



A-557-815
Investigation
Public Document
E&C IV: EK

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Malaysia

Summary

The Department of Commerce (the Department) analyzed the case brief submitted by Petitioners¹ in the antidumping duty investigation of welded stainless pressure pipe (WSPP) from Malaysia. As a result of our analysis, we have not made changes to the *Preliminary Determination*.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Background

The Department published its *Preliminary Determination* on January 7, 2014. Petitioners submitted a case brief on January 28, 2014.³ No other parties submitted case briefs, and no parties submitted rebuttal briefs.

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this investigation, references

¹ Petitioners include Bristol Metals, Felker Brothers, and Outokumpu Stainless Pipe.

² See *Welded Stainless Pressure Pipe From Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 808 (January 7, 2014) (“*Preliminary Determination*”).

³ See Submission from Petitioner, “Welded Stainless Pressure Pipe from Malaysia: Petitioners’ Case Brief,” dated January 28, 2014 (“Petitioners’ Case Brief”).



to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Discussion of the Issues

Comment 1: Determination of the All-Others Rate

Background: Mandatory respondent Superinox Pipe Industry Sdn. Bhd./Superinox International Sdn. Bhd. (Superinox) withdrew from participating in this investigation one business day before the preliminary determination deadline.⁴ We applied an adverse facts available (AFA) margin of 167.11 percent to Superinox, as well as to two other companies that were selected as mandatory respondents but did not participate.⁵ The weighted-average dumping margin that would have been calculated from Superinox's own information submitted in its questionnaire responses prior to its withdrawal from participation was 55.94 percent.⁶ We applied a 22.70 percent margin as the all-others rate, which was an average of the dumping margins alleged in the petition, as adjusted at initiation.⁷

Petitioners' Argument:

- The all-others rate should be the dumping margin that would have been calculated for

⁴ See *Preliminary Determination*.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Welded Stainless Pressure Pipe from Malaysia: Application of Facts Available and Selection of Adverse Facts Available Rate," dated December 30, 2013. The other two companies that were selected as mandatory respondents but did not participate were Kanzen Tetsu Sdn. Bhd. and Pantech Stainless & Alloy Industries Sdn. Bhd.

⁶ See *id.*; see also Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Welded Stainless Pressure Pipe from Malaysia: Retention of Superinox's Data," dated December 30, 2013. This rate is on the record because the Department retained Superinox's data and based the AFA rate for all three mandatory respondents, including Superinox, on the highest transaction-specific margin calculated for Superinox.

⁷ See *Preliminary Determination*.

Superinox (*i.e.*, 55.94 percent), had it not withdrawn from participating in the investigation prior to the preliminary determination, rather than the average of the dumping margins alleged in the petition, as adjusted at initiation (*i.e.*, 22.70 percent).

- If Superinox had not withdrawn, its calculated dumping margin of 55.94 percent would have been applied as the all-others rate, pursuant to section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), because it was not zero or *de minimis*, was not determined entirely under section 776 of the Act, and would have been the only rate calculated for an individually examined respondent.
- The 55.94 percent dumping margin is preferable to the “exception” rate calculated with “any reasonable method” under section 735(c)(5)(B) of the Act. Using an all-others rate based on the lower dumping margins in the petition allows other Malaysian exporters/producers of WSPP to benefit from Superinox’s decision to cease participating in the investigation.
- If a 55.94 percent dumping margin had been applied as the all-others rate in the *Preliminary Determination*, all other exporters/producers would have been subject to the preliminary critical circumstances determination that was made for the mandatory respondents. Thus, if the Department sets the all-others rate at 55.94 percent it should also apply its critical circumstances determination to all Malaysian exporters/producers of WSPP.

No other parties commented on this issue.

Department’s Position: For the final determination, we continue to apply a 22.70 percent margin as the all-others rate, which is a simple average of the dumping margins alleged in the petition, as adjusted at initiation.

Normally, “the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {based on facts available}.”⁸ However, pursuant to section 735(c)(5)(B) of the Act, if the dumping margins established for the individually examined companies are zero, *de minimis*, or entirely based on facts available, the Department “may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated”⁹

We disagree with Petitioners that we should assign, as the all-others rate in this investigation, a margin that may have been established for Superinox, one of the individually examined companies, if Superinox had not withdrawn from participating in the investigation prior to the preliminary determination. Because all of the individually examined companies failed to cooperate to the best of their ability in this proceeding by refusing to fully participate in the Department’s investigation,¹⁰ the margin assigned to each of these companies was based entirely

⁸ Section 735(c)(5)(A) of the Act.

⁹ Section 735(c)(5)(B) of the Act.

¹⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Welded Stainless Pressure Pipe from Malaysia: Application of Facts Available and Selection of Adverse Facts Available Rate,” dated December 30, 2013.

on AFA. The fact that the Department applied AFA to the mandatory respondents does not mean that in selecting a rate for all other companies from among possible rates on the record the Department should select the highest of the available rates. Rather, the statute directs the Department to “use any reasonable method to establish the estimated all-others rate” when it has based the mandatory respondents’ dumping margins on total AFA. Where there is no information calling into question the reliability of the petition rates, as is the case here, we believe an average of these rates satisfies the “any reasonable method” standard for determining the all others rate.

This approach is consistent with the Department’s practice. In *Lawn Groomers from the PRC* all of the mandatory respondents ceased participating in the investigation after the preliminary determination.¹¹ Although the petitioner in that case argued that the Department should assign the separate rate companies the rate calculated for one of the mandatory respondents in the preliminary determination, the Department found the petition rate reasonable and reliable for purposes of establishing a separate rate.¹² Similarly, in numerous cases the Department found that an average of the rates alleged in a petition and/or contained in an initiation notice is appropriate for use as “any reasonable method” for determining the all-others rate in market economy cases, (or the separate rate in non-market economy (NME) cases), when the dumping margins established for the individually examined companies are entirely based on AFA.¹³ Further, in *Bristol Metals*, the Court sustained the Department’s application of an initiation rate to the companies eligible for a separate rate, when the only individually examined respondent had a dumping margin entirely based on AFA.¹⁴ The Court stated:

Commerce’s chosen methodology of applying an average of the initiation margins is also consistent with what Commerce has done in other NME investigations in which the individually investigated rates are based entirely on adverse facts available, and with what Commerce has done in market economy proceedings in which the individually investigated rates are zero, *de minimis*, or based entirely on adverse facts available.¹⁵

Based on the foregoing, we continue to find it appropriate to base the all-others rate on an average of the petition rates, as adjusted at initiation, because it is a “reasonable method” within the meaning of section 735(c)(5)(B) of the Act. Since we did not change the all-others rate, there

¹¹ See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 29167 (June 19, 2009) (“*Lawn Groomers from the PRC*”).

¹² See *Lawn Groomers from the PRC* and accompanying Issues and Decisions Memorandum at Comment 3.

¹³ See, e.g., *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People’s Republic of China*, 73 FR 6479, 6480-81 (February 4, 2008) (assigning the average of the initiation margins to the separate rate respondents); *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007) (calculating the all-others rate based upon an average of the petition rates); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999) (calculating the all-others rate based upon an average of the petition rates).

¹⁴ See *Bristol Metals L.P. v. United States*, 703 F. Supp. 2d 1370 (Ct. Int’l Trade April 20, 2010) (“*Bristol Metals*”).

¹⁵ *Id.* at 1378.

is no basis for finding that critical circumstances exist for all other exporters/producers of WSPP as requested by Petitioners.¹⁶

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting the above position. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

AGREE ✓ DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 MAY 2014
Date

¹⁶ See Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, "Welded Stainless Pressure Pipe from Malaysia: Critical Circumstances," dated December 30, 2013.