



A-489-842
Investigation
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December 7, 2020

MEMORANDUM TO: Jeffrey I. Kessler
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 Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Prestressed Concrete Steel Wire Strand from Turkey

I. SUMMARY

The Department of Commerce (Commerce) finds that imports of prestressed concrete steel wire strand (PC strand) from Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2019 through March 31, 2020.

After analyzing the comments submitted by interested parties, we have made no changes to the *Preliminary Determination*.¹ We recommend that you approve the position described in the “Discussion of the Issues” section of this memorandum. Below is the issue in this LTFV investigation for which we received comments from interested parties:

Comment 1: Rejection of Celik Halat’s Response and Application of Adverse Facts Available (AFA)

II. BACKGROUND

On September 30, 2020, Commerce published the *Preliminary Determination* in this LTFV investigation. On October 30, 2020, we received a case brief from Celik Halat ve Tel Sanayi A.S. (Celik Halat).² On November 6, 2020, we received a rebuttal brief from Insteel Wire

¹ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, the Republic of Turkey, and the United Arab Emirates: Preliminary Affirmative Determinations of Sales at Less than Fair Value and Preliminary Affirmative Critical Circumstances Determinations, in Part*, 85 FR 61722 (September 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Celik Halat’s Letter, “Pre-Stressed Concrete Steel Wire Strand from Turkey: Case Brief of Celik Halat ve Tel Sanayi A.S.,” dated October 30, 2020 (Celik Halat Case Brief).



Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation (collectively, the petitioners).³

III. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

On September 2, 2020, the petitioners alleged that critical circumstances exist with regard to imports of PC strand from Turkey under section 773(e)(1)(A) of the Act.⁴ In the *Preliminary Determination*, Commerce found that critical circumstances exist for Celik Halat, Güney Celik Hasir ve Demir (Güney Celik) and “all other” producers and exporters in this investigation.⁵ Specifically, we found that the criteria under section 773(e)(1)(A)(i) of the Act – that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise – were met.⁶

In addition, we found that the volume of U.S. imports increased by at least 15 percent from the base to the comparison period.⁷ Therefore, we found imports by Celik Halat, Güney Celik, and all other companies to be massive under section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).⁸

The bases for our *Preliminary Determination* finding of critical circumstances are unchanged in the final determination, except with respect to Celik Halat. Based on our analysis of Celik Halat’s updated monthly import information,⁹ we find that the volume of Celik Halat’s U.S. imports increased by less than 15 percent from the base to the comparison period.¹⁰ Therefore, for purposes of the final determination, we no longer find Celik Halat’s imports to be massive pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h). As a result, for the final determination, while we continue to find that critical circumstances exist for Güney Celik and the companies covered by the “all others” rate, we now find that critical circumstances do not exist for Celik Halat.

³ See Petitioners’ Letter, “Prestressed Concrete Steel Wire Strand From Turkey: Petitioners’ Rebuttal Brief,” dated November 6, 2020 (Petitioners Rebuttal Brief).

⁴ See Petitioners’ Letter, “Prestressed Concrete Steel Wire Strand from Taiwan and Turkey – Petitioners’ Allegation of Critical Circumstances,” dated September 2, 2020.

⁵ See *Preliminary Determination*, 85 FR at 8561; see also *Preliminary Determination* PDM at 4-6.

⁶ See PDM at 5.

⁷ *Id.* at 15-16; see also Memorandum, “Preliminary Determination Critical Circumstances Analysis,” dated September 23, 2020.

⁸ *Id.*

⁹ See Celik Halat’s Letter, “Pre-Stressed Concrete Steel Wire Strand from Turkey: Critical Circumstances Response of Celik Halat ve Tel Sanayi A.S.,” dated October 15, 2020.

¹⁰ See Memorandum, “Final Determination Critical Circumstances Analysis,” dated concurrently with this memorandum.

IV. DISCUSSION OF THE ISSUES

Comment 1: Rejection of Celik Halat's Response and Application of AFA

Celik Halat's Case Brief

- Commerce's rejection of Celik Halat's response to sections B and C of Commerce's questionnaire as untimely failed to account for the "extraordinary circumstances" Celik Halat encountered in its efforts to file its response on time. Celik Halat acted to the best of its efforts to file all portions of its complete questionnaire response on time.¹¹
- Commerce failed to apply its regulations and grant Celik Halat an extension for extraordinary circumstances to submit its questionnaire response. Commerce has previously granted extensions for a variety of clerical and inadvertent errors.
- Accordingly, Commerce's failure to accept Celik Halat's late filing in the face of its good faith efforts to cooperate in this investigation is arbitrary, capricious, and an abuse of Commerce's discretion.¹²
- Even if Commerce were justified in rejecting the untimely filed portion of its response to sections B and C of the questionnaire (*i.e.*, the home market sales database), the remainder of its response to sections B and of the C questionnaire was timely filed, as was its response to section D of the questionnaire.
- For the final determination, Commerce should recognize the disproportionate application of AFA in the *Preliminary Determination* to Celik Halat. Thus, Commerce should accept Celik Halat's response to sections B and C of the questionnaire and calculate Celik Halat's margin using its own data.
- If Commerce continues to reject the use of Celik Halat's questionnaire response in its entirety to calculate Celik Halat's margin, it should devise a non-adverse methodology to calculate Celik Halat's dumping margin and not assign Celik Halat a margin based on AFA.

Petitioner's Rebuttal Brief

- Commerce correctly rejected Celik Halat's untimely-filed questionnaire response and, as a result, properly based Celik Halat's margin on AFA.
- The record of this investigation demonstrates that Celik Halat's response to sections B and C of the questionnaire was filed after the established deadline. As a result, Commerce properly rejected Celik Halat's response as untimely and removed it from the record of the investigation.¹³

¹¹ See Celik Halat Case Brief at 3-7 (citing Celik Halat's Letters, "Pre-Stressed Concrete Steel Wire Strand from Turkey: Request for Reconsideration of the Department's Rejection of the Sections B&C Antidumping Questionnaire Response of Celik Halat," dated August 24, 2020 (Celik Halat Reconsideration Request); *see also* "Pre-Stressed Concrete Steel Wire Strand from Turkey: Response of Celik Halat to Petitioners' Demand for Imposition of Total AFA and to the Department's Denial of Reconsideration of the Rejection of its Section B and C Responses," dated September 8, 2020 (Celik Halat September 8 Letter).

¹² *Id.* at 8-11 and 13-14 (citing 19 CFR 351.302; and *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1347 (CIT 2014) (*Artisan*)). Celik Halat also cites a number of memoranda from other proceedings which are not on the record of this investigation.

¹³ See Petitioners Rebuttal Brief at 3-6 (citing Commerce's Letter, "Antidumping Duty Questionnaire," dated June

- Celik Halat failed to request an extension of the deadline to submit its response to sections B and C of the questionnaire until after Commerce rejected the response as untimely. Celik Halat also failed to demonstrate that its response was untimely filed due to an extraordinary circumstance. Celik Halat had notice of both the deadline for its questionnaire response and the consequences of its failure to timely file the response or to request an extension of the deadline.¹⁴
- Contrary to Celik Halat's claim, there was no "extraordinary circumstance" to merit Commerce's acceptance of Celik Halat's untimely questionnaire response. Celik Halat's difficulties in properly formatting its submission for uploading to Commerce's ACCESS system was not an "unexpected event" that "{c}ould not have been prevented if reasonable measures had been taken."¹⁵
- Because Commerce properly rejected Celik Halat's untimely-filed questionnaire response, Commerce does not have the requisite data on the record to calculate a margin for Celik Halat. Accordingly, Commerce properly applied AFA to assign a margin to Celik Halat for its failure to cooperate to the best of its ability.
- Celik Halat's reliance on *Artisan* in support of its position is misplaced because the facts in that case, where the respondent timely submitted a separate rate application but untimely filed a quantity and value (Q&V) questionnaire response, are not comparable to the instant investigation.¹⁶

Commerce's Position:

We disagree with Celik Halat and continue to find that we properly rejected its untimely-filed questionnaire response. In the *Preliminary Determination*, we found that, because Celik Halat failed to submit all portions of its response to sections B and C of the questionnaire by the established deadline, Celik Halat failed to cooperate to the best of its ability to comply with Commerce's request for information, within the meaning of section 776(b)(1) of the Act. As a result, we preliminarily determined to use an adverse inference when selecting from among the facts otherwise available to assign a margin to Celik Halat, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).¹⁷ As AFA, we relied on the 53.65 percent dumping margin alleged in the Petition as the only information regarding the PC strand industry in Turkey reasonably at Commerce's disposal on the record of this investigation.¹⁸ For the final

19, 2020 at 1 - 3, G-1, and G-9 (Initial Questionnaire); *see also* Memorandum, "Celik Halat ve Tel Sanayi A.S.'s Section A Response – Exhibits Missing from Public Version," dated July 20, 2020 (July 20 Memo); Celik Halat's Letter, "Prestressed Concrete Steel Wire Strand from Turkey (A-489-842): Extension Request of Celik Halat ve Tel Sanayi A.S.," ("Celik Halat") for Section B-C-D in the AD investigation," dated July 22, 2020; Commerce's Letter to Celik Halat dated July 23, 2020; Commerce's Letter to Celik Halat dated August 19, 2020 (Response Rejection Letter); and Commerce's Letter to Celik Halat dated August 27, 2020 (Celik Halat Reconsideration Letter)).

¹⁴ *Id.* at 6-8 (citing Celik Halat Reconsideration Letter, *Dongtai Peak Honey Indus. Co. v. United States*, 777 F.3d 1343, 1352-53 (CAFC 2015); *PSC VSMIPA-Avisma Corp. v. United States*, 688 F.3d 751, 761-62 (CAFC 2012); sections 776(a) and (b) of the Act; and 19 CFR 351.302(c)).

¹⁵ *Id.* at 8-9 (citing Celik Halat Reconsideration Request; 19 CFR 351.3(c); and *Extension of Time Limits* (Final Rule), 78 FR 57790, 57793 (September 20, 2013)).

¹⁶ *Id.* at 2-3 and 9-10 (citing sections 776(a) and (b) of the Act; *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003); *Fresh Garlic Producers Ass'n v. United States*, 121 F. Supp. 3d 1313, 1324-25 (CIT 2015); and *Artisan*, 978 F. Supp. 2d at 1338-39 and 1345-46).

¹⁷ *See* PDM at 9.

¹⁸ *Id.* at 9-11; *see also* Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia,

determination, we find no basis to alter our use of AFA pursuant to section 776(b) of the Act, or the AFA rate assigned to Celik Halat in the *Preliminary Determination*.

Celik Halat does not dispute that it did not file its complete response to sections B and C of the questionnaire by 5:00 p.m. on the due date of August 10, 2020.¹⁹ Celik Halat argues that only a portion of response, its home market sales database, was submitted after the established deadline.²⁰ Thus, Celik Halat claims that Commerce can rely on the timely-filed portions of its questionnaire response to calculate a margin, without resorting to AFA.

We disagree with Celik Halat and find that Commerce's regulations are clear that a submission is not complete until it is filed in its entirety. Section 351.301(b) of Commerce's regulations provides that "{a}n electronically filed document must be received successfully *in its entirety* by {Commerce's} electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date" (emphasis added). When we amended our regulations to allow for electronic filing we explained:

To implement electronic filing procedures, {Commerce} is amending the regulation so that {Commerce} will consider a document to be officially received by {Commerce} only when it is filed electronically **in its entirety** using {} ACCESS, in accordance with 19 CFR 351.303(b)(2)(i), or, where applicable, filed manually in the APO/Dockets Unit in accordance with 19 CFR 351.303(b)(2)(ii).²¹

We reminded Celik Halat of this rule in the cover letter of the antidumping duty (AD) questionnaire, where we stated:

We remind you that, beginning August 5, 2011, with certain, limited exceptions, all submissions for all proceedings must be filed electronically using Enforcement and Compliance's ACCESS. An electronically filed document must be received successfully **in its entirety** by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time (ET) on the date indicated on the cover page of the enclosed questionnaire.²²

Thus, it is immaterial that portions of Celik Halat's questionnaire response were filed prior to the deadline. Celik Halat did not file its response to sections B and C of the questionnaire in its entirety by the established deadline of 5:00 p.m. ET on August 10, 2020. Consequently,

Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates - Petition for the Imposition of Antidumping and Countervailing Duties," dated April 16, 2020 (the Petition); and AD Investigation Initiation Checklist: Prestressed Concrete Steel Wire Strand from Turkey (May 6, 2020).

¹⁹ See Celik Halat Reconsideration Request at 2; *see also* Celik Halat September 8 Letter at 7; and Celik Halat Case Brief at 6-7.

²⁰ See Celik Halat Case Brief at 11-12; *See also* Celik Halat Reconsideration Request at 12; and Celik Halat September 8 Letter at 4 and 7.

²¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) (emphasis added).

²² See Initial Questionnaire at 2 (emphasis added).

Commerce properly rejected sections B and C of Celik Halat's questionnaire response in its entirety as untimely.²³

As discussed in the *Preliminary Determination*, Celik Halat failed to request an extension of the deadline to submit its sections B and C questionnaire response when it encountered filing difficulties.²⁴ The cover letter to the questionnaire for Celik Halat stated:

If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response²⁵

This statement is consistent with 19 CFR 351.302(c), which states that a party may request an extension of a time limit before the applicable time limit expires, and that an untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.

After Celik Halat realized its filing difficulties, it had sufficient time to notify Commerce (*i.e.*, either the official in charge or the ACCESS Help Desk) and request an extension of the deadline to resolve the problem prior to the expiry of the deadline.²⁶ However, Celik Halat acknowledges that it made no attempt to contact Commerce at that time, either by telephone or email, prior to the expiry of the deadline.²⁷ Moreover, Celik Halat did not promptly submit a letter to Commerce after knowingly filing its untimely response to explain its delay and request an out-of-time extension. Only on August 24, 2020, after Commerce rejected Celik Halat's questionnaire response as untimely, did Celik Halat request that Commerce retroactively extend the questionnaire response deadline and reverse its rejection of Celik Halat's sections B and C questionnaire response.²⁸

Celik Halat contends that Commerce should use its discretion under 19 CFR 351.302(c) to accept its untimely-filed submission because of "extraordinary circumstances."²⁹ According to Celik Halat, it was initially unable to submit its home market sales database in the ACCESS electronic filing system because the database did not meet ACCESS's formatting requirements, including that all documents contain searchable text.³⁰ Celik Halat also argues Commerce has previously accepted untimely filed information after finding certain clerical difficulties constituted an "extraordinary circumstance" under 19 CFR 351.302(c). Thus, Celik Halat claims

²³ See Response Rejection Letter.

²⁴ See PDM at 6.

²⁵ See Initial Questionnaire at 2.

²⁶ See Celik Halat Reconsideration Request at 3 (Celik Halat notes that it received notification at 4:12 p.m. that its initial attempt to file the home market sales database was rejected); see also September 8 Letter at 6.

²⁷ See September 8 Letter at 6 and 11.

²⁸ See Celik Halat Reconsideration Request at 11-12 and 14.

²⁹ See Celik Halat Case Brief at 8-10.

³⁰ See Celik Halat Reconsideration Request at 3 and Exhibit 1.

that it that was unable to file its submission on time “because of unpredictable clerical difficulties with the Access {sic} system,”³¹ which constitutes an extraordinary event.

Under 19 CFR 351.302(c), “{a}n untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.” The regulations define an extraordinary circumstance as “an unexpected event that: (i) Could not have been prevented if reasonable measures had been taken, and (ii) Precludes a party from timely filing an extension request through all reasonable means.”³² Commerce’s *Extension of Time Limits* further elaborates that extraordinary circumstances examples include “a natural disaster, riot, ware, *force majeure*, or medical emergency.”³³ The *Extension of Time Limits* also states that “insufficient resources, inattentiveness, or the inability of a party’s representative to access the Internet on the day on which the submission was due” are unlikely examples of an extraordinary circumstance.³⁴

The ACCESS filing issue Celik Halat encountered due to document formatting problems was not an unexpected event. Commerce provides resources to all users of the ACCESS electronic filing system, including the “Handbook on Electronic Filing Procedures” (Handbook).³⁵ Commerce advised Celik Halat of the Handbook and other ACCESS resources in the AD questionnaire.³⁶ The Handbook provides information on properly formatting documents for ACCESS, including the following:

All documents must be submitted as searchable PDFs. ... {Commerce} requires all submitted documents to be searchable Failure to convert a PDF into a text searchable document will result in the rejection of your submission.³⁷

Celik Halat was thus counseled on the proper formatting for its submissions to Commerce, including the requirement that the document contain searchable text, weeks before its attempt to file its sections B and C questionnaire response. Celik Halat was also capable of preparing a document to contain searchable text as it had timely filed other submissions in accordance with the ACCESS filing requirements before it failed to timely file its sections B and C questionnaire response.³⁸ Thus, Celik Halat’s problem with its questionnaire response filing was not due to “unpredictable clerical difficulties” with ACCESS, as the Handbook provides guidance to ACCESS users on how to avoid the specific filing issue Celik Halat encountered. Celik Halat’s failure to file its response in a timely manner was therefore not “an unexpected event that...could not have been prevented if reasonable measures had been taken” under 19 CFR 351.302(c)(2). Therefore, examples of Commerce previously granting out-of-time extensions are immaterial here. Accordingly, Celik Halat failed to demonstrate, in accordance

³¹ See Celik Halat Case Brief at 7

³² See 19 CFR 351.302(c)(2).

³³ See *Extension of Time Limits*, 78 FR at 57792.

³⁴ *Id.*

³⁵ The Handbook is available on the ACCESS home page at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

³⁶ See Initial Questionnaire at 2.

³⁷ See Handbook at 12.

³⁸ See Celik Halat’s July 17, 2020 Section A Questionnaire Response; see also Celik Halat’s August 7, 2020 Supplemental Section A Response.

with 19 CFR 351.302(c), that an extraordinary circumstance existed which prevented it from filing its questionnaire in a timely manner.

Additionally, as discussed above, Celik Halat acknowledged that it failed to request an extension of the deadline for its sections B and C questionnaire response to resolve its filing difficulties when it had the timely opportunity to do so. That is, Celik Halat was not precluded “from timely filing an extension request through all reasonable means” under 19 CFR 351.302(c)(2)(ii).

Moreover, we disagree with Celik Halat that the Court’s decision in *Artisan* provides relevant guidance here.³⁹ In *Artisan*, Commerce rejected a respondent’s timely-filed separate rate application as well as its untimely-filed Q&V response, denying the applicant’s separate rate request and assigning it a margin based on AFA.⁴⁰ The Court, in determining that Commerce abused its discretion, noted that Commerce was ambiguous in stating its policy on time extensions for the information at issue and that its determination was based on “the particular circumstances of this investigation.”⁴¹ Thus, the facts in *Artisan* stand in contrast to those present here, where Commerce: 1) established clear, unambiguous deadlines for submitting the requested information; and 2) notified interested parties of the consequences for untimely filings.

Finally, we disagree with Celik Halat that Commerce should use Celik Halat’s timely filed information to determine its margin in the final determination, instead of applying the AFA rate of 53.65 percent provided in the Petition. As discussed above, because Commerce rejected Celik Halat’s response to sections B and C of the questionnaire as untimely filed and removed this response from the record, neither Celik Halat’s home market nor U.S. sales data are available for Commerce to use.⁴² Thus, even assuming, *arguendo*, that it was appropriate to base Celik Halat’s margin on its reported information, Commerce is unable to do so without the home market and U.S. sales data.

Consequently, for the reasons discussed above, we continued to assign Celik Halat the Petition AFA rate of 53.65 percent for purposes of the final determination.

³⁹ *Id.* at 14.

⁴⁰ *See Artisan*, 978 F. Supp. 2d at 1337-1340.

⁴¹ *Id.* at 1347-1348 and 1344 (emphasis in original).

⁴² *See* Response Rejection Letter.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.



Agree



Disagree

12/7/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance