales of subject pipe to the United States and that the importer is in contact with CBP about the entries. ERBOSAN requests that the Department use the discretion provided in 19 CFR 351.213(e)(2), which references “entries or exports,” and rely on the export entry data to continue the company’s review.

Department’s Position

It is the Department’s practice to rescind an annual review when there are no Type 3 entries² of subject merchandise during the POR.³ At the end of the review, the suspended entries are liquidated at the assessment rate computed for the review period. Therefore, for an administrative review to be conducted there must be a suspended entry to be liquidated at the newly calculated assessment rate.

As discussed in the Preliminary Rescission, we requested customs data from CBP for Type 3 entries by ERBOSAN during the CVD POR.⁴ We reviewed the customs data provided by CBP for the CVD POR and found that there were no suspended entries of subject merchandise produced by ERBOSAN. In the Request for Customs Data Memorandum, we placed on the record of the CVD review the September 30, 2011, memorandum from the administrative review of the antidumping duty (AD) order on certain welded carbon steel standard pipe and tube from Turkey (A-489-501), in which the Department determined that ERBOSAN had no reviewable entries for the AD review period of May 1, 2010, through April 30, 2011.⁵

On November 3, 2011, we issued a letter to ERBOSAN explaining that the Department’s practice requires there to be a suspended entry during the POR upon which to assess duties in order to conduct an administrative review.⁶ In that letter, we also requested that ERBOSAN

¹ See ERBOSAN’s “Response to Entry Documentation Request,” (November 17, 2011). The public version and all other public documents and public versions generated in the course of this review are available to the public through Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Department building.

² A Type 3 entry is an entry of merchandise imported into the United States that is subject to antidumping and/or countervailing duties and for which liquidation is suspended until after the completion of an administrative review in which the assessment rate is calculated.

³ See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review, 76 FR 42679 (July 19, 2011), and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299, 39302 (July 12, 2006), and Portable Electric Typewriters from Japan: Final Results of Antidumping Duty Administrative Review, 56 FR 14072, 14073 (April 5, 1991).

⁴ See Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Request for Customs Data in the CVD Administrative Review of Certain Welded Carbon Steel Standard Pipe from Turkey,” (October 27, 2011) (Request for Customs Data Memorandum).

⁵ Id.

⁶ See Department’s Letter to ERBOSAN “Request for Entry Documentation,” (November 3, 2011).

submit evidence demonstrating that the company had a Type 3 entry of subject merchandise during the CVD POR. ERBOSAN, however, was unable to provide such documentation.⁷

Because the Department finds that there are no suspended entries of subject merchandise produced by ERBOSAN against which to assess duties, we are rescinding the 2010 administrative review for ERBOSAN. The Department's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR has been upheld by the Court of Appeals for the Federal Circuit in *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368 (Fed. Cir. 2003).

Lastly, ERBOSAN is mistaken that the Department has discretion under 19 CFR 351.213(e)(2) to complete a review based on "entries or exports." The regulation cited by ERBOSAN simply addresses the review period for a CVD proceeding. Specifically, 19 CFR 351.213(e)(2) states "... an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year." Further, the regulation does not define "entries or exports." However, as discussed above, it is the Department's practice that, for an administrative review, there must be a suspended entry, *i.e.*, a reviewable Type 3 entry, against which to assess duties.

Comment 2: Application of Adverse Facts Available

Petitioner argues that if the Department determines to rescind ERBOSAN's review, then, it should adjust the cash deposit rate based on adverse facts available (AFA) for future entries. Petitioner states that the Department must address the improperly declared entries in the context of its statutory authority. At minimum, Petitioner argues that the Department should apply AFA for purposes of calculating a new cash deposit rate for future entries produced by ERBOSAN, as permitted under 19 USC §1677e(a)(2). Therefore, Petitioner suggests that the Department use the subsidy rate calculated in the original investigation of 17.80 percent⁸ as the new cash deposit rate for ERBOSAN.

Department's Position

Because there are no suspended entries of subject merchandise produced by ERBOSAN against which to assess duties, the Department is rescinding ERBOSAN's administrative review. Therefore, in the 2010 administrative review, the Department will not calculate a new cash deposit rate for future entries produced by ERBOSAN. In accordance with the Department's practice,⁹ for all non-reviewed companies, including ERBOSAN, we will instruct CBP to continue to collect cash deposits at the most recent company-specific rates applicable to the companies. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. For ERBOSAN, we will instruct CBP to continue

⁷ See ERBOSAN's "Response to Entry Documentation Request," (November 17, 2011).

⁸ See Final Affirmative Countervailing Duty Determinations: Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 51 FR 1268 (January 10, 1986).

⁹ See, e.g., Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review, 75 FR 44766, 44767 (July 29, 2010); and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 76 FR 3613 (January 20, 2011).

to collect cash deposits for the company at its current cash deposit rate of 3.97 percent.¹⁰ That cash deposit rate will apply until a future review of ERBOSAN is requested and completed.

Further, under 19 USC § 1677e(a), the Department may apply AFA in certain situations in the context of an AD or CVD proceeding. In this case, however, the Department is rescinding its review of ERBOSAN because there are no entries against which to assess duties. As such, we determine that Petitioner's argument to apply AFA to calculate a new cash deposit for ERBOSAN is moot.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final notice of rescission of this CVD administrative review with respect to ERBOSAN in the Federal Register.

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

¹⁰ See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews, 62 FR 43984 (August 18, 1997).