DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular pipe and tube from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Accordingly, we will make our final determination not later than 75 days after the signature date of the preliminary determination, in accordance with 19 CFR 351.210.

EFFECTIVE DATE: January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Tyler Weinhold, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0408, (202) 482–1121, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2007, the Department initiated the antidumping duty investigation of light-walled rectangular pipe and tube from Turkey. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China,* 72 FR 40274 (July 24, 2007) (*Initiation Notice*). The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, EXLTUBE, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments. *See Initiation Notice,* 72 FR 40274, (July 24, 2007). No party submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of light-walled rectangular pipe and tube from the People's Republic of China, Korea, Mexico and Turkey are materially injuring the U.S. industry and notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers. 701–TA–449 (Preliminary) and 731–TA–1118–1121 (Preliminary),* 72 FR 49310, (August 28, 2007).

On October 19, 2007, the petitioners requested the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. *See Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations,* 72 FR 64044, (November 14, 2007).

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of light-walled rectangular pipe and tube from Turkey and determined it was not practicable to examine each known producer or exporter of the subject merchandise, as provided in section 777A(c)(1) of the Tariff Act. On July 31, 2007, we sent quantity and value (Q&V) questionnaires to the following seventeen companies identified in the petition or through our own research: Anadolu Boru, Ayata Metal Industry, Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Goktas Tube, Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. ve Tic. A.S., Ozborsan Boru San. ve Tic. A.S., Ozgur Boru, Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Seamless Steel Tube and Pipe Co. (Celbor), Toscelik Profil ve Sac End. A.S, Umran Steel Pipe Inc., Yusan Industries, Ltd., and Yucel Boru ve Profil Endustrisi A.S.

The Department did not receive a response to the Q&V questionnaire from the following six companies: Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and Yusan Industries, Ltd. Furthermore, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru [1] submitted untimely, improperly filed, or incomplete responses. These nine companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file, but none of them did so in a timely manner.[2]

Nine other exporters/producers submitted proper responses to the Department's Q&V questionnaire: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Guven Boru Profil Sanayii ve Ticaret Limited Sirketi, Noksel Steel Pipe Co., MMZ Onur Boru Profil Uretim San. Ve Tic. A.S, Ozborsan Boru San. Ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil Ve Sac End. A.S, and Yucel Boru ve Profil Endustrisi A.S. Two respondents—Guven Boru Profil Sanayii ve Ticaret Limited Sirketi (Guven Boru) and MMZ Onur Boru Profil Uretim San. Ve Tic. A.S (MMZ)—accounted for the majority by volume of exports of subject merchandise to the United States during the period of investigation (POI) among those companies that responded to our quantity and value questionnaire. These two respondents accounted for 54 percent of the total exports reported by the responding companies. Pursuant to section 777A(c)(2)(1)(B) of the Tariff Act, we selected these two firms as mandatory respondents. *See* the September 7, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, entitled ''Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Turkey(A–489–815), Respondent Selection'' (Respondent Selection Memorandum).

We issued the antidumping questionnaires to Guven Boru and MMZ on September 7, 2007. The Department received a section A response from MMZ on October 4, 2007. The Department received a section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely

[1] Ozmak Makina ve Elektrik Sanayi, which has been identified as another name for Ozgur Boru (*see* Memorandum to the File, ''Communication from Ozgur Boru,'' dated August 22, 2007), submitted a response on behalf of Ozgur Boru. However, it was not filed properly, and has not been made part of the record.

[2] Kerim Celik Mamulleri Imalat ve Ticaret submitted an untimely second response on September 17, 2007, which was not made part of the record.

manner. Furthermore, the sales data Guven Boru submitted with its November 7, 2007, sections B and C responses were not in a useable format. For a complete discussion of these and other deficiencies in Guven Boru's submissions, see ''Use of Facts Otherwise Available,'' *infra*.

Petitioners provided comments on MMZ's section A response on October 16, 2007. On October 23, 2007, the Department issued a supplemental questionnaire to MMZ regarding its section A response. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding.

Period of Investigation

The POI is April 1, 2006, to March 31, 2007.

Scope of Investigation

The merchandise that is the subject of this investigation is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Model Match

In accordance with section 771(16) of the Tariff Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Turkey during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea, Mexico, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. Parties in this investigation and in the concurrent antidumping duty investigations of light-walled rectangular pipe and tube from Korea and Mexico were also invited to comment on the appropriate model matching methodology. *See* Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007. The Department received comments from the Mexican company Perfiles y Herrajes LM on August 23, 2007; from the Mexican companies Productos Laminados de Monterrey S.A. de C.V. and Prolamsa USA, Inc. on August 24, 2007, August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. The Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We would have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type, whether metallic coated or not, whether painted or not, perimeter, wall thickness and shape. However, because we are basing the margins for the mandatory respondents upon adverse facts available, there was no need to match sales of respondents.

Use of Facts Otherwise Available

For the reasons discussed below, we determine the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to all companies that failed to respond (or to respond adequately) to the Q&V Questionnaire, and for both mandatory respondents (MMZ and Guven Boru). As noted in the Supplementary Information section above, the former failed to provide adequate responses to the Department's Q&V questionnaire and to the Department's follow-up letter of August 16, 2007, while the mandatory respondents failed to cooperate in this investigation.

Section 776(a)(2) of the Tariff Act provides that if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the nine non-responding or improperly responding companies all failed to provide such information by the deadlines for submission of the information and/or in the form or manner requested. Thus, for these companies in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin on facts otherwise available.

MMZ

MMZ, one of the mandatory respondents, did not provide the information we requested necessary to calculate an antidumping margin for the preliminary determination. Specifically, MMZ failed to provide a complete response to our questionnaire, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Tariff Act. On October 25, 2007, MMZ informed the Department that it was no longer participating in the antidumping proceeding. *See* Letter from MMZ, ''Request for Withdrawl of MMZ Onur Boru Profil Uretim San. Tic. A.S. (''MMZ'') in the Anti-Dumping Investigation of Light Walled Rectangular Pipes from Turkey,'' dated

October 25, 2007. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for MMZ on facts otherwise available.

Guven Boru

Guven Boru, the other mandatory respondent, failed to provide complete, timely, and properly filed responses to several of the Department's questionnaires. The Department received the initial section A response from Guven Boru on October 5, 2007. However, the public versions of the Guven Boru response were not properly filed or served upon parties and the business proprietary version was not served to parties in a timely manner. The public version submitted was not labeled ''public version,'' as required by 19 CFR 351.303. Also, Guven Boru served on the petitioners a public version which differed from the public version submitted to the Department, where the bracketed proprietary information was not redacted on the Department's versions. Further, petitioners indicated, and Guven Boru later confirmed, that the company did not serve a copy of the business proprietary version of this response to the petitioners under administrative protective order (APO), as required. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. *See also* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at Exhibit 1, page 3. Finally, Guven Boru filed a certificate of service with its business proprietary submissions which was inaccurate, because it indicated that copies of the business proprietary version of the response were served on the parties on the public service list. Because of improper labeling of proprietary information, the Department had petitioners return the October 5, 2007, submission on October, 15, 2007.

On October 15, 2007, the Department contacted Mr. Kemal Tureyen of Guven Boru by electronic mail asking that Guven Boru re-submit the public version of its response and serve the business proprietary and public versions of the response on the petitioners and pointing out Guven Boru's filing and service obligations, specifically Guven Boru's obligation to serve business proprietary versions of documents to those parties who have access to such information under APO, including counsel for petitioners. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at Exhibit 1, page 2. On October 18, 2007, the Department received Guven Boru's corrected public version of its section A response. In its response, Guven Boru reported it had no sales of the foreign like product in the home market, and would be reporting sales to its three largest third-country export markets instead.

On October 19, 2007, Mr. Tureyen sent an e-mail to the case analyst claiming Guven Boru had sent both a business proprietary and public version of its section A response to the petitioners. *Id.* at page 4. In an October 23, 2007, e-mail, Mr. Tureyen explained the company had sent both a public and proprietary version of its section A response ''by post'' on October 16, 2007, or eleven days after the initial filing with the Department. *Id.* at page 5. However, because petitioners indicated they still had not received the response (*see* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown,'' dated December 27, 2007), on October 23, 2007, the case analyst sent an e-mail to Mr. Tureyen suggesting Guven Boru re-send the business proprietary and public versions of its section A response to petitioners as quickly as possible. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone conversation and E-mail Correspondence with Kemal Tureyen of Guven Boru,'' dated October 23, 2007, at page 5. On October 26, 2007, counsel for the petitioners indicated he had received the corrected public version of Guven Boru's section A response, but had not received the business proprietary version. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Michael Brown,'' dated December 27, 2007. On October 30, 2007, counsel for petitioners informed the case analyst by telephone that petitioners had received the business proprietary version of Guven Boru's section A response, which was originally due to the Department October 5, 2007. *Id.*

We received sections B and C responses from Guven Boru on November 7, 2007. However, Guven Boru's sales databases were not submitted in a useable format. On November 9, 2007, the case analyst sent Mr. Tureyen an e-mail asking him to confirm what versions of Guven Boru's section B and C questionnaire response had been served on the petitioners. *See* Memorandum from Tyler Weinhold to the File, dated November 9, 2007, at Exhibit 1, page 6. On November 12, 2007, in response to an e-mail from the case analyst, Guven Boru explained that it had sent a public version of the sections B and C response to petitioners.

On November 13, 2007, the Department issued its first supplemental questionnaire regarding Guven Boru's section A response and its section B and C sales database. On November 19, 2007, in response to our first sections A, B, and C supplemental questionnaire, we received revised sections B and C databases from Guven Boru. On November 19, 2007, petitioners informed the Department by telephone that they had received a public version of Guven Boru's section B and C response, but no business proprietary version. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007.

On November 26, 2007, petitioners again informed the Department by telephone that they had received one public version of Guven Boru's November 8, 2007 section B and C response, no business proprietary version, and no public or proprietary copies of the corrected section B and C databases submitted November 19, 2007. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes from Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. On November 26, 2007, we set a letter to Guven Boru reminding the company of its obligation to comply with the Department's filing and service regulations. On November 27, 2007, Mr. Tureyen sent an e-mail to the case analyst explaining that Guven Boru had not sent business proprietary versions of the company's section B and C responses to the petitioners, and stated it was unable to serve the petitioners the original section B and C sales databases because company officials had deleted

them. *See* Memorandum from Tyler Weinhold to the file, dated December 19, 2007, at exhibit 1, page 1. In doing so, Guven Boru had denied petitioners the opportunity to comment on the data contained in its original sales database. On November 28, 2007, we issued our second supplemental questionnaire to Guven Boru, which included questions regarding certain possible affiliations (our second section A supplemental questionnaire).

On November 29, 2007, we set a letter to Guven Boru giving the company a deadline by which to bring itself into compliance with the Department's filing and service regulations and warning it that further untimely or improperly filed submissions would not be accepted. On December 3, 2007, we issued our third supplemental questionnaire to Guven Boru (our second sections B and C supplemental questionnaire). Also, on December 3, 2007, Guven Boru failed to respond in a timely fashion to the our first section A supplemental questionnaire. Guven Boru's response was received the next day, on December 4, 2007.

In a telephone conversation on December 6, 2007, counsel for petitioners explained that petitioners had received a copy of the narrative portion of Guven Boru's business proprietary section B and C response and a copy of the November 19, 2007, section B and C sales database submission. *See* Memorandum from Tyler Weinhold to the File, ''Antidumping Investigation of Light-Walled Rectangular Pipes and Tubes From Turkey, Telephone Conversations with Mr. Mike Brown,'' dated December 27, 2007. Therefore, Guven Boru had denied petitioners the opportunity to comment on the proprietary version of its section B and C response until nearly one month after those documents were due to the Department. On December 12, 2007, we issued our fourth supplemental questionnaire to Guven Boru, regarding certain possible sales in the home market (our third section A supplemental questionnaire). Guven Boru failed to provide a timely response to our second section A supplemental questionnaire, which was due December 13, 2007. On December 13, 2007, Guven Boru also submitted a request for an extension for its response to our second section B and C supplemental questionnaire, which was due December 13, 2007. We denied this request for additional time. *See* letter to Guven Boru, dated December 21, 2007.

On December 17, 2007, the petitioners submitted a sales-below cost allegation for Guven Boru. *See* Letter from Schagrin Associates, dated December 17, 2007. Also, on December 17, 2007, Guven Boru attempted to submit an untimely-filed response to our second section A supplemental questionnaire, which was due December 13, 2007. In addition, Guven Boru failed to file its response to the our second sections B and C supplemental questionnaire, which was due on December 17, 2007. On December 19, 2007, we received an untimely request for an extension for our second sections B and C supplemental questionnaire. Finally, on December 20, 2007, Guven Boru failed to respond to the December 12, 2007 section A supplemental questionnaire.

On December 21, 2007, we sent a letter to Guven Boru, rejecting its response to the second section A supplemental questionnaire, which was due December 13, 2007, and its request for an extension for the our second sections B and C supplemental questionnaire because these documents were untimely filed. In that letter, we also informed Guven Boru that we would not accept any further submissions and would use facts otherwise available in making our preliminary determination.

Guven Boru failed to respond in a timely manner to the our November 13, 2007, section A supplemental questionnaire and our second section A supplemental questionnaire and failed to respond entirely to the our December 3, 2007, sections B and C supplemental questionnaire and our December 12, 2007, section A supplemental questionnaire. Further, Guven Boru's untimely filings represented a continuance of a pattern of untimely and improperly filed submissions. Moreover, Guven Boru's failure on two occasions to timely serve petitioners with proprietary versions of its responses until weeks after those responses were due prevented the petitioners from meaningfully participating in this proceeding. Also, by its own admission, it destroyed its original sales databases prior to serving them on petitioners. Finally, Guven Boru's untimely responses prevented us from conducting a proper analysis within the statutorily imposed time limits of this investigation. For these reasons, in reaching our preliminary determination we have based the dumping margin for Guven Boru on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act.

Non-Responding Companies

As explained above, the Department did not receive a response to the Q&V questionnaire from Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru submitted untimely, improperly-filed, or incomplete responses. Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, we have based the dumping margin for Anadolu Boru, Ayata Metal Industry, Goktas Tube, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., or Yusan Industries, Ltd., and Kalibre Boru Sanayi ve Ticaret A.S., and Kerim Celik Mamulleri Imalat ve Ticaret and Ozgur Boru on facts otherwise available.

Application of Adverse Inferences for Facts Available

According to section 776(b) of the Tariff Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See, e.g., Certain Polyester Staple Fiber From Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review,* 72 FR 69663, December 10, 2007. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon). *See also, Certain Polyester Staple Fiber from Korea: Final Results of*

the 2005–2006 Antidumping Duty Administrative Review, 72 FR 69663 (December 10, 2007).

Although the Department provided all respondents, including those that did not respond (or did not respond adequately) to the Q&V questionnaire, with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Tariff Act, these companies did not respond as requested. With respect to MMZ and Guven Boru, the former stated it would not continue to participate in the proceeding, and the latter failed to serve petitioners with proprietary versions of its questionnaire responses in a timely fashion, destroyed one sales database before providing it to petitioners, and failed to respond in a timely fashion to four of the Department's supplemental questionnaires. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Tariff Act. Because these companies did not provide the information requested, section 782(e) of the Tariff Act is not applicable.

Based on the above, the Department has preliminarily determined that the companies that failed to respond adequately to the Q&V questionnaire and the two mandatory respondents (MMZ and Guven Boru) failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland,* 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland,* 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to each uncooperative respondent the highest margin alleged in the petition, as referenced in the *Initiation Notice,* of 41.71 percent. *See Initiation Notice* at 40278.

When using facts otherwise available, section 776(c) of the Tariff Act provides that when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist* at pages 9 and 10. *See also Initiation Notice* at 40277. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the Petition or in supplements to the Petition that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins. *Id.*

The petitioners calculated export price (EP) in two ways: by use of a price quote from a U.S. dealer and by use of the average unit values (AUVs) for import data from the Bureau of the Census IM145 import statistics.

When based on the price quote, the petitioners deducted an amount for international freight, and also a value of three percent of the U.S. price to cover inland freight from the U.S. port to the U. S. dealer, as well as the U.S. dealer's expenses and profit. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 4. The three percent figure is based on an affidavit from a U.S. producer of light-walled rectangular tubing, who stated that three percent is the standard mark-up in the industry. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 1. We then compared the U.S. price quote to the AUVs for this period and confirmed that the value of the U.S. price quote was consistent with the AUVs.

The petitioners also calculated EP based on AUVs. In the Petition of June 27, 2007, the petitioners included figures from January—March of 2006 in their calculation of AUV. *See* Volume II of the Petition at Exhibit I–3. The Department requested that Petitioner recalculate AUVs to exclude the January—March 2006 import figures. Additionally, the Department requested that the Petitioner exclude HTSUS number 7306.69.50.00 from the calculation of AUVs, as this number does not include LWR merchandise that would be subject to the investigation. The petitioners corrected the calculation as requested by the Department. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at pages 5–

6, and at Exhibit 3. The petitioners did not make an adjustment for international freight because they calculated the AUV prices on the FAS value of the merchandise. *See* Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 3.

U.S. official import statistics (*e.g.*, AUVs from the Bureau of the Census IM145 import statistics) are sources that we consider reliable. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan,* 70 FR 48538, 48540 (August 18, 2005), (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan,* 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the pricing information provided in the petition. Therefore, based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

The petitioners based normal value on two price quotes from each of two Turkish producers of light-walled rectangular pipe and tube. *See* Volume II of the Petition at page II–11 and Exhibit II–27 and Volume II of the Supplement to the Petition, dated July 6, 2007, at Exhibit 2. The petitioners obtained these prices by engaging a consultant, who hired a research firm with an agent in Turkey. *See* Volume II of the Petition at II–12, Volume II of the Supplement to the Petition, and Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. In one case, this research firm obtained price quotations directly from the manufacturer. *See* Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. In another case, they were referred by the manufacturer to a distributor. *Id.* These price quotations identified specific products, terms of sales and payment terms. *See* Volume II of the Petition at II–12, Volume II of the Supplement to the Petition, and Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. Where appropriate, the petitioners made a deduction for freight, selling expenses, discount, and profit.

Based on our examination of the aforementioned, we consider the petitioner's calculation of normal value, based on price quotations, corroborated. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents as well as publicly available information, we preliminarily determine the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *American Silicon Technologies* v. *United States,* 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found the adverse facts-available rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition (*e.g., prices, expenses, adjustments, etc.*) reflects the commercial practices of the particular industry during the period of investigation. *See* Memorandum to the File, ''Telephone Call to Market Research Firm,'' dated July 17, 2007. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine the highest margin in the Petition, which we determined during our pre-initiation analysis, was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination. Therefore, it is relevant as the adverse facts-available rate for the uncooperative respondents in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review,* 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondents in this investigation, we have corroborated the adverse facts-available rate ''to the extent practicable.'' *See* section 776(c) of the Tariff Act, 19 CFR 351.308(d), and *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, ''pursuant to the 'to the extent practicable' language * * * the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 41.71 percent in the *Initiation Notice* has probative value. Consequently, with respect to MMZ, Guven Boru, and the other uncooperative respondents (Anadolu Boru, Ayata Metal Industry, Goktas Tube, Kalibre Boru Sanayi ve Ticaret A.S., Kerim Celik Mamulleri Imalat ve Ticaret, Ozgur Boru, Ozmak Makina ve Elektrik Sanayi, Seamless Steel Tube and Pipe Co. (Celbor), Umran Steel Pipe Inc., and Yusan Industries, Ltd.), we have applied the margin rate of 41.71 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice* at 40278.

All-Others Rate

Section 735(c)(5)(B) of the Tariff Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition. *See, e.g., 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). *See also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice we used the rates in the Petition that were considered in the Department's initiation to calculate a simple average to be assigned as the all-others rate. That simple average, 27.04 percent, is derived from the following petition rates: 36.43 percent, 29.08 percent, 19.67 percent, 15.28 percent, 41.71 percent, 30.08 percent, 24.31 percent, and 19.75 percent. *See* Volume II of the

Supplement to the Petition dated July 6, 2007, at Exhibit 4.

This 27.04 percent rate will be applied to the following seven responsive firms that were not selected as mandatory respondents: Borusan Mannesmann Boru, Erbosan Erciyas Boru Sanayii ve Ticaret A.S., Noksel Steel Pipe Co., Ozborsan Boru San. Ve Tic. A.S., Ozdemir Boru Sanayi ve Ticaret Ltd. Sti., Toscelik Profil Ve Sac End. A.S, and Yucel Boru ve Profil Endustrisi A.S.

Preliminary Determination

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006 through March 31, 2007:

Producer/Exporter	Weighted-average margin (percentage)
Guven Boru Profil Sanayii ve Ticaret Limited Sirketi	41.71
MMZ Onur Boru Profil Uretim San. ve Tic. A.S	41.71
Anadolu Boru	41.71
Ayata Metal Industry	41.71
Goktas Tube	41.71
Kalibre Boru Sanayi ve Ticaret A.S	41.71
Kerim Celik Mamulleri Imalat ve Ticaret	41.71
Ozgur Boru	41.71
Ozmak Makina ve Elektrik Sanayi	41.71
Seamless Steel Tube and Pipe Co. (Celbor)	41.71
Umran Steel Pipe Inc.	41.71
Yusan Industries, Ltd.	41.71
Borusan Mannesmann Boru	27.04
Erbosan Erciyas Boru Sanayii ve Ticaret A.S	27.04
Noksel Steel Pipe Co	27.04
Ozborsan Boru San. ve Tic. A.S	27.04
Ozdemir Boru Sanayi ve Ticaret Ltd. Sti	27.04
Toscelik Profil ve Sac End. A.S	27.04
Yucel Boru ve Profil Endustrisi A.S	27.04
All Others	27.04

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of light-walled rectangular pipe and tube from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated in the chart above, as follows: (1) The rate for the firms listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 27.04 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

Comission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of light-walled rectangular Pipe and tube from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than fifty days after the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be scheduled two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: January 23, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1665 Filed 1–29–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 18, 2008, the United States Court of International Trade (''CIT'') sustained the remand redetermination issued by the Department of Commerce (''the Department'') pursuant to the CIT's remand order in the final results of the thirteenth administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. *See Ames True Temper* v. *United States,* Slip Op. 08–8 (CIT 2008) (''*Ames II*''). This case arises out of the Department's final results in the administrative review covering the period February 1, 2003, through January 31, 2004. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews,* 70 FR 54897 (September 19, 2005) (''*Final Results*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that *Ames II* is not