



C-489-825

Administrative Review

POR: 1/1/2017 – 12/31/2017

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December 17, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results:
Administrative Review of the Countervailing Duty Order on
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes
from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on heavy walled rectangular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey), covering the period of review (POR) January 1, 2017 through December 31, 2017. The sole mandatory respondent in this review is Ozdemir Boru Profil San ve Tic. Ltd Sti. (Ozdemir). The petitioners are Independence Tube Corporation, a Nucor Company, and Southland Tube, Incorporated, a Nucor company (collectively, the petitioners).

As a result of this analysis, we have made certain changes since the *Preliminary Results*.¹ We recommend that you approve the positions described in the “Analysis of Comments” section of this memorandum.

Below is the complete list of issues in this review for which we received comments from interested parties:

Comment 1: Provision of Hot-Rolled Steel (HRS) for Less than Adequate Renumeration (LTAR): Whether to Include Value-Added Tax (VAT) on Imported HRS

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2017, 84 FR 43583 (August 21, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 2: Deduction from Taxable Income for Export Revenue: Whether to Use Amount Listed in Ozdemir's 2016 or 2017 Tax Return

II. BACKGROUND

A. Case History

On August 21, 2019, Commerce published its *Preliminary Results* in this review. In accordance with 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1), we invited parties to comment on the *Preliminary Results*. On September 9, 2019, we issued a supplemental questionnaire to the Government of Turkey (GOT), to which GOT responded on September 18, 2019.² On September 27, 2019, we received a case brief from Ozdemir.³ The petitioners submitted a rebuttal brief on October 2, 2019.⁴ No party requested a public hearing.

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The products covered by this 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 exceed 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

² See GOT's Letter, "Response of the Government of Turkey to Fifth Supplemental Questionnaire in 2017 Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated September 18, 2019.

³ See Ozdemir's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Ozdemir's Case Brief," dated September 27, 2019 (Ozdemir's Case Brief).

⁴ See Petitioners' Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Rebuttal Brief," dated October 2, 2019 (Petitioners' Rebuttal Brief).

- 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 of this order is dispositive.

IV. PERIOD OF REVIEW

The POR is January 1, 2017 through December 31, 2017.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent company. For a description of allocation period and the methodology used for these final results, *see the Preliminary Results*.⁵

B. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, *see the Preliminary Results*.⁶

C. Benchmarks and Interest Rates

Commerce made changes to certain benchmarks that were used in the *Preliminary Results*. We addressed the comments raised by interested parties regarding benchmarks at Comment 1 below.

D. Denominators

Commerce made no changes to the denominators used for Ozdemir in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of Ozdemir's denominators used for the final results, *see the Preliminary Results*.⁷

⁵ See *Preliminary Results* PDM at 4.

⁶ *Id.* at 4-5.

⁷ *Id.* at 5.

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including the parties' comments addressed below, we determine the following:

A. Programs Determined To Be Countervailable

We made changes to our preliminary methodology used to calculate the subsidy rates for certain programs used by Ozdemir. For further details, *see* the specific program section below and Ozdemir's Final Calculation Memorandum.⁸ For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Results*.⁹ Except where noted below, no other issues were raised regarding these programs in the parties' case and rebuttal briefs. The final program rates are as follows:

1. Rediscount Program

We made no changes regarding the countervailability of this program.¹⁰ However, we have modified our calculation of the subsidy rate to correct a clerical error.¹¹ Ozdemir's final subsidy rate for this program is 0.01 percent *ad valorem*.

2. Deductions from Taxable Income for Export Revenue

We modified our analysis of this program by using the tax deduction amount reported in Ozdemir's tax return for 2016 filed in the POR (2017).¹² *See* Comment 2 below for further discussion. Ozdemir's final subsidy rate for this program is 0.03 percent *ad valorem*.

3. Provision of HRS for LTAR

We modified our analysis of this program by removing VAT from all reported purchase prices of HRS.¹³ *See* Comment 1 below for further discussion. To calculate the net subsidy rate attributable to Ozdemir, we divided the benefit by the company's total sales value during the POR. On this basis, we find that Ozdemir received a countervailable subsidy of 0.09 percent *ad valorem*.

⁸ *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results Calculations for Ozdemir Boru Profil San ve Tic. Ltd Sti.," dated concurrently with this memorandum (Ozdemir's Final Calculation Memorandum).

⁹ *See Preliminary Results* PDM at 8-15.

¹⁰ *Id.* at 8-9.

¹¹ *See* Final Calculations Memorandum at 2.

¹² *Id.* at 9-10.

¹³ *Id.* at 10-13.

4. Provision of Land for LTAR

We made no changes to this program.¹⁴ Ozdemir's final subsidy rate for this program is 0.08 percent *ad valorem*.

5. Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions

We made no changes to this program.¹⁵ Ozdemir's final subsidy rate for this program is 0.03 percent *ad valorem*.

B. Programs Determined To Be Not Countervailable or To Not Confer a Measurable Benefit

1. Intern Salary Support
2. Inward Processing Regime (IPR)

C. Programs Determined to Be Not Used During the POR

Commerce made no changes to the *Preliminary Results* with regard to these programs determined to be not used by Ozdemir during the POR.¹⁶

1. Exemption from Property Tax
2. Assistance to Offset AD/CVD Costs
3. Provision of Lignite for LTAR
4. Tax Incentives for Research & Development (R&D) Activities: Tax Benefits for R&D Activities
5. Tax Incentives for R&D Activities: Product Development R&D Support-UFT
6. Pre-Export Credit Program
7. Export Insurance Provided by Turk ExIm Bank
8. Large Scale Investment Incentives: VAT and Customs Duty Exemptions
9. Large Scale Investment Incentives: Tax Reductions
10. Large Scale Investment Incentives: Income Tax Withholding
11. Large Scale Investment Incentives: Social Security and Interest Support Large Scale Investment Incentives: Land Allocation
12. Strategic Investment Incentives: VAT and Customs Duty Exemptions
13. Strategic Investment Incentives: Tax Reductions
14. Strategic Investment Incentives: Income Tax Withholding
15. Strategic Investment Incentives: Social Security and Interest Support
16. Strategic Investment Incentives: Land Allocation
17. Law 5084: Withholding of Income Tax on Wages and Salaries
18. Law 5084: Incentive for Employer's Share in Insurance Premiums
19. Law 6486: Social Security Premium Incentive

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 14-15.

¹⁶ *Id.* at 18.

VII. ANALYSIS OF COMMENTS

Comment 1: Provision of HRS for LTAR: Whether to Include VAT on Imported HRS

*Ozdemir's Case Brief*¹⁷

- Commerce erred in the *Preliminary Results* by adding VAT to the HRS benchmark prices for the Provision of HRS for LTAR program. Ozdemir purchased HRS from domestic and international markets under an IPR which allows Ozdemir not to pay any customs duty or VAT.
- Commerce added an 18 percent VAT rate to the prices of Ozdemir's purchases of imported HRS without also adding VAT to its domestic purchases of HRS. By adding a VAT rate to purchases where it was not incurred, Commerce has, in fact, countervailed the IPR program, which Commerce found to be not countervailable in the *Preliminary Results*.
- By adding VAT to domestic purchases of HRS, Commerce would be departing from its calculation methodology used in the original investigation, whereby Commerce used the respondents' actual import prices, consistent with 19 CFR 351.511(a)(2)(iv).¹⁸
- Commerce should calculate the subsidy benefit based on the actual prices paid by Ozdemir (*i.e.* exclusive of VAT). However, if Commerce decides not to do so, it should also add the 18 percent VAT to domestic purchases which were made exclusive of VAT in the *Preliminary Results* in order to make a fair comparison.

*Petitioners' Rebuttal Brief*¹⁹

- Commerce should continue to add VAT to all of Ozdemir's imported HRS purchases in creating the benchmark for the Provision of HRS for LTAR program. Commerce's regulations and previous practice demonstrate that HRS benchmark prices should be what a firm, and not necessarily the respondent, would pay for a certain input. Whether Ozdemir paid or did not pay VAT on its HRS purchases has no bearing on the question of whether VAT should be included in the HRS benchmark.
- Previous decisions in proceedings such as *Certain Oil Country Tubular Goods from the Republic of Turkey*,²⁰ *High Pressure Steel Cylinders from the People's Republic of China*,²¹ and *Certain Oil Country Tubular Goods from the People's Republic of China*²²

¹⁷ See Ozdemir's Case Brief at 6-10.

¹⁸ *Id.* at 8 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR Turkey CVD Investigation*), and accompanying Issues and Decision Memorandum (IDM)).

¹⁹ See Petitioners' Rebuttal Brief at 2-10.

²⁰ *Id.* at 4 (citing *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at 44-46).

²¹ *Id.* at 5 (citing *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from China*), and accompanying IDM).

²² *Id.* at 5 (citing *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from China*), and accompanying IDM).

all support Commerce's practice that benchmark prices must reflect the price an importer, and not necessarily the respondent, would have paid during the POR.

- Turkish importers of HRS must apply for, and be granted, an IPR Certificate by the GOT in order to participate in the IPR. However, Commerce previously found that not every firm in Turkey must use the IPR when importing HRS. Therefore, some firms may avoid paying VAT through the IPR, while others are not able to avoid paying.
- Adjusting upwards the purchase prices of HRS from Eregli Demir ve Celik Fabrikalan A.S. (Erdemir) and Iskenderun Demir ve Celik A.S. (Isdemir) by adding VAT would be distortive and contravene Commerce's regulations.

Commerce's Position: We agree with Ozdemir that our preliminary calculation methodology did not result in an accurate comparison of Ozdemir's HRS purchase prices from government authorities to benchmark prices. Commerce's regulations at section 351.511(a)(2)(iv) direct Commerce to "adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product," including delivery charges and import duties. In the underlying investigation, Commerce explained, "{b}ecause the import and domestic prices paid by the respondents are reported exclusive of the delivery charges and value-added tax (VAT) paid, we included this information for benchmarking purposes where appropriate."²³ In contrast, during the POR, Ozdemir reported using Inward Processing Certificates (IPCs) for HRS purchases.²⁴ This resulted in VAT being waived on some domestic purchases from the government authority (*i.e.*, Erdemir) and on all of Ozdemir's imports of HRS from private entities.²⁵

In our preliminary calculations, we added VAT to the value of imported HRS purchases used as benchmark prices, as the imported HRS was exempt from VAT due to Ozdemir's IPCs. Our addition of VAT to Ozdemir's imported HRS was without a similar adjustment to the authority purchases under the IPCs where VAT was waived. This adjustment resulted in the comparison of VAT-inclusive benchmark prices to VAT-exclusive prices from the government authority in some cases. We agree with Ozdemir that our preliminary methodology is distortive because it does not result in apples-to-apples comparisons.

The petitioners argue that the benchmark prices must reflect the price an importer, and not necessarily the respondent, would have paid during the POR. In support of this argument, the petitioners cite several cases, including *Steel Cylinders from China* and *OCTG from China*. However, the petitioners' reliance on these cases is misplaced. First, in the final determination of *Steel Cylinders from China*, the respondent's VAT exemption was due to its placement inside a free trade zone. Consequently, the respondent in that case received uniform VAT exemptions, in contrast to this review, where Ozdemir only received VAT exemptions on some of its purchases, specifically on its IPC purchases which we have found to be not countervailable. Further, the petitioners' citation to *OCTG from China* regards the treatment of ocean freight costs in that particular case, and does not involve the treatment of VAT. We note, however, that the principle of making an equitable comparison applies to all cases.

²³ See *HWR Turkey CVD Investigation* IDM at 13.

²⁴ See *Preliminary Results* PDM at 16-18.

²⁵ *Id.*

The petitioners also argue that in *OCTG from Turkey*, “{t}he Department rejected one respondent’s argument that it is distortive to compare a benchmark price that includes VAT to an input purchase price that does not include VAT.”²⁶ The petitioners’ claim is inaccurate. In *OCTG from Turkey*, Commerce rejected this argument because VAT had, in fact, been incorporated in both the benchmark and authority purchase prices for the express purpose of avoiding distortions in the comparison.²⁷ Therefore, Commerce decided that there was no distortion because both sets of prices were VAT-inclusive.

In summary, we agree with Ozdemir’s claim that it is distortive to add VAT only to the benchmark prices and not also to the HRS authority purchase prices in which the VAT was waived.²⁸ Because VAT was incurred for some, but not all of the benchmark and authority purchases, we must make an adjustment to create an accurate comparison consistent with the requirements in 19 CFR 351.511(a)(2)(iv) and with our practice.²⁹ In order to create an equitable basis upon which to calculate the benefit Ozdemir received from the Provision of HRS for LTAR program, we removed VAT from both the benchmark and authority purchase prices in our final calculations.

Comment 2: Deduction from Taxable Income for Export Revenue: Whether to Use Amount Listed in Ozdemir’s 2016 or 2017 Tax Return

*Ozdemir’s Case Brief:*³⁰

- In the *Preliminary Results*, Commerce inadvertently calculated Ozdemir’s benefit from this program using the amount of the tax deduction on Ozdemir’s tax return for fiscal year (FY) 2017 (filed in 2018). Commerce should calculate this program’s benefit based on the tax deduction on Ozdemir’s tax return for FY2016, which was filed during the POR.

*Petitioners’ Rebuttal Brief:*³¹

- Commerce should continue to use Ozdemir’s 2017 tax return to calculate the benefit for this program. According to 19 CFR 351.509(b)(1), Commerce considers the benefit from a tax exemption to have been “received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission.”
- Ozdemir failed to demonstrate whether the deductions reported in its 2016 or 2017 tax return would have been actually paid during the POR; therefore, Commerce should continue to use the deduction reported in Ozdemir’s 2017 tax return.

Commerce’s Position: We agree with Ozdemir. In its rebuttal brief, the petitioners argue that, according to 19 CFR 351.509(b)(1), a benefit from the deduction of taxes will be considered to be, “received on the date on which the recipient firm would otherwise have had to pay the taxes

²⁶ See Petitioners’ Rebuttal Brief at 8 (citing *OCTG from Turkey* IDM at 44-46)

²⁷ See *OCTG from Turkey* IDM at 45.

²⁸ See Ozdemir’s Case Brief at 7.

²⁹ See *OCTG from Turkey* IDM at 45; see also *HWR Turkey CVD Investigation* IDM at 13.

³⁰ See Ozdemir’s Case Brief at 10-11.

³¹ See Petitioners’ Rebuttal Brief at 11.

associated with the exemption or remission.”³² According to the petitioners, because Ozdemir provided no evidence that its taxes associated with the deductions from 2016 and 2017 were paid or even due during the POR, it was reasonable for Commerce to use the deduction reported in Ozdemir’s 2017 tax return.³³

However, Commerce has always equated the year a tax return is filed with the year in which the tax liability (for the prior year) is paid and, thus, the year the benefit is conferred.³⁴ Ozdemir’s tax returns for tax years 2016 and 2017 were filed on April 26, 2017 (in the POR) and April 28, 2018 (outside the POR), respectively.³⁵ Accordingly, the relevant tax deduction that benefited Ozdemir in the POR under this program is in the tax return for tax year 2016, filed in 2017. We find no compelling reason otherwise to deviate from 19 CFR 351.509(b)(1) in this regard. Consequently, for the final results, Commerce is using Ozdemir’s deduction from its tax return for 2016, filed in 2017, to calculate its benefit for the Deductions from Taxable Income for Export Revenue program. On this basis, we now find that Ozdemir received a countervailable subsidy of 0.03 percent *ad valorem*.³⁶

VIII. RECOMMENDATION

We recommend that you approve the positions described above. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register*.

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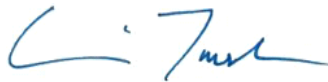
Agree

☐

Disagree

12/17/2019

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Deputy Assistant Secretary

for Enforcement and Compliance

³² See Petitioners’ Rebuttal Brief at 11.

³³ *Id.*

³⁴ See, e.g., *Welded Line Pipe From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 83 FR 1237 (January 10, 2018), and accompanying PDM at 6-7; unchanged in *Welded Line Pipe From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 34113 (July 19, 2018).

³⁵ See Ozdemir’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Questionnaire,” dated March 20, 2019, at Exhibit 3.

³⁶ See Ozdemir’s Final Calculation Memorandum at 4.