



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-826]

Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017-18 and 2018-19 Antidumping Duty Administrative Reviews, in Part

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

SUMMARY: On April 13, 2020, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (Commerce) third remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Amended Final Determination* in the LTFV investigation of hot-rolled steel from Turkey. Pursuant to the CIT's final judgment, Commerce is amending the estimated weighted-average dumping margins for Ereğli Demir ve Çelik Fabrikalari T.A.Ş. and Iskenderun Demir Ve Celik (collectively, Erdemir) and Çolakoğlu Metalurji A.S. and Çolakoğlu Dis Ticaret A.S. (collectively, Çolakoğlu), and excluding Çolakoğlu from the *Order*. Further, Commerce is discontinuing, in part, the 2017-18 and 2018-19 administrative reviews with respect to Çolakoğlu.

DATES: Applicable April 23, 2020.

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#### SUPPLEMENTARY INFORMATION:

##### Background

On August 12, 2016, Commerce published its *Final Determination* in the LTFV investigation of hot-rolled steel from Turkey.<sup>1</sup> Subsequently, on October 3, 2016, Commerce published its *Amended Final Determination and Order*.<sup>2</sup> As reflected in Commerce's *Amended Final Determination*, Commerce calculated estimated weighted-average dumping margins of 6.77 percent for Çolakoğlu, 4.15 percent for Erdemir, and 6.41 percent for all other producers and exporters of subject merchandise.<sup>3</sup>

Çolakoğlu and Erdemir appealed Commerce's *Final Determination*, as amended by the *Amended Final Determination*, to the CIT. On March 22, 2018, the CIT remanded the *Amended Final Determination* for Commerce to explain or reconsider: (1) its treatment of Erdemir's home market date of sale; (2) Çolakoğlu's request for a duty drawback adjustment; and (3) Commerce's rejection of Çolakoğlu's corrections to international ocean freight expenses presented at verification.<sup>4</sup> On July 20, 2018, Commerce issued its first results of redetermination, in which it determined to: (1) use the "click date" of the pro-forma invoice as the date of sale for Erdemir's home market sales; (2) grant Çolakoğlu's request for a duty drawback adjustment; and (3) continue to reject Çolakoğlu's corrections to its reported

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<sup>1</sup> See *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016) (*Final Determination*), and accompanying Issues and Decision Memorandum.

<sup>2</sup> See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Amended Final Determination and Order*).

<sup>3</sup> *Id.*, 81 FR at 67965.

<sup>4</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 308 F. Supp. 3d 1297 (CIT 2018).

international ocean freight expenses, which were presented at verification.<sup>5</sup> As a result of the changes in the *First Redetermination*, Commerce calculated estimated weighted-average dumping margins of 5.70 percent for Çolakoğlu, 2.73 percent for Erdemir, and 5.29 percent for all other producers and exporters of subject merchandise.<sup>6</sup>

On December 27, 2018, in its *Second Remand Order*, the CIT sustained Commerce's revised home market date of sale for Erdemir and its determination not to accept corrections to Çolakoğlu's international ocean freight expenses that had been presented at verification, and remanded Commerce's methodology for calculating Çolakoğlu's duty drawback adjustment.<sup>7</sup> Specifically, the CIT found that Commerce's calculation methodology of allocating exempted duties over the total cost of sales for hot-rolled steel to calculate Çolakoğlu's duty drawback adjustment was inconsistent with the statute.<sup>8</sup>

On June 3, 2019, Commerce issued its second results of redetermination, in which we increased Çolakoğlu's U.S. price by the full amount of duties that were drawn back or forgiven and then added the same per-unit duty amount to normal value as a circumstance of sale adjustment.<sup>9</sup> As a result of the changes to our duty drawback methodology in the *Second Redetermination*, Commerce calculated estimated weighted-average dumping margins of 6.27 percent for Çolakoğlu, and 5.79 percent for all other producers and exporters of subject merchandise.<sup>10</sup>

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<sup>5</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S., et al. v. United States*, Consol. Ct. No. 16-00218, Slip Op. 18-27 Final Results of Redetermination Pursuant to Remand, dated July 20, 2018 (*First Redetermination*).

<sup>6</sup> See *First Redetermination* at 16.

<sup>7</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 357 F. Supp. 3d 1325 (CIT 2018) (*Second Remand Order*).

<sup>8</sup> See *Second Remand Order* at 16; see also *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, Consol. Ct. No. 16-00218, Slip Op. 18-180 Final Results of Redetermination Pursuant to Second Court Remand, dated June 3, 2019 (*Second Redetermination*) at 5, 13-16.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.*

On October 29, 2019, in its *Third Remand Order*, the CIT ordered Commerce to recalculate normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to U.S. price.<sup>11</sup> On January 27, 2020, in the third results of redetermination, Commerce did not make a circumstance of sale adjustment to normal value to reflect the difference between the amount of import duties reflected in Çolakoğlu’s reported costs of production and the amount of import duties that the Court directed Commerce to recognize as the basis for a duty drawback adjustment to U.S. price.<sup>12</sup> In addition, Commerce corrected the unit of currency that Çolakoğlu used to report its U.S. duty drawback amount.<sup>13</sup> As a result of the changes to our duty drawback methodology in the *Third Redetermination*, Commerce calculated estimated weighted-average dumping margins of 0.00 percent for Çolakoğlu, and 2.73 percent for all other producers and exporters of subject merchandise.<sup>14</sup>

#### Timken Notice

In its decision in *Timken*,<sup>15</sup> as clarified by *Diamond Sawblades*,<sup>16</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s April 13, 2020 judgment constitutes a final decision of the Court that is not

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<sup>11</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 415 F. Supp. 3d 1216 (CIT 2019) (*Third Remand Order*).

<sup>12</sup> See *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States Consol. Ct. No. 16-00218*, Slip Op. 19-135 (CIT October 29, 2019); see also Final Results of Redetermination Pursuant to Third Court Remand, dated January 27, 2020 (*Third Redetermination*) at 6.

<sup>13</sup> See *Third Redetermination* at 6.

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

<sup>15</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>16</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

in harmony with Commerce’s *Amended Final Determination*.<sup>17</sup> Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

#### Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Amended Final Determination*. The revised estimated weighted-average dumping margins for the period of investigation July 1, 2014 through June 30, 2015 are as follows:

Exporter or Producer	Weighted-Average Dumping Margin (percent)
Çolakoğlu Metalurji A.S. and Çolakoğlu Dis Ticaret A.S.	0.00
Eregli Demir ve Çelik Fabrikalari T.A.S. and Iskenderun Demir Ve Çelik	2.73 <sup>18</sup>
All Others	2.73 <sup>19</sup>

#### Amended Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.”<sup>20</sup> As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Çolakoğlu, Commerce is hereby

<sup>17</sup> See *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, Ct. No. 16-00218, Slip Op. 20-47 (CIT April 13, 2020).

<sup>18</sup> See *Second Redetermination* at 16.

<sup>19</sup> As explained in the *Third Redetermination*, because Çolakoğlu’s estimated weighted-average dumping margin is now 0.00 percent, its rate is no longer factored in the calculation of the all-others rate. Accordingly, the rate calculated for Erdemir is now the only rate that is not zero, *de minimis* or based entirely on facts available, and as such Erdemir’s rate is now the estimated weighted-average dumping margin for all other producers and exporters of subject merchandise. See Memorandum, “Redetermination Pursuant to Remand of Hot-Rolled Steel Products from the Republic of Turkey: Final Remand Calculation Memorandum for the ‘All-Others’ Rate,” dated January 27, 2020.

<sup>20</sup> Section 733(b)(3) of the Act defines *de minimis* dumping margin as “less than 2 percent *ad valorem* or the equivalent specific rate for the subject merchandise.”

excluding merchandise produced and exported by Çolakoğlu from the *Order*.<sup>21</sup> This exclusion does not apply to merchandise that is not both produced and exported by Çolakoğlu.<sup>22</sup>

#### Continued Suspension of Entries for Çolakoğlu

Pursuant to *Timken*, the suspension of liquidation for entries of subject merchandise produced and exported by Çolakoğlu will continue during the pendency of the appeals process. Thus, we will continue to instruct CBP to suspend liquidation of all unliquidated entries from Çolakoğlu that are entered, or withdrawn from warehouse, for consumption after April 23, 2020 (*i.e.*, ten days after the CIT's final decision) at a cash deposit rate of 0.00 percent.<sup>23</sup>

#### Discontinued Administrative Reviews

As a result of Çolakoğlu's exclusion from the *Order*, Commerce is discontinuing the ongoing 2017-18 and 2018-19 administrative reviews, in part, with respect to Çolakoğlu.<sup>24</sup> Further, Commerce will not initiate a subsequent administrative review of entries of subject merchandise both produced and exported by Çolakoğlu pursuant to the *Order*.<sup>25</sup>

#### Cash Deposit Requirements for Erdemir and All Other Producers and Exporters

Because Erdemir does not have a superseding cash deposit rate, *i.e.*, there have been no final results published in a subsequent administrative review for Erdemir, Commerce will

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<sup>21</sup> See *Third Redetermination* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., *Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037, 78038 (December 29, 2014) (*Drill Pipe*); see also *High Pressure Steel Cylinders from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review*, 82 FR 46758, 46760 (October 6, 2017).

<sup>24</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 67712 (December 11, 2019).

<sup>25</sup> See *Drill Pipe*, 79 FR at 78038; see also *Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation*, 80 FR 77316 (December 14, 2015).

instruct CBP to collect a cash deposit for estimated antidumping duties at *ad valorem* rates equal to the estimated weighted-average dumping margins listed above for Erdemir and all other producers and exporters of the subject merchandise, effective April 23, 2020. Entries of subject merchandise for all-other producers and exporters include entries of subject merchandise not both produced and exported by Çolakoğlu (*i.e.*, produced by Çolakoğlu and exported by another party, or exported by Çolakoğlu and produced by another party).

#### Liquidation of Suspended Entries for Çolakoğlu

If the CIT's final judgment is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Çolakoğlu without regard to antidumping duties.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), 735(d), 736(a), 751(a) and 777(i) of the Act.

Dated: May 11, 2020.

Jeffrey I. Kessler,  
Assistant Secretary

for Enforcement and Compliance.

[FR Doc. 2020-10491 Filed: 5/14/2020 8:45 am; Publication Date: 5/15/2020]