



A-489-841
Investigation
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March 18, 2021

MEMORANDUM TO: Christian Marsh
Acting 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
Mattresses from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) determines that mattresses 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 735 of the Tariff Act of 1930, as amended (the Act). One company, BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S. (BRN), was individually examined. The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of the comments submitted by the interested parties, we have made no changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments from interested parties:

Comment 1: Whether to Grant a Startup Adjustment to BRN
Comment 2: Whether to Include Foreign Exchange Losses in the Financial Expense Rate Calculation

II. BACKGROUND

On November 3, 2020, Commerce published the *Preliminary Determination* in the LTFV investigation of mattresses from Turkey. On November 13, 2020, pursuant to 19 CFR

¹ See *Mattresses from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 69571 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



351.310(c), Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (collectively, the petitioners) requested that Commerce hold a public hearing.² On November 16, 2020, BRN submitted its final quantity and value response regarding the critical circumstances allegation.³ On November 30, 2020, Commerce issued a questionnaire requesting additional information from BRN in lieu of performing on-site verification, in accordance with section 782(i) of the Act.⁴ On December 7, 2020, BRN submitted its response to Commerce's questionnaire in lieu of on-site verification.⁵ On December 18, 2020, BRN submitted a case brief.⁶ On December 28, 2020, the petitioner submitted a rebuttal brief.⁷ On January 15, 2021, the petitioners withdrew their request for a public hearing.⁸

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2019, through December 31, 2019. This period corresponds to the most recently completed fiscal quarters prior to the month of the filing of the Petition, which was March 2020.

IV. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 735(a)(3) of the Act provide that Commerce determines critical circumstances exist in an LTFV investigation: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, Commerce generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.⁹ In the *Preliminary*

² See Petitioners' Letter, "Mattresses from Turkey: Mattress Petitioners' Request for Public Hearing," dated November 13, 2020.

³ See BRN's Letter, "Mattresses from Turkey; Quantity and Value Response," dated November 16, 2020; *see also Preliminary Determination* PDM at 5-8.

⁴ See Commerce's Letter, Questionnaire In lieu of Verification to BRN, dated November 30, 2020.

⁵ See BRN's Letter, "Mattresses from the Republic of Turkey; Supplemental Response in Lieu of Verification," dated December 7, 2020.

⁶ See BRN's Letter, "Mattresses from the Republic of Turkey; Case Brief," dated December 18, 2020 (BRN's Case Brief).

⁷ See Petitioners' Letter, "Mattresses from Turkey: Mattress Petitioners' Rebuttal Brief," dated December 28, 2020 (Petitioners' Rebuttal Brief).

⁸ See Petitioners' Letter, "Mattresses from Turkey: Mattress Petitioners' Withdrawal of Request for a Public Hearing," dated January 15, 2021.

⁹ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary*

Determination, Commerce explained that it has not previously issued an antidumping duty order on mattresses on Turkey and that Commerce is not aware of current antidumping duty orders imposed by other World Trade Organization members against mattresses from Turkey.¹⁰ Accordingly, we preliminarily determined that there is no history of dumping and material injury by reason of mattresses from Turkey.

In determining whether the knowledge standard pursuant to section 735(a)(3)(A)(ii) of the Act has been met, Commerce normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.¹¹ Because our *Preliminary Determination* calculated weighted-average dumping margins on EP sales for BRN (and, thus, all other producers and exporters in Turkey) lower than 25 percent, we preliminarily determined that the knowledge standard was not met and critical circumstances did not exist with respect to BRN or all other producers and exporters in Turkey.¹²

No parties submitted comments regarding our negative preliminary critical circumstances determination. Furthermore, we continue to calculate weighted-average dumping margins on EP sales for BRN that are lower than 25 percent. As such, we have no basis to reconsider our preliminary negative critical circumstances finding, and we continue to find that critical circumstances do not exist for BRN and all other producers or exporters of mattresses from Turkey.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

We made no changes to the calculated EP, normal value, and cost of production for BRN, the sole respondent in this investigation, from the methodology discussed in the *Preliminary Determination*.

VI. DISCUSSION OF THE ISSUES

Comment 1: Whether to Grant a Startup Adjustment to BRN

BRN's Comments:

- The production of mattresses is a labor-intensive endeavor such that staffing levels affect production and present a technical factor that prevented BRN from reaching commercial production levels until late in the POI.¹³

Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹⁰ See *Preliminary Determination* PDM at 6.

¹¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422, 17425 (March 26, 2012).

¹² See *Preliminary Determination* PDM at 5-8.

¹³ See BRN's Case Brief at 2.

- In BRN’s Section D response, BRN provided the information regarding monthly production in a separate worksheet.¹⁴
- BRN did not achieve production utilization levels exceeding 30 percent until the fourth quarter of 2019.¹⁵

Petitioners Rebuttal Comments:

- A lack of trained workers reflects market conditions and management decisions, which are not technical factors under the statute.¹⁶
- BRN failed to cite any agency or judicial precedent in its brief in support of its assertion that a lack of trained employees satisfies the technical difficulties criterion.¹⁷
- Commerce correctly found in the *Preliminary Determination* that BRN failed to provide the necessary throughput information for the new facility to assess whether the alleged technical difficulties limited the production level.¹⁸ The worksheet BRN provided relates to information regarding monthly production of finished goods of each facility, it does not provide the throughput information for the new facility.¹⁹
- Commerce does not analyze capacity utilization in evaluating startup adjustment; rather, it measures the level of production by the throughput level.²⁰

Commerce’s Position: We agree with the petitioners that BRN failed to meet one of the two prongs of the test required by the statute to qualify for a startup adjustment. Specifically, BRN failed to demonstrate that technical factors limited the production level for its new facility during the startup period.

Section 773(f)(1)(C)(ii) of the Act permits adjustments for startup operations if: (I) a producer is using new production facilities or producing a new product that requires substantial additional investment; and (II) production levels are limited by technical factors associated with the initial phase of commercial production. After analyzing the information on the record, we preliminarily determined that BRN’s new facility meets the first criteria for a startup adjustment.²¹ However, we find that BRN failed to establish that its production levels were limited by technical factors associated with the initial phase of commercial production.²² In BRN’s response to the initial section D, as well as to our first supplemental section D questionnaire, it failed to provide the requested monthly throughput information for its new facility.²³ To determine when a company reaches commercial production levels, Commerce will

¹⁴ *Id.* (citing BRN’s Letter, “Mattresses from the Republic of Turkey; Section D Response,” dated July 8, 2020 (BRN’s Section D Response)).

¹⁵ *Id.*

¹⁶ See Petitioners Rebuttal Brief at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ See *Preliminary Determination* PDM at 14; see also Memorandum, “Less-Than-Fair-Value Investigation of Mattresses from Turkey: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S. (BRN),” dated October 27, 2020 (Preliminary Cost Memorandum) at 1-2.

²² See *Preliminary Determination* PDM at 14; see also Preliminary Cost Memorandum at 1-2.

²³ See BRN’s Section D Response; see also BRN’s Letter, “Mattresses from the Republic of Turkey; Section D Supplemental Response,” dated August 12, 2020.

consider first the actual production experience of the merchandise in question and production levels will be measured based on units processed.²⁴ BRN failed to provide the necessary throughput information (number of units started into production each month during the startup period) needed for the new facility to assess whether the alleged technical difficulties did indeed limit production levels. BRN argues that it did not reach capacity utilization rates exceeding 30 percent until the fourth quarter of 2019.²⁵ However, according to the SAA²⁶ and 19 CFR 351.407(d)(2)(i), the attainment of peak production levels is not a standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization. Without the necessary throughput information, we are unable to determine when commercial production levels were achieved and whether the company was in fact in a startup period during the POI.

In addition, BRN reported that the need to train workers for the new facility presented a technical factor that limited production levels.²⁷ BRN failed to cite any agency or judicial precedent in its case brief in support of its assertion that a lack of trained employees satisfies the “technical factors” criterion and, in any event, provided no substantive evidence that the inability to achieve commercial production levels was attributable to the lack of trained workers and staffing levels. As we have stated in previous cases when faced with similar facts, the lack of trained workers and staffing levels are the result of management decisions rather than technical factors associated with a new facility.²⁸ For the final determination, we continue to find that BRN failed to meet the second prong of the test and, therefore, has not demonstrated that a startup adjustment is appropriate.

Comment 2: Whether to Include Foreign Exchange Losses in the Financial Expense Rate Calculation

BRN’s Comments:

- The foreign exchange loss for 2019 reflects the conversion of assets and liabilities in foreign currency into Turkish Lira for taxation purposes, it does not actually reflect BRN’s operations.²⁹

Petitioners Rebuttal Comments:

- Commerce’s practice is to include all foreign exchange losses in calculating the financial expense ratio and BRN provided no basis for departing from the established practice.³⁰
- The foreign exchange losses represent an actual loss to the company as demonstrated by the fact that the losses are reported on BRN’s income statement prepared in accordance with home market generally accepted accounting principles (GAAP).³¹

²⁴ See 19 CFR 351.407(d)(3)(i); see also Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 836.

²⁵ See BRN’s Case Brief at 2.

²⁶ See SAA at 836.

²⁷ See BRN’s Case Brief at 2.

²⁸ See, e.g., *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

²⁹ See BRN’s Case Brief at 2.

³⁰ See Petitioners Rebuttal Brief at 7.

³¹ *Id.* at 8.

Commerce's Position: We agree with the petitioners that the foreign exchange losses should be included in calculating financial expense ratio of BRN. Foreign exchange translation gains and losses that are recognized on a company's audited income statement, in accordance with home country GAAP, are real costs or gains to the company and they directly relate to the year in which they are recorded.³² Accordingly, Commerce's practice is to include all foreign exchange gains and losses in the calculation of the financial expense ratio.³³ In this instance, the foreign exchange losses do represent an actual loss to the company as demonstrated by the fact that the losses are reported on BRN's income statement prepared in accordance with home market GAAP. Further, such foreign exchange losses are akin to an increased cost of borrowing funds that BRN will need to pay back, and accordingly has a real impact on a company's cost of financing during the period. Therefore, we continue to include BRN's foreign exchange losses in the financial expense ratio calculation.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final dumping margins in the *Federal Register* and will notify the International Trade Commission of our determination.

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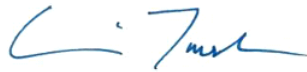
Agree

☐

Disagree

3/18/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

³² See *Micron Technology, Inc. v. United States*, 893 F. Supp. 2 1, 33 (CIT 1995).

³³ See, e.g., *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 IDM at Comment 16 ("Contrary to Toscelik's assertions, {Commerce} does not have a practice of excluding unrealized foreign exchange gains and losses.").