



A-489-824
Administrative Review
POR: 9/1/2017-8/31/2018
Public Document
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July 12, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Heavy Walled
Rectangular Welded Carbon Steel Pipes and Tubes from the
Republic of Turkey; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey).¹ The review covers five producers/exporters of the subject merchandise. The period of review (POR) is September 1, 2017 through August 31, 2018. We preliminarily determine, based on adverse facts available (AFA), that Noksel Celik Boru Sanayi A.S. (Noksel), a producer and/or exporter subject to this administrative review, made sales of subject merchandise at less than normal value during the POR. We also preliminarily determine that Cinar Boru Profil San Ve Tic A.S. (Cinar Boru) had no shipments of subject merchandise during the POR. We are conducting this administrative review of the *Order* in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

II. BACKGROUND

On September 13, 2016, Commerce published the *Order* in the *Federal Register*. On September 11, 2018, Commerce published a notice of opportunity to request an administrative review of the

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865 (September 13, 2016) (*Order*).



Order for the 2017-2018 review period.² On October 1, 2018, Independence Tube Corporation, a Nucor company, and Southland Tube, Incorporated, a Nucor company, (collectively, the petitioners) requested an administrative review with respect to Agir Haddecilik A.S., Cinar Boru,³ MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul, Noksel, and Ozdemir Boru Profil San. ve Tic. Ltd. Sti. (Ozdemir).⁴ Accordingly, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order* for each of these five companies.⁵

In the “Respondent Selection” section of the *Initiation Notice*, we stated that, if necessary, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of HWR pipes and tubes from Turkey during the POR.⁶ On November 26, 2018, Commerce issued to all parties with an Administrative Protective Order (APO) access to the entry data from CBP and invited interested parties to comment on these data.⁷ We received no comments about the CBP data or respondent selection.

On December 17, 2018, Commerce selected Noksel, the exporter/producer with the largest volume of subject merchandise entries during the POR, as the mandatory respondent in this administrative review.⁸ Commerce issued Noksel the standard antidumping questionnaire on December 18, 2018.⁹ Noksel subsequently notified Commerce that it did not intend to participate in the review.¹⁰

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 45888 (September 11, 2018).

³ Commerce initiated a review of Cinar Boru Profil San Ve Tic Stl. However, the company has identified itself as Cinar Boru Profil San Ve Tic A.S. in its letters to Commerce. See, e.g., Cinar Boru’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824),” dated March 14, 2019 (Cinar Boru’s No Shipment Letter). Commerce is hereby using Cinar Boru’s spelling of its name.

⁴ See Petitioners’ Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Request for Administrative Review,” dated October 1, 2018 (Petitioners’ Review Request).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411 (November 15, 2018) (*Initiation Notice*). Commerce is conducting this administrative review only with respect to entries for which Ozdemir was not both the exporter and producer of subject merchandise. See the “Background” section of the accompanying *Federal Register* notice for additional detail.

⁶ See *Initiation Notice*.

⁷ See Memorandum, “Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: U.S. Customs Data for Respondent Selection,” dated November 26, 2018.

⁸ See Memorandum, “2017-2018 Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Respondent Selection,” dated December 17, 2018 (Respondent Selection Memorandum).

⁹ See Memorandum, “Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes: Noksel Celik Borun Sanayi A.S. Questionnaire,” dated December 18, 2018 (Noksel Initial Questionnaire Memorandum).

¹⁰ See Noksel’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824),” dated February 4, 2019 (Noksel Non-Participation Letter).

On February 22, 2019, we selected Cinar Boru as a mandatory respondent.¹¹ Cinar Boru subsequently notified Commerce that it did not ship any subject merchandise to the United States during the POR.¹²

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019.¹³ The revised deadline for the preliminary results is now July 12, 2019.

III. SCOPE OF THE ORDER

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under

¹¹ See Memorandum, “2017-2018 Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from the Republic of Turkey: Second Respondent Selection,” dated February 22, 2019 (Second Respondent Selection Memorandum).

¹² See Cinar Boru’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824),” dated March 14, 2019 (Cinar Boru’s No Shipment Letter).

¹³ See Memorandum to the Record from 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, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Cinar Boru reported that it made no sales of subject merchandise during the POR.¹⁴ In accordance with our standard practice, we requested entry documentation from CBP to confirm Cinar Boru's no-shipment claim.¹⁵ On May 16, 2019, we placed these documents on the record,¹⁶ and we sent Cinar Boru a supplemental questionnaire asking it to clarify information found in CBP's entry documentation.¹⁷ Cinar Boru responded that, while the company had third-country sales to Europe during the POR, it has no knowledge of subject merchandise exported to the United States during the POR.¹⁸ The petitioners commented on both Cinar Boru's no-shipment claim and the CBP entry documentation, arguing that Cinar Boru's no-shipment claim is contradicted by evidence on the record (*i.e.*, the CBP data, the CBP entry documentation, and public information found on Cinar Boru's website) and that the company did not fully explain this discrepancy.¹⁹ We disagree that any of the information on the record contradicts Cinar Boru's claim that it had no knowledge of any third party sales of its merchandise to the United States. Therefore, we preliminarily determine that Cinar Boru had no shipments of subject merchandise during the POR.

However, consistent with our practice, we are not preliminarily rescinding the review with respect to Cinar Boru, but, rather, we will complete the review with respect to the company and issue appropriate instructions to CBP based on the final results of this review.²⁰ Following our long-standing practice, we will instruct CBP to liquidate any existing entries of merchandise produced by Cinar Boru and exported by other parties at the all-others rate, should we continue to find in our final results that it made no shipments of subject merchandise during the POR.²¹

¹⁴ See Cinar Boru's No Shipment Letter.

¹⁵ See Memorandum, "Request for U.S. Entry Documents – 2017-2018 Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from the Republic of Turkey (A-489-824)," dated March 19, 2019.

¹⁶ See Memorandum, "Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from Turkey: Entry Documents Requested," dated May 16, 2019.

¹⁷ See Commerce's Letter, "2017-2018 Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from Turkey," dated May 16, 2019.

¹⁸ See Cinar Boru's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824)," dated May 29, 2019.

¹⁹ See Petitioners' Letters, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on No Shipment Letter," dated March 25, 2019; "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on CBP Entry Documentation," dated May 24, 2019; and "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Response to Cinar's May 29, 2019 Letter and Submission of Other Factual Information," dated June 12, 2019.

²⁰ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306 (August 28, 2014).

²¹ See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008).

See the “Assessment Rates” section of the accompanying *Federal Register* notice for additional detail.

V. USE OF FACTS AVAILABLE AND ADVERSE INFERENCES

For the reasons discussed below, we determine that the use of facts available with an adverse inference is appropriate for these preliminary results with respect to Noksel.

A. Use of Facts Available

Section 776(a) of the Act, provides that Commerce shall use “facts otherwise available” if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

On December 17, 2018, Commerce issued the antidumping questionnaire to Noksel.²² On February 4, 2019, Noksel stated that it did not intend to participate in the administrative review.²³ Without information from Noksel, Commerce is unable to calculate a dumping margin for Noksel. Thus, in accordance with section 776(a)(1) of the Act, necessary information to calculate a weighted-average dumping margin for Noksel’s exports of subject merchandise to the United States during the POR is not on the record. Moreover, in accordance with section 776(a)(2) of the Act, we preliminarily determine that, because Noksel did not respond to the questionnaire, it withheld information that had been requested by Commerce, failed to provide information to Commerce by the deadline for submission of that information, and significantly impeded the conduct of this proceeding. Therefore, we are relying upon facts otherwise available to determine a preliminary weighted-average dumping margin for Noksel in this review.

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.²⁴ In addition, the SAA provides that Commerce may employ an adverse inference when selecting among facts otherwise available “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁵ The

²² See Commerce’s Letter to Noksel, dated December 17, 2018; *see also* Noksel Initial Questionnaire Memorandum.

²³ See Noksel Non-Participation Letter.

²⁴ See *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 36891, 36891 (June 8, 2016).

²⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870; *see also, e.g., Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

“best of its ability” standard requires a party to “do the maximum it is able to do.”²⁶ Evidence of “motivation or intent” on the part of the respondent is not required for Commerce to make an adverse inference.²⁷

Because Noksel received Commerce’s questionnaire but did not respond to our request for information, we preliminarily determine that Noksel has failed to cooperate by not acting to the best of its ability. The failure of Noksel to participate in this review has precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin for Noksel’s exports of subject merchandise to the United States during the POR. Accordingly, we preliminarily find that the application of AFA, pursuant to section 776(b) of the Act, is warranted.²⁸

C. Selection and Corroboration of Information Used as Facts Available

When employing an adverse inference in selecting among the facts available, Commerce’s practice is to select an AFA rate that is sufficiently adverse to induce respondents to provide Commerce with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.²⁹ Specifically, Commerce’s practice in reviews is to use the highest rate on the record of the proceeding, which, to the extent practicable, can be corroborated.³⁰

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.³¹

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or

²⁶ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

²⁷ *Id.* at 1383.

²⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where Commerce applied total AFA because the respondent failed to respond to the questionnaire); see also *Nippon Steel*, 337 F. 3d at 1382-83.

²⁹ See SAA at 870.

³⁰ See, e.g., *Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

³¹ See 19 CFR 351.308(c); and SAA at 868-70.

any previous review under section 751 of the Act concerning the subject merchandise.³² However, section 776(c)(2) of the Act explains that Commerce “shall not be required to corroborate any dumping margin . . . applied in a separate segment of the same proceeding.”

In this review, we are preliminarily assigning Noksel a weighted-average dumping margin of 35.66 percent, which was applied as the AFA margin to MMZ Boru Profil Uretim Sanayi Ve Tic. A.S. (MMZ) in the LTFV investigation.³³ This rate was the highest transaction-specific margin of Ozdemir, the cooperating mandatory respondent in the LTFV investigation, and is the highest rate calculated, or otherwise applied to a respondent, in any segment in this proceeding.³⁴ Applying this rate achieves the purpose of applying an adverse inference in this instance, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Because we are applying as the AFA rate a dumping margin applied in a prior segment of this proceeding, we are not required to corroborate this margin, pursuant to section 776(c)(2) of the Act.

When a respondent is not cooperative, such as Noksel in this review, Commerce has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.³⁵ If this were not the case, the party would have produced current information showing its rate to be less.³⁶ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

D. Rate for Non-Selected Companies

The statute and Commerce’s regulations do not directly address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce’s practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.³⁷ In particular, section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit’s decision in *Albemarle Corp. v. United States*,³⁸ in this review, we preliminarily determine that a reasonable method for determining the rate for the non-selected companies is to use the dumping margin applied to

³² See SAA at 870; and 19 CFR 351.308(c).

³³ 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), and accompanying IDM at 6-7.

³⁴ *Id.*

³⁵ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990)).

³⁶ See *Rhone Poulenc*, 899 F. 2d at 1190.

³⁷ See, e.g., *Longkou Haimeng Mach. Co., Ltd. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).

³⁸ See *Albemarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. 2016).

Noksel in this administrative review.³⁹ This is the only dumping margin determined in this review for an individual respondent and, thus, it is appropriate to apply this dumping margin to the three non-selected companies under section 735(c)(5)(B) of the Act. Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 35.66 percent.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

7/12/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³⁹ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 17527 (April 20, 2018), and accompanying IDM at Comment 4.