

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

Investigation No. 731-TA-1296 (Final)

Hot-Rolled Steel Flat Products from Turkey

Denial of Request to Institute a Section 751(b) Review

Denial of request to institute a section 751(b) review or reconsideration proceeding concerning the Commission's affirmative determination in investigation No. 731-TA-1296 (Final), *Hot-Rolled Steel Flat Products from Turkey*.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has declined to institute a review pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)) (the Act) or grant reconsideration regarding the Commission's affirmative determination in investigation No. 731-TA-1296 (Final).

EFFECTIVE DATE: November 22, 2022.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this matter may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—In September 2016, the Commission determined that a U.S. industry was materially injured by reason of imports of hot-rolled steel flat products from Turkey found by the U.S. Department of Commerce (Commerce) to be sold in the United States at less than fair value (81 FR 66996, Sept. 29, 2016). Turkish producer and exporter Ereğli Demir ve Çelik Fabrikalari T.A.S. (Erdemir) did not appeal the Commission's final affirmative material injury

determination in the antidumping duty investigation with respect to Turkey.

On September 1, 2021, Commerce initiated, and the ITC instituted, five-year reviews of the antidumping duty order on hot-rolled steel flat products from Turkey (86 FR 48983 & 86 FR 49057, Sept. 1, 2021). On December 6, 2021, the Commission determined to conduct a full five-year review of the order (87 FR 3123, Jan. 20, 2022).

On September 10, 2021, the Commission received a request from Erdemir to review its affirmative determination in investigation No. 731-TA-1296 (Final) pursuant to section 751(b) of the Act (19 U.S.C. § 1675(b)). The request alleged there have been significant changed circumstances since the issuance of the Commission's 2016 determination. Specifically, Erdemir alleged that Commerce's recalculation of Colakoglu Dis Ticaret A.S.'s (Colakoglu) antidumping duty margin to zero percent and Colakoglu's consequent exclusion from the antidumping duty order as a result of judicial review constitute significantly changed circumstances from those in existence at the time of the original investigation. According to Erdemir, the exclusion of Colakoglu from the antidumping duty order places this case *in pari materia* with the Commission's finding of negligibility in the countervailing duty investigation and provides a compelling basis to now find that imports from Turkey were negligible in the original antidumping duty investigation.

On December 2, 2021, the Commission published a **Federal Register** notice inviting comments from the public on whether changed circumstances exist sufficient to warrant the institution of a changed circumstances review (86 FR 68512, Dec. 2, 2021). In response to its **Federal Register** notice soliciting comments, the Commission received a submission opposing the institution of a changed circumstances review jointly filed on behalf of Cleveland-Cliffs Inc., Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation. The Commission also received separate submissions in favor of instituting a changed circumstances review on behalf of the government of the Republic of Turkey and Erdemir.

The Commission has determined not to institute a changed circumstances review of the antidumping duty order on hot-rolled steel flat products from Turkey. At the time Erdemir filed its request for a changed circumstance review, the Commission was already conducting a five-year review of the antidumping duty order on hot-rolled steel flat products from Turkey. Conducting a changed circumstances review at the same time as a five-year review would be unwarranted because it would be duplicative of the full five-year review. *See Eveready Battery Co. Inc. v. United States*, 77 F. Supp.2d 1327 (CIT 1999) (finding that a request for a changed circumstances review was rendered moot by the Commission's institution of a full five-year review). Moreover, the result that Erdemir seeks – reexamination of the Commission's original negligibility finding -- is not possible in a changed circumstances review because negligibility is not a factor for the Commission to consider under the statute in a changed

circumstances review. A changed circumstances review involves a forward-looking inquiry that considers whether in view of changed circumstances an order is no longer needed to prevent the continuation or recurrence of material injury; it does not provide an opportunity for the Commission to reconsider and amend its original injury determination. *Compare* 19 U.S.C. § 1675a(a) with 19 U.S.C. §§ 1673d(b)(1) & 1677(24).

While not included in its request for a changed circumstances review, Erdemir raised in its comments regarding the changed circumstances request that the Commission consider the alternative of conducting a reconsideration proceeding. After considering this alternative request, the Commission has determined not to exercise its authority to undertake a reconsideration of its negligibility analysis in its original material injury determination with respect to the antidumping duty investigation of imports of hot-rolled steel flat products from Turkey.

In view of the presumption of finality and correctness that underlies past action by the Commission, the Commission has chosen to exercise its authority to reconsider only when “extraordinary circumstances” are present. For example, the Commission reconsidered its determination in *Ferrosilicon* “when a fraud has been perpetrated on the tribunal in its initial proceeding.” *Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela*, Inv. Nos. 731-TA-566-570, 641 and 303-TA-23 (Reconsideration), USITC Pub. 3218 (Aug. 1999) (“*Ferrosilicon Reconsideration*”), *aff’d Elkem Metals Co. v. United States*, 193 F.Supp.2d 1314 (CIT 2002). In *Ferrosilicon Reconsideration*, the Commission concluded that the “type of extraordinary circumstances that ... would warrant reconsideration of a Commission determination – matters that strike at the heart of the integrity of the administrative process” were present because “[d]omestic producers were criminally convicted of an offense concerning an issue – the establishment of prices for ferrosilicon – that was a focal point of the original Commission investigations.” *Ferrosilicon Reconsideration* at 8.

Recognizing that the facts presented are unique to each case, and in this case where there is no evidence of fraud or other facts that suggest extraordinary circumstances, we do not find that the recalculation of the dumping margin by Commerce with respect to hot-rolled steel flat products from Turkey warrants reconsideration of our determination. We note that our finding is consistent with the Statement of Administrative Action to the Uruguay Round Agreements Act (SAA) and statutory provisions, in which Congress specifically contemplated subsequent changes to the antidumping duty margins and instructed that such changes would not be a basis to reconsider the Commission’s impact analysis.¹ See 19 U.S.C. § 1677(35)(C)

¹ Commissioners Kearns and Karpel do not join this sentence. They note that 19 U.S.C. § 1677(35)(C) defines the “magnitude of margins of dumping” that the Commission is to consider in its impact analysis in accordance with 19 U.S.C. § 1677(7)(C)(iii)(v), and that the section of the SAA referenced above pertains to these provisions. Erdemir, on the other hand, is not asking the Commission to reconsider the “magnitude of margins of dumping” for purposes of its impact analysis pursuant to 19 U.S.C. § 1677(7)(C)(iii)(v) and 1677(35)(C), but rather is asking for the Commission to reconsider its negligibility analysis for purposes of 19 USC 1673d(b)(1) and 19 USC 1677(24) because the scope of imports subject to Commerce’s final affirmative antidumping duty determination has changed.

and SAA at 851. There was a path for Erdemir to avail itself to preserve its rights to obtain a reexamination of the Commission's original determination in light of the subsequent successful appeal of Commerce's final original determination that resulted in a de minimis dumping margin for Colakoglu and exclusion of imports from Colakoglu from the scope of Commerce's final affirmative antidumping duty determination. The potential impact on Erdemir at the time that Erdemir and Colakoglu appealed Commerce's final antidumping duty determination was known to Erdemir at that time, and in fact, Erdemir joined Colaloglu in appealing Commerce's original determination. Erdemir did not appeal the Commission's final affirmative material injury determination which would have provided it with the opportunity to preserve its rights for further reconsideration of the merits based on the outcome of Commerce's appeal. *Accord Borlem S.A. Empreeditmentos Industriais v. United States*, 913 F.2d 933, 939 (Fed. Cir. 1990); *LG Electronics, Inc. v. U.S. International Trade Commission*, Slip Op. 14-8, 2014 WL 260603, at *3 (CIT Jan. 23, 2014). The interests of the finality of the agency's decision are paramount under the circumstances presented and, absent extraordinary circumstances, we decline the request to revisit the final original determination.

AUTHORITY: This notice is published pursuant to section 207.45 of the Commission's Rules of Practice and Procedure.²

By order of the Commission.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: November 23, 2022

Therefore, in their view, it is not clear that 19 U.S.C. § 1677(7)(C)(iii)(v) and 1677(35)(C) and the related SAA language address the circumstances presented here.

² The Commission has determined the additional analysis needed to consider the alternative reconsideration request was good cause to exercise its authority to waive the institution period pursuant to section 207.45(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. 207.45(c)).