




UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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DATE: February 22, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Heavy Walled Rectangular
Welded Carbon Steel Pipes and Tubes from the Republic of
Turkey

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

II. BACKGROUND

On July 21, 2015, the Department received an antidumping duty (AD) petition covering imports of HWR pipes and tubes from Turkey,¹ which was filed in proper form by Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; EXLTUBE; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc. (collectively, the petitioners). The Department initiated this investigation on August 10, 2015.²

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from South Korea, Mexico, and Turkey; and Countervailing Duties on Imports from Turkey, dated July 21, 2015 (the Petition).

² See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations, 80 FR 49202 (August 17, 2015) (Initiation Notice).



In the Initiation Notice, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on August 20, 2015, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection. No parties submitted comments on respondent selection.

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of HWR pipes and tubes to be reported in response to the Department's AD questionnaire.⁴ No parties submitted comments on the scope of this investigation.

On September 4, 2015, the Department limited the number of respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume. Accordingly, we selected, in alphabetical order, MMZ Onur Boru Profil Uretim San Ve Tic. A.S. (MMZ) and Ozdemir Boru Profil San ve Tic. Ltd Sti. (Ozdemir), and issued the AD questionnaires to them.⁵

On September 8, 2015, Productos Laminados de Monterrey S.A. de C.V. (i.e., a respondent in the companion AD investigation on HWR pipes and tubes from Mexico) submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. On September 10, 2015, the petitioners and Dong-A Steel Company (i.e., a respondent in the companion AD investigation on HWR pipes and tubes from the Republic of Korea) filed rebuttal comments.

On September 11, 2015, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of HWR pipes and tubes from Turkey.⁶

In October 2015, MMZ and Ozdemir submitted timely responses to section A of the Department's AD questionnaire (i.e., the section relating to general information). In November 2015, MMZ and Ozdemir timely responded to sections B, C, and D of the Department's AD questionnaire (i.e., the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively). Also in November 2015, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the

³ See Initiation Notice, 80 FR at 49206.

⁴ Id. at 49204.

⁵ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated September 4, 2015 (Respondent Selection Memo).

⁶ See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, Mexico, and Turkey: Determinations, 80 FR 54802 (September 11, 2015) (ITC Preliminary Determination).

Department published a postponement of the preliminary determination until no later than February 16, 2016.⁷

From November 2015 through January 2016, we issued additional supplemental questionnaires to MMZ and Ozdemir, and we received responses to these supplemental questionnaires during the same time period.

On January 21 and 26, 2016, MMZ and Ozdemir respectively requested that the Department postpone the final determination, and that provisional measures be extended.⁸ On January 28, and February 11, 2016, the petitioners submitted comments for the preliminary determination.⁹

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this investigation is now February 22, 2016.¹⁰

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2015.¹¹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(ii), on January 21 and 26, 2016, MMZ and Ozdemir requested that the Department postpone the final determination, and

⁷ See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 76269 (December 8, 2015).

⁸ See letter from MMZ entitled, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETİM SANAYİ VE TİC A.Ş. (MMZ) Request for Postponement of Final Determination,” dated January 21, 2016, and letter from Ozdemir entitled, “Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Ozdemir Request to Postpone Final Determination,” dated January 26, 2016 (MMZ and Ozdemir Final Postponement Requests).

⁹ See Letter from the petitioners entitled, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Initial Pre-Preliminary Determination Comments Regarding Ozdemir,” dated January 28, 2016; Letter from the petitioners entitled, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Petitioners’ Pre-Preliminary Comments for Ozdemir,” dated February 11, 2016 (Pre-Preliminary Comments for Ozdemir); and Letter from the petitioners entitled, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Petitioners’ Pre-Preliminary Comments for MMZ,” dated February 11, 2016 (Pre-Preliminary Comments for MMZ).

¹⁰ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

¹¹ See 19 CFR 351.204(b)(1).

that provisional measures be extended.¹² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporters account for a significant proportion of exports of the subject merchandise, 3) the requesting exporters have each requested extension of provisional measures to a period not more than six months, and 4) no compelling reasons for denial exist, we are granting the respondents' requests and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage.¹³ No parties submitted comments on the scope of this investigation.

VI. DISCUSSION OF THE METHODOLOGY

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether MMZ's and Ozdemir's sales of HWR pipes and tubes from Turkey to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this memorandum.¹⁴

In its questionnaire responses, Ozdemir reported that it invoiced its home market customers based on both actual and theoretical weight, and that it invoiced its U.S. customers based on theoretical weight. Ozdemir reported its sales prices in both markets on an actual weight basis. In its questionnaire responses, MMZ reported that it invoiced its home market customers on an actual weight basis, and its U.S. customers on a theoretical weight basis. MMZ reported its home market sales on an actual weight basis and its U.S. sales on both an actual and theoretical weight basis.

In their Pre-Preliminary Comments, the petitioners requested that the Department base EP and NV on theoretical rather than actual weight for both respondents. Among other things, the petitioners allege that distortions result when the respondents converted theoretical weight to actual weight for reporting purposes, and proposed that the Department adjust the reported prices in order to compare EP and NV on a theoretical weight basis.¹⁵ In its February 17, 2016, response to the petitioners' comments, MMZ stated that, in reviewing its records it determined that the home market sales and expenses it reported to the Department were, in fact, based on

¹² See MMZ and Ozdemir Final Postponement Requests.

¹³ See Initiation Notice; see also Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

¹⁴ See Memorandum to the File from Rebecca Trainor, entitled, "Preliminary Determination Calculations for MMZ Onur Boru Profil Uretim San Ve Tic. A.S. (MMZ)," dated February 22, 2016 (MMZ Preliminary Calculation Memo); and Memorandum to the File from Ross Belliveau, entitled, "Preliminary Determination Calculations for Ozdemir Boru Profil San Ve Tic. Ltd Sti.," dated February 22, 2016 (Ozdemir Preliminary Calculation Memo).

¹⁵ See Pre-Preliminary Comments for Ozdemir at 18-19 ; and Pre-Preliminary Comments for MMZ at 12-14.

theoretical, rather than actual weight.¹⁶ Thus, MMZ claimed that the Department has the home market data necessary to base its calculations on theoretical weight.¹⁷

Our review of Ozdemir's questionnaire response indicates, subject to verification, that Ozdemir employed a reasonable methodology in deriving prices based on actual weights obtained from weigh bridge receipts.¹⁸ Therefore, for the preliminary determination, we used Ozdemir's gross unit prices based on actual weight, as reported for both the U.S. and home market.

For MMZ, the record is unclear with respect to the basis of MMZ's home market price reporting, and there was insufficient time before the preliminary determination to clarify the matter. Therefore, we find that it is appropriate to use facts otherwise available pursuant to section 776(a)(1) of the Act because we are missing the necessary clarity with respect to MMZ's reporting of home market prices. For the preliminary determination, we used the U.S. prices that MMZ reported based on theoretical weight, and its home market prices, which we understood from MMZ's representations prior to February 17 to reflect an actual weight basis, after adjusting those figures to reflect theoretical weight. For the conversion of MMZ's home market prices from an actual to a theoretical weight basis, we used, as facts available, the average difference between the theoretical and actual weights reported for U.S. sales.¹⁹

Prior to verification, we intend to request additional information from both respondents with respect to their reporting of theoretical vs. actual prices and quantities, and we will allow all parties the opportunity to submit comments on this information. We also intend to fully examine this issue at verification and revisit it for the final determination, if appropriate.

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (i.e., the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁰ The Department

¹⁶ See letter from MMZ entitled, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Response to Petitioner's February 11, 2016 Submission" dated February 17, 2016.

¹⁷ Ozdemir submitted comments on the petitioners' Pre-Preliminary Comments on February 18, 2016, but these comments were received too late to be considered for the preliminary determination.

¹⁸ See Ozdemir's Section A Response at Exhibits A-6 and A-7, and letter from Ozdemir entitled "Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to Second §BC Supplemental Questionnaire," dated January 27, 2016, at 3-6 and Exhibit 1.

¹⁹ See MMZ Preliminary Calculation Memo.

²⁰ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at

finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015) (Welded Line Pipe from Turkey).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

For MMZ, based on the results of the differential pricing analysis, the Department preliminarily finds that 88.59 percent of the value of U.S. sales pass the Cohen’s *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary

determination, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for MMZ.²¹

For Ozdemir, based on the results of the differential pricing analysis, the Department preliminarily finds that 52.37 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Ozdemir.²²

VII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. The date of sale is generally the date on which the parties establish the material terms of the sale,²³ which normally includes the price, quantity, delivery terms and payment terms.²⁴ The Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁵

MMZ reported the date of invoice as the date of sale for all home market and U.S. sales.²⁶ The respondent reported that the invoice date best represents the date of sale for both home market and U.S. sales because, at that point, the material terms of the sale (*i.e.*, quantity and delivery terms) cannot be altered.²⁷ Accordingly, we used the invoice date as the date of sale for purposes of this preliminary determination for MMZ.

²¹ See MMZ Preliminary Calculation Memo.

²² See Ozdemir Preliminary Calculation Memo.

²³ See 19 CFR 351.401(i).

²⁴ See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

²⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁶ See Letter from MMZ, entitled, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETİM SANAYİ VE TİC A.Ş. Response to the Department of Commerce's September 14, 2015 Sections B and C Questionnaire," dated November 4, 2015 (MMZ's Section B Response and MMZ's Section C Response), at 13 and 10, respectively.

²⁷ See Letter from MMZ, entitled, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETİM SANAYİ VE TİC A.Ş. Response to the Department's Section A Questionnaire, dated October 14, 2015 (MMZ's Section A Response), at 14; and Letter from MMZ, entitled, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETİM SANAYİ VE TİC A.Ş. Response to the Department of Commerce's November 20, 2015 Sections A through C Questionnaire," dated December 11, 2015, at 13.

Ozdemir reported the date of invoice as the date of sale for all home market and U.S. sales.²⁸ Ozdemir reported that the invoice date best represents the date of sale because important terms such as quantity and shipment date can be changed after the contract date.²⁹ Accordingly, for Ozdemir, we used the invoice date as the date of sale for purposes of this preliminary determination.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents, MMZ and Ozdemir, in Turkey during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: steel input type, quality, metallic coating, painted, perimeter, wall thickness, scarfing, and shape.³⁰

IX. EXPORT PRICE

For all sales made by MMZ and Ozdemir, we used EP in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

MMZ

We based the starting price on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses (e.g., foreign inland freight, foreign brokerage and handling, and international freight expenses), in accordance with section 772(c)(2)(A) of the Act.³¹

²⁸ See Letter from Ozdemir, entitled “Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey, Response to §§B,C,D,” dated November 4, 2015 (Ozdemir’s Section B Response and Ozdemir’s Section C Response), at 15 and 11, respectively.

²⁹ See Letter from Ozdemir, entitled “Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to Section A/B/C Supplemental Questionnaire,” dated December 17, 2015 (Ozdemir’s Supplemental Questionnaire Response), at 3.

³⁰ We received arguments in the companion investigation on HWR pipes and tubes from Mexico relating to the treatment of custom-designed parts for original equipment manufacturers. While this is not currently an issue in this investigation, we may consider altering our product comparison criteria to account for these parts in future segments of this proceeding, consistent with our proposed treatment of them in the investigation involving Mexico.

³¹ See MMZ Preliminary Calculation Memo.

Ozdemir

We based the starting price on packed prices to unaffiliated purchasers in the United States or to unaffiliated purchasers who shipped the merchandise to the United States. We made deductions from the starting price, where appropriate, for movement expenses (e.g., foreign inland freight, and foreign brokerage and handling expenses), in accordance with section 772(c)(2)(A) of the Act.³²

We disallowed Ozdemir's claimed adjustment to U.S. price in connection with a provision of Turkish tax law allowing exporters to claim a deduction from taxable income for export revenue.³³ Ozdemir identified no provision under U.S. Antidumping duty law which allows for such an adjustment to U.S. price.

Ozdemir claimed a duty drawback adjustment to U.S. price.³⁴ Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to EP or CEP.³⁵ The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.³⁶

In this investigation, we preliminarily are granting a duty drawback adjustment for Ozdemir because it has satisfied the criteria described above for Turkey's duty drawback program, or Inward Processing Regime (IPR). We note that Ozdemir reported claims that were opened and "closed" (i.e., claims based on import certificates (also known as DIIBs) to which the company was no longer permitted by the Turkish government to add import or export information), as well as for a DIIB that has not been closed. For this preliminary determination, we considered only "closed" claims for purposes of our duty drawback adjustment, as explained below.

In its response, Ozdemir claimed a duty drawback adjustment for exports made under three DIIBs: 1138, 6034, and 3432. DIIB 1138 is still open. Ozdemir applied for closure of DIIB 6034, and simultaneously requested a suspension of that closure. Accordingly, it appears that Ozdemir's application to close DIIB 6034 is not yet final, and it is uncertain whether Ozdemir has definitively fulfilled the DIIB's requirements or may submit revisions to its application. Only DIIB 3432 has been closed and is not subject to revision. Therefore, we have only

³² See Ozdemir Preliminary Calculation Memo.

³³ See Ozdemir's Section C Response at 43.

³⁴ *Id.* at 27-31, and Exhibit C-7.

³⁵ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (Saha Thai).

³⁶ *Id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

included DIIB 3432 in our preliminary calculation of the duty drawback adjustment. We note that this methodology is consistent with our approach to the duty drawback calculation in the recently completed final determination of Welded Line Pipe from Turkey.³⁷

Ozdemir provided sufficient information to support its claim for a duty drawback adjustment; this information includes the rules from the Turkish government describing the program and the schedule of rates for exported goods.³⁸ Additionally, Ozdemir identified the raw materials imported for which duties were not collected in accordance with the IPR, worksheets detailing how it calculated the per-unit duty drawback adjustment, as well as worksheets linking the raw materials to the merchandise under consideration, and demonstrating that there were sufficient volumes of the imported materials to account for the duty drawback or exemption granted.³⁹

Based on Ozdemir's satisfaction of the two-prong test, we preliminary determine to grant a duty drawback adjustment to EP pursuant to 772(c)(1)(B) of the Act.⁴⁰ However, the record shows that Ozdemir sources its inputs from foreign and domestic sources. The portion of inputs that are domestically sourced contain no import duties because they were not imported and thus, not subject to import duties. Under the Department's practice, the Department has normally taken the amount of the duty forgiven or rebated for the year and divided it by the exports subject to the duty drawback for the year to arrive at an amount by which to adjust EP. However, the Department has realized that in situations in which the inputs are sourced from both domestic and foreign sources, such a calculation results in an imbalance in the dumping calculations.⁴¹

The imbalance results from the different bases used on the NV side and the EP side, and from the fact that the full amount of any duty cannot be assumed to be in the home market price. First, on the NV side of the dumping equation, the annual average cost for an input is an average cost of both the foreign-sourced input, which includes the duties, and the domestically-sourced inputs on which no import duties were imposed. Second, on the EP side, the duty was allocated to the export sales. Adjusting EP/CEP for the full amount of duties imposed which are rebated or not collected on export sales, when some of the same inputs are domestically sourced, results in a larger adjustment to the EP/CEP than reflected in the NV, creating an imbalance. Additionally, when the inputs are from both foreign and domestic sources, the home market price may no longer be assumed to have been increased to account for the full duty.

³⁷ See Welded Line Pipe from Turkey, and accompanying Issues and Decision Memorandum (Welded Line Pipe IDM) at Comment 3.

³⁸ See Ozdemir's Section C Response at Exhibit C-7, and Ozdemir's Supplemental Questionnaire Response at Exhibit S-28.

³⁹ See Ozdemir's Section C Response at Exhibit C-7, and Ozdemir's Supplemental Questionnaire Response at Exhibits S-21, S-22, S-23, and S-24.

⁴⁰ See e.g., Welded Line Pipe IDM at Comment 1; and Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹ See Certain Corrosion-Resistant Steel Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 63 (January 4, 2016), and accompanying Decision Memorandum at 14.

A duty drawback adjustment to EP/CEP is based on the principle that the “goods sold in the exporter’s domestic market are subject to import duties while exported goods are not.”⁴² Home market sales prices and cost of production are import duty “inclusive,” while export market sales prices are import duty “exclusive.” In Saha Thai, the Court of Appeals for the Federal Circuit (CAFC) stated:

The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty draw-back is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.⁴³

Thus, the CAFC recognized the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate or exemption of import duties on inputs used in the production of exported merchandise. However, in circumstances such as those present here, a distortion in the dumping margin is caused by providing a duty drawback adjustment based solely on what would have been collected on export sales of subject merchandise when the inputs have been imported and domestically sourced. In other words, not all home market sales prices can be presumed to reflect an increase because of import duties paid.

Accordingly, the Department determines to take these distortions into account in order to accurately determine an adjustment for “the amount of import duties imposed . . . which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.”⁴⁴ Specifically, the Department will make an upward adjustment to EP and CEP based on the amount of the duty imposed on the input incorporated in the subject merchandise by properly 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.

Thus, based on the facts of this investigation, the Department believes that the import duty costs, based on the consumption of imported inputs during the POI, including imputed duty costs on export sales, properly accounts for the amount of duties imposed, as required by 772(c)(1)(B) of the Act. We have added the resulting per-unit amount to the U.S. price.⁴⁵

⁴² See Saha Thai, 635 F.3d at 1339.

⁴³ Id.

⁴⁴ See Section 772(c)(1)(B) of the Act.

⁴⁵ See Memorandum to Neal Halper from Stephanie Arthur entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination--Ozdemir Boru Profil San. Ve Tic. Ltd. STI,” dated February 22, 2016 (Ozdemir COP Calculation Memo).

X. NORMAL VALUE

A. *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for MMZ and Ozdemir, in accordance with section 773(a)(1)(B) of the Act.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁷ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁴⁸ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁹

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in

⁴⁶ See 19 CFR 351.412(c)(2).

⁴⁷ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010) (OJ from Brazil), and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁸ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁹ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁵⁰

In this investigation, we obtained information from MMZ and Ozdemir regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.⁵¹ Our LOT findings are summarized below.

MMZ

MMZ reported that it sold HWR pipes and tubes to home market customers through one distribution channel during the POI.⁵² We preliminarily determine that there is one LOT in the home market, as all sales are made through a single distribution channel and the selling activities do not vary within the channel.⁵³

With respect to the U.S. market, MMZ reported it sold the subject merchandise to U.S. customers through two distribution channels, but that these two channels represent a single LOT.⁵⁴ Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on our analysis of these selling activities, we preliminarily determine that there is one LOT in the U.S. market because the difference in selling activities between the two channels is not significant enough to warrant a LOT distinction.⁵⁵

We compared the U.S. LOT to the home market LOT. Based on our review of the selling functions described in MMZ's questionnaire responses, we do not find the selling functions performed by MMZ for its home market customers to be significantly different from those performed for its U.S. customers, such that they would constitute a different marketing stage. Therefore, we preliminarily determine that sales to the home market during the POI were not made at a different LOT than sales to the United States, and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

⁵⁰ See, e.g., OJ from Brazil, at Comment 7.

⁵¹ See MMZ's Section A Response at 7-13 and Exhibit A-4; and Ozdemir's Section A Response at Exhibit A-5.

⁵² Although MMZ discusses selling through two home market distribution channels, its home market sales database reflects only one channel. See MMZ's Section A response at 8 and Exhibit A-4.

⁵³ See MMZ's Section A Response at 8 and Exhibit A-4.

⁵⁴ See MMZ's Section C Response at 17.

⁵⁵ See MMZ Preliminary Calculation Memo for a business proprietary discussion of MMZ's channels of distribution and selling activities.

Ozdemir

Ozdemir reported that it sold HWR pipes and tubes to home market customers through one distribution channel during the POI.⁵⁶ We preliminarily determine that there is one LOT in the home market, as all sales are made through a single distribution channel and the selling activities do not vary within the channel.⁵⁷ Similarly, we preliminarily determine that there is only one LOT in the U.S. market because all U.S. sales are made through a single distribution channel and the selling activities do not vary within the channel.⁵⁸

We compared the U.S. LOT to the home market LOT. Based on our review of the selling functions described in Ozdemir's questionnaire responses, we do not find the selling functions performed by Ozdemir for its home market customers to be significantly different from those performed for its sales to U.S. customers, such that they would constitute a different marketing stage. Therefore, we preliminarily determine that sales to the home market during the POI were not made at a different LOT than sales to the United States, and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

C. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production.⁵⁹ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment of the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁶⁰ Section 773 (b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings.⁶¹ Accordingly, the Department requested this information from MMZ and Ozdemir.⁶² We examined MMZ's and Ozdemir's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

⁵⁶ See Ozdemir's Section B Response at 14.

⁵⁷ See Ozdemir's Section A Response at Exhibit A-5.

⁵⁸ See Ozdemir's Section C Response at 10-11, and Exhibit A-5.

⁵⁹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. (2015).

⁶⁰ See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

⁶¹ Id., 80 FR at 46794-95.

⁶² The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.⁶³

We made certain revisions to the per-unit amount Ozdemir reported in the cost database for exempted import duties on hot-rolled coil inputs.⁶⁴ Otherwise, we relied on the COP data submitted by the respondents.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of MMZ's and Ozdemir's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

⁶³ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁶⁴ See Ozdemir Cost Calculation Memo. See also Section IX above.

D. *Calculation of NV Based on Comparison-Market Prices*

For MMZ, we calculated NV based on packed prices to unaffiliated customers. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and courier fees.

For Ozdemir, we calculated NV based on packed prices to unaffiliated customers. We made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, bank charges, export fees, and commissions. Where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the U.S. market.⁶⁵

For all price-to-price comparisons, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁶⁶ We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

XI. CURRENCY CONVERSION


We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

We recommend applying the above methodology for this preliminary determination.




Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date

⁶⁵ See 19 CFR 351.410(e).

⁶⁶ See 19 CFR 351.411(b).