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DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination of the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2018, the Court of International Trade (CIT) entered final judgment sustaining the Department of Commerce's (Commerce's) remand redetermination in the countervailing duty (CVD) investigation of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). Commerce is notifying the public that the Court's final judgment in this case is not in harmony with Commerce's amended final determination with respect to Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir) and all other exporters and producers.

DATES: Applicable February 12, 2018.¹

FOR FURTHER INFORMATION CONTACT: Brian Smith or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230; telephone (202) 482-1766 or (202) 482-0238, respectively.

¹ February 11, 2018, ten days after the Court's opinion was issued, falls on a Sunday. Therefore, the effective date is Monday, February 12, 2018. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2016, Commerce published its final determination in the CVD investigation of HWR pipes and tubes from Turkey.² On September 13, 2016, Commerce published an amended final determination and the CVD order.³

The Court remanded one aspect of Commerce's findings for further consideration.⁴ Specifically, in its *Remand and Opinion Order*, the Court held that, if Commerce decided to maintain its Land for Less than Adequate Remuneration (LTAR) benchmark calculation, it must explain the following: (1) why the high prices for the Istanbul and Yalova Altinova (Yalova) land parcels were not aberrational, and how calculating a simple average of all the land parcel prices used in the land benchmark calculation successfully moderated the price disparities; (2) whether the Istanbul and Yalova land parcels were located in more highly developed areas of Turkey and how that affected Commerce's analysis; and (3) why the future usage of the land parcels is relevant under the applicable provisions of the statute and Commerce's regulations.⁵

² See *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).

³ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 81 FR 62874 (September 13, 2016) (*Amended Final Determination and Order*).

⁴ See *Ozdemir Boru San. Ve Tic. Ltd. Sti., v. United States and Atlas Tube and Independence Tube Corporation Court No. 16-00206, Slip Op. 17-142* (CIT October 16, 2017) (*Remand Opinion and Order*).

⁵ *Id.* at 44-45.

On December 11, 2017, Commerce issued its *Remand Redetermination*.⁶ In its *Remand Redetermination*, Commerce determined that there was a reasonable basis for treating the Istanbul and Yalova land parcels as outliers because (1) the prices of these parcels deviated substantially from the other prices in the dataset; and (2) the average price of the land parcels in the benchmark would be skewed if the Istanbul and Yalova land parcels were not removed from the dataset.⁷ Additionally, in its *Remand Redetermination*, Commerce stated that although it generally avoids selectively removing prices from datasets, it has occasionally done so after finding certain data to be clearly aberrational or unreliable.⁸ In removing the two parcels at issue from the benchmark, Commerce found that other issues raised by the Court, namely the relative levels of development of the land parcels in the benchmark, the importance of a land parcel's future usage in Commerce's benchmark selection, and other issues involving comparability, were moot.⁹ Therefore, Commerce did not address these issues in the *Remand Redetermination*.

On February 1, 2018, the CIT sustained Commerce's *Remand Redetermination*.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries

⁶ See *Final Results of Remand Redetermination Pursuant to Court Remand*, Court No. 16-00206, dated December 11, 2017, available at: <http://ia.ita.doc.gov/remands/> (*Remand Redetermination*).

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *Ozdemir Boru San. Ve Tic. Ltd. Sti., v. United States and Atlas Tube and Independence Tube Corporation* Court No. 16-00206, Slip Op.18-6. (CIT February 1, 2018).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

pending a “conclusive” court decision. The CIT’s February 1, 2018, final judgment affirming the *Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Amended Final Determination and Order*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination

As there is now a final court decision, Commerce amends its *Amended Final Determination and Order*. Commerce finds that the following revised net countervailable subsidy rates exist:

Producer/Exporter	Net Subsidy Rate
MMZ Onur Boru Profit uretirn San Ve Tic. A.S.	9.87
Ozdemir Boru Profil San ve Tic. Ltd Sti.	14.66
All-Others	12.36

Cash Deposit Requirements

Because there has been no subsequent administrative review for MMZ Onur Boru Profit uretirn San Ve Tic. A.S. (MMZ) and Ozdemir, Commerce will instruct U.S. Customs and Border Protection (CBP) to set the cash deposit rates for these companies to the rates listed above, pending a final and conclusive court decision.

Pursuant to section 705(c)(5)(A) of the Act, companies not individually investigated are assigned an “all-others” countervailing duty rate. As a general rule, the all-others rate is equal

to the weighted-average of the countervailable subsidy rates established for individually investigated producers, excluding any zero and *de minimis* countervailable subsidy rates.¹³

Commerce will instruct CBP that the “all-others” cash deposit rate is to be amended to reflect the revised subsidy rate calculated for Ozdemir, as listed above.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

March 8, 2018.

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.

¹³ See section 705(c)(5)(A)(i) of the Act. For a full discussion of the calculation of the all-others rate, see Memorandum “Remand Redetermination Calculation of the ‘All Others’ Rate,” dated December 12, 2017.

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