



A-489-824

Administrative Review  
POR: 9/1/2017-8/31/2018  
**Public Document**  
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November 15, 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:** Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes  
from the Republic of Turkey: Issues and Decision Memorandum  
for the Final Results of Antidumping Duty Administrative Review  
and Final Determination of No Shipments; 2017-2018

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## **I. Summary**

The Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review on July 19, 2019, in which we found that mandatory respondent Cinar Boru Profil San Ve Tic A.S. (Cinar Boru) had no shipments of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey), and in which we determined a rate for mandatory respondent Noksel Celik Boru Sanayi A.S. based on total adverse facts available.<sup>1</sup> The period of review (POR) is September 1, 2017 through August 31, 2018. We analyzed the case brief that the petitioners<sup>2</sup> submitted on the record. No rebuttal briefs were submitted. Based on our analysis of the comments received, these final results do not differ from the *Preliminary Results*. We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum.

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<sup>1</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018*, 84 FR 34863 (July 19, 2019) (*Preliminary Results*) and accompanying Memorandum, “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,” dated July 12, 2019 (Preliminary Decision Memorandum).

<sup>2</sup> The petitioners are Independence Tube Corporation, a Nucor company, and Southland Tube, Incorporated, a Nucor company.

## II. Background

On February 22, 2019, Commerce selected Cinar Boru as a mandatory respondent in the antidumping duty (AD) administrative review of HWR pipes and tubes from Turkey and issued to Cinar Boru an AD questionnaire.<sup>3</sup> Cinar Boru subsequently notified Commerce that it did not ship any subject merchandise to the United States during the POR.<sup>4</sup> On May 16, 2019, Commerce placed entry documentation obtained from U.S. Customs and Border Protection (CBP) for Cinar Boru on the record of this review.<sup>5</sup> Also on May 16, 2019, we issued a letter to Cinar Boru requesting that it explain the apparent discrepancy between its claim of no exportation of subject merchandise to the United States during the POR and the CBP information.<sup>6</sup> Cinar Boru responded to this request on May 29, 2019.<sup>7</sup> Based on record evidence, we preliminarily determined that Cinar Boru had no shipments of subject merchandise during the POR. After publishing the *Preliminary Results*, the petitioners submitted a case brief on August 19, 2019.<sup>8</sup> No other party submitted a case brief or rebuttal brief.

Commerce exercised its discretion to toll all deadlines affected by the partial government closure from December 22, 2018 through the resumption of operations January 29, 2019.<sup>9</sup> Accordingly, the revised deadline for these final results is November 18, 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.

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<sup>3</sup> 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; *see also* Memorandum, “Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from Turkey: Cinar Boru Profil San Ve Tic. Stl. Questionnaire,” dated March 5, 2019.

<sup>4</sup> See Cinar Boru’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824),” dated March 14, 2019.

<sup>5</sup> 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.

<sup>6</sup> 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 (Commerce’s May 16 Letter).

<sup>7</sup> See Cinar Boru’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-824),” dated May 29, 2019 (Cinar Boru’s May 29 Letter).

<sup>8</sup> See Petitioners’ Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Petitioners’ Case Brief,” dated August 19, 2019 (Petitioners’ Case Brief).

<sup>9</sup> 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. If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day.

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 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. Discussion of the Issue: Certification of No Shipments**

##### *The Petitioners' Arguments*

- There is no evidence on the record to support Cinar Boru's claim that it had no knowledge of any third-party sales of its merchandise to the United States.<sup>10</sup>
- Entry documentation from CBP placed on the record contradicts Cinar Boru's claim that the difference between American and European standards would not allow the possibility of Cinar Boru's sales to Europe to enter the United States as subject merchandise and, therefore, Cinar Boru has no basis to claim that, while it had knowledge of sales to Europe, it did not have knowledge of sales to the United States.<sup>11</sup>
- Additionally, despite Cinar Boru's claim that it had no re-exports or knowledge of sales of its products to the United States, Cinar Boru is a major Turkish producer of HWR pipes and tubes, and the company's website identifies the United States as a destination for its products.<sup>12</sup>

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<sup>10</sup> See Petitioners' Case Brief at 2.

<sup>11</sup> *Id.* at 3 (citing Cinar Boru's May 29 Letter).

<sup>12</sup> *Id.* at 3-4 (citing Cinar Boru's May 29 Letter and Petitioners' Letter, "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 at Exhibit 1).

- In its final results, Commerce should reject Cinar Boru's no-shipment claim and find that the company had shipments of subject merchandise to be examined in this administrative review.<sup>13</sup>
- Further, Commerce should assign Cinar Boru a rate based on the application of total adverse facts available (AFA) because Cinar Boru failed to provide Commerce with information requested in Commerce's questionnaire, failed to support its claim that it had no knowledge of sales to the United States when it made sales to Europe during the POR, and failed to address the apparent discrepancy between its no-shipment claim and other evidence on the record.<sup>14</sup>
- Commerce should also refer Cinar Boru's evasion of the order and misreporting of its entries to CBP for investigation.<sup>15</sup>
- Regarding Cinar Boru's reference to the Section 232 duties in its May 29 Letter, these duties must be assessed in addition to existing AD and countervailing duties. If Commerce does not collect AD and/or countervailing duties, this undermines the objective of the Sections 232 duties to protect national security.<sup>16</sup>

#### Commerce's Position:

We disagree with the petitioners that Commerce should reverse its preliminary finding of no shipments and apply an AFA rate to Cinar Boru for the final results.

In Commerce's May 16 Letter, we asked Cinar Boru to: (1) explain the apparent discrepancy between its claim of no exportation of subject merchandise to the United States and the CBP information; (2) explain whether it made any sales to third country entities during the POR; and (3) explain whether it had knowledge of subject merchandise ultimately destined for the United States after sale to a third country. We did not ask Cinar Boru to provide specific documentation in support of its no shipment claim, and we disagree that the information on the record contradicts Cinar Boru's claim that it had no knowledge of any third-party sales of its subject merchandise to the United States. Because Cinar Boru's claim of no shipments during the POR involves business proprietary information, our analysis of the issue is contained in the No Shipment Certification Memo.<sup>17</sup>

We also disagree with the petitioners that AFA is warranted because Cinar Boru did not submit requested information in a questionnaire response. The cover letter to the questionnaire<sup>18</sup> specifically states:

If, after examining sections A and C of the questionnaire, you conclude that your company and its affiliates did not have any U.S. sales or shipments during the review period identified above, please submit a statement to that effect, following the data submission requirements

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 5-7.

<sup>15</sup> *Id.* at 7 (citing Petitioners' Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on CBP Entry Documentation," dated May 24, 2019 at 5).

<sup>16</sup> *Id.* at 7 (citing Cinar Boru's May 29 Letter).

<sup>17</sup> See Memorandum, "No Shipment Certification – Cinar Boru Profil San Ve Tic A.S.," dated concurrently with this memorandum (No Shipment Certification Memo).

<sup>18</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated March 4, 2019 (IQ).

specified in the general instructions. If you do not submit such a statement for the administrative record in this case, we may conclude that your company has not been responsive to this questionnaire and may proceed on the basis of the facts otherwise available, as defined in the glossary at Appendix I of the attached questionnaire.

The record indicates that Cinar Boru received the questionnaire on March 7, 2019, and submitted a no-shipment claim on March 14, 2019, which was before the due date for a response to Section A of the questionnaire (*i.e.*, March 25, 2019).<sup>19</sup> Because Cinar Boru submitted a no-shipment certification, a complete response to Commerce's questionnaire was unnecessary. Accordingly, there is no basis to apply AFA to Cinar Boru for the final results of this review.

Although the petitioners have asked Commerce to refer Cinar Boru's alleged evasion of the order and misreporting of its entries to CBP, they have not provided any specific evidence to support their allegation. Commerce takes seriously allegations of potential customs fraud, and if presented with evidence of potential customs fraud on our record, we will refer the matter to CBP. Commerce's *Federal Register* notice and instructions to CBP make clear that the identified companies are the only companies entitled to the corresponding rates. Additionally, because we are not calculating a weighted-average dumping margin for Cinar Boru in this administrative review, given our finding that Cinar Boru had no shipments of the subject merchandise, we find that the petitioners' argument regarding the assessment of the Section 232 duties is moot.

## V. RECOMMENDATION

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

☒

Agree

☐

Disagree

11/15/2019

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>19</sup> See Memorandum, "Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon and Steel Pipes and Tubes from Turkey," dated March 11, 2019; *see also* IQ.