

Slip Op. 23-6

UNITED STATES COURT OF INTERNATIONAL TRADE

**NUCOR TUBULAR PRODUCTS
INC.,**

Plaintiff,

v.

UNITED STATES,

Defendant,

and

**PRODUCTOS LAMINADOS DE
MONTERREY S.A. DE C.V.,
PROLAMSA, INC.,
MAQUILACERO S.A. DE C.V.,**

Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge

Court No. 21-00543

OPINION AND ORDER

[Remanding the final results of the administrative review by the U.S. Department of Commerce in the antidumping duty investigation of heavy walled rectangular welded carbon steel pipes and tubes from Mexico.]

Dated: January 18, 2023

Alan H. Price, Robert E. DeFrancesco, III, Jake R. Frischknecht, Enbar Toledano, and Nicole C. Hager, Wiley Rein LLP, of Washington, D.C., for Plaintiff Nucor Tubular Products Inc.

Claudia Burke, Assistant Director, and Kara M. Westercamp, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of

Washington, D.C., for Defendant United States. With them on the brief were Brian M. Boynton, Principal Deputy Assistant Attorney General, and Patricia M. McCarthy, Director. Of Counsel on the brief was Ayat Mujais, Attorney, International Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce.

David E. Bond, Allison J.G. Kepkay, and C. Alejandro Dilley, White & Case LLP, of Washington D.C., for Defendant-Intervenors Productos Laminados de Monterrey, S.A. de C.V. and Prolamsa, Inc.

Diana Dimitriuc Quaia, John M. Gurley, and Yun Gao, ArentFox Schiff LLP, of Washington, D.C., for Defendant-Intervenor Maquilacero S.A. de C.V.

Choe-Groves, Judge: This action concerns the import of heavy walled rectangular welded carbon steel pipes and tubes from Mexico, subject to the final affirmative determination in an antidumping duty investigation by the U.S. Department of Commerce (“Commerce”). Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico (“Final Results”), 86 Fed. Reg. 41,448 (Dep’t of Commerce Aug. 2, 2021) (final results of antidumping duty administrative review; 2018–2019); see also Issues and Decision Mem. for the Final Results of the Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico (“Final IDM”), PR 243.

Before the Court is Plaintiff Nucor Tubular Products Inc.’s Rule 56.2 Motion for Judgment on the Agency Record and Memorandum in Support, filed by Plaintiff Nucor Tubular Products, Inc. (“Nucor”), challenging Commerce’s Final Results. Pl.’s R. 56.2 Mot. J. Agency R. (“Plaintiff’s Motion” or “Pl.’s Mot.”),

ECF No. 32; Pl.'s Mem. Supp. R. 56.2 Mot. J. Agency R. ("Pl.'s Br."), ECF Nos. 33, 34. Defendant United States ("Defendant") and Defendant-Intervenor Maquilacero S.A. de C.V. ("Maquilacero" or "Defendant-Intervenor") both submitted response briefs. Def.'s Resp. Opp'n Pl.'s R. 56.2 Mot. J. Agency R. ("Def.'s Resp. Br."), ECF No. 36; Def.-Interv.'s Resp. Opp'n Pl.'s R. 56.2 Mot. J. Agency R. ("Def.-Interv.'s Resp. Br."), ECF Nos. 37, 38. Nucor submitted a reply to Defendant and Defendant-Intervenor's briefs. Pl.'s Reply Br. Supp. R. 56.2 Mot. J. Agency R. ("Pl.'s Reply Br."), ECF Nos. 41, 42, 43.

The Court reviews Commerce's determination to reject Nucor's ministerial error comments as untimely regarding Maquilacero and Productos Laminados de Monterrey S.A. de C.V. ("Prolamsa"). For the reasons discussed below, the Court concludes that Commerce's decision to reject Nucor's ministerial error comments as untimely is not in accordance with the law and remands the Final Results to Commerce.

BACKGROUND

Nucor challenges Commerce's rejection of Nucor's ministerial error comments as untimely and Commerce's affirmative determination in the Final Results. Specifically, Nucor argues that Commerce's calculations in the build-up of normal value contained errors that resulted in incorrect 0% dumping margins for both Maquilacero and Prolamsa. Pl.'s Br. at 1. Regarding Maquilacero, Nucor

alleges that Commerce included in its normal value calculation sales that were made below cost, contrary to 19 U.S.C. § 1677b(b)(1) and Commerce's standard practice. Id. Regarding Prolamsa, Nucor alleges that Commerce changed its calculation program, and in doing so failed to accurately convert a variable from pesos to dollars, thus violating 19 U.S.C. § 1677b-1. Id. Nucor provided ministerial error comments to Commerce regarding each allegedly erroneous calculation, but Commerce dismissed Nucor's comments as untimely. Id.

Commerce published its final determination in the antidumping duty investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico on July 21, 2016. Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico, 81 Fed. Reg. 47,352 (Dep't of Commerce July 21, 2016) (final determination of sales at less than fair value). Commerce published its antidumping duty order in the Federal Register. Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea, Mexico, and the Republic of Turkey, 81 Fed. Reg. 62,865 (Dep't of Commerce Sept. 13, 2016) (antidumping duty orders).

After receiving requests to conduct administrative reviews of the relevant antidumping order, Commerce initiated an administrative review of the antidumping duty order covering hot water return pipe and tube from Mexico. Initiation of Antidumping and Countervailing Duty Administrative Reviews, 84

Fed. Reg. 61,011 (Dep't of Commerce Nov. 12, 2019). Commerce selected Maquilacero and Prolamsa as mandatory respondents. See Commerce Memorandum, re: Respondent Selection (Dec. 19, 2019) at 1, PR 21, CR 5. Commerce published the preliminary results and supporting calculations. Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico (“Preliminary Results”), 86 Fed. Reg. 7067 (Dep't of Commerce Jan. 26, 2021) (preliminary results of antidumping duty administrative review; 2018–2019); see also Prelim. Decision Mem. accompanying Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico, 86 Fed. Reg. 7,067 (Jan. 26, 2021) (“Prelim. DM”), PR 191; see also Commerce Memorandum, re: Preliminary Results Margin Calculation for Maquilacero S.A. de C.V. (Jan. 15, 2021), PR 192, CR 301; see also Commerce Memorandum, re: Preliminary Results Sales Calculations for Productos Laminados de Monterrey S.A. de C.V. (Jan. 15, 2021), PR 196, CR 304; see also Commerce Memorandum, re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Maquilacero S.A. de C.V. (Jan. 15, 2021), PR 197, CR 309.

Maquilacero and Nucor each submitted an administrative case brief. Letter from Arent Fox LLP to Sec'y Commerce, re: Maquilacero S.A. de C.V.'s Case Brief (Mar. 8, 2021), PR 230, CR 374; Letter from Wiley Rein LLP to Sec'y Commerce, re: Case Brief (Mar. 8, 2021) (“Nucor’s Administrative Case Brief” or

“Nucor’s Admin. Case Br.”), PR 231, CR 375-376. Each party submitted a rebuttal brief. Letter from White & Case LLP to Sec’y Commerce, re: Rebuttal Brief (Mar. 17, 2021), PR 235, CR 377; Letter from Arent Fox LLP to Sec’y Commerce, re: Maquilacero S.A. de C.V.’s Rebuttal Brief (Mar. 17, 2021), PR 236, CR 378-379; Letter from Wiley Rein LLP to Sec’y Commerce, re: Rebuttal Brief (Mar. 17, 2021), PR 237, CR 380. Commerce published its Final Results and supporting calculations. Final Results, 86 Fed. Reg. 41,448; Final IDM.

Nucor submitted ministerial error comments addressing the margin calculations for both Prolamsa and Maquilacero. Letter from Wiley Rein LLP to Sec’y Commerce, re: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Ministerial Error Comments (Aug. 2, 2021) (“Ministerial Error Comments” or “Ministerial Error Cmts.”) at 1–7, PR 253, CR 392. Both Prolamsa and Maquilacero filed rebuttal comments. Letter from White & Case LLP to Sec’y Commerce, re: Response to Ministerial Error Comments (Aug. 6, 2021), PR 256, CR 393; Letter from Arent Fox LLP to Sec’y Commerce, re: Maquilacero S.A. de C.V.’s Reply to Ministerial Error Comments for the Final Results (Aug. 9, 2021), PR 257, CR 394. Commerce issued its ministerial error determination on August 20, 2021. See Commerce Memorandum, re: Ministerial Error Allegations in the Final Results of the 2018-2019 Antidumping Duty Administrative Review on Heavy Walled Rectangular Welded Carbon Steel Pipes

and Tubes from Mexico (Aug. 20, 2021) (“Ministerial Error Determination”), PR 259. Commerce determined that Nucor’s ministerial error allegations were untimely because Nucor should have submitted comments concerning any ministerial errors in Nucor’s initial administrative case brief. Id. at 1.

JURISDICTION AND STANDARD OF REVIEW

The U.S. Court of International Trade has jurisdiction under 19 U.S.C. § 1516a(a)(2)(B)(i) and 28 U.S.C. § 1581(c). The Court shall hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

Commerce determines antidumping duties by calculating the amount by which the normal value of subject merchandise exceeds the export price or the constructed export price for the merchandise. 19 U.S.C. § 1673. “Normal value” is “the price at which the foreign like product is first sold . . . in the exporting country . . . in the ordinary course of trade[.]” Id. § 1677b(a)(1)(B)(i). The “dumping margin” (i.e., the antidumping duty) is the amount by which normal value exceeds the export price or constructed export price. Id. § 1677(35)(A). When reviewing antidumping duties in an administrative review, Commerce must determine: (1) the normal value and export price or constructed export price of each entry of the subject merchandise, and (2) the dumping margin for each such

entry. Id. § 1675(a)(1)(B), (a)(2)(A). The statute dictates the steps by which Commerce may calculate normal value “to achieve a fair comparison” with export price or constructed export price. Id. § 1677b(a).

When calculating normal value, the statute specifies the methodology for Commerce to determine which sales should be considered and disregarded. Id. § 1677b(b)(1). Specifically, sales outside the “ordinary course of trade” are disregarded and excluded from normal value. Id.; id. § 1677(15). Sales outside the ordinary course of trade include sales made at less than the cost of production. Id. § 1677(15)(A). To determine whether “sales . . . have been made at prices which represent less than the cost of production[,]” the statute directs Commerce to conduct the sales-below-cost test. Id. § 1677b(b)(1). The cost of production is defined by statute to include the cost of materials and processing, amounts for selling, general, and administrative expenses, and the cost of all containers and expenses incidental for shipment. Id. § 1677b(b)(3). Upon applying the sales-below-cost test, sales that Commerce determines were made at prices below the cost of production are outside the ordinary course of trade and are disregarded from the calculation of normal value. See id. § 1677b(b)(1), (a)(1)(B)(i). “Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade.” See id. § 1677b(a)(1)(B)(i), (b)(1); id. § 1677(15)(A). Determining which sales are

included in the normal value calculation is therefore multi-faceted and fundamentally important to Commerce's determination of an antidumping duty rate. This determination must be calculated correctly and consistently to avoid any subsequent inaccuracy in Commerce's determination.

I. Nucor's Ministerial Error Comments Regarding Maquilacero

Nucor challenges Commerce's rejection of Nucor's ministerial error comments as untimely with respect to Maquilacero.

The Court first examines whether the errors raised by Nucor are ministerial in nature. Nucor argues that in the administrative proceeding, Commerce issued a preliminary decision memorandum that included a normal value calculation for Maquilacero using "arbitrary" placeholder numbers for cost construction. Pl.'s Br. at 6–8. Nucor contends that Maquilacero's normal value was inappropriately depressed because lower-value sales that would have failed the sales-below-cost test were subsequently included in normal value. Id. at 6–9. Commerce applied a quarterly methodology to determine costs for Maquilacero in the Preliminary Results. Id. at 7. Nucor submitted an administrative case brief regarding Maquilacero, in which Nucor argued that Commerce used "arbitrary" placeholder numbers for cost construction in the Preliminary Results (i.e., .1, .2, .3, etc.) and that Commerce should have used Maquilacero's actual costs instead in the Final Results. Nucor's Admin. Case Br. at 49–52.

In the Final Results, Commerce used the same quarterly methodology, but rather than using “placeholder” cost values as it did in the Preliminary Results, Commerce used “zero values” for the quarterly cost calculations in the Final Results. Pl.’s Br. at 9. After Commerce published the Final Results, Nucor submitted Ministerial Error Comments. See Ministerial Error Cmts. Nucor argued in its Ministerial Error Comments that in the Final Results, Commerce unintentionally and incorrectly calculated Maquilacero’s constructed costs for the quarter prior to the period of investigation. Id. at 2. Nucor contends that the use of zero values in the Final Results was a ministerial error that unintentionally reduced Maquilacero’s cost calculation because the placeholder sequential numbers from the Preliminary Results were removed by Commerce and zeros were unintentionally inserted by the computer program. Pl.’s Br. at 8–9.

Defendant and Defendant-Intervenor argue that Commerce determined correctly that Nucor’s Ministerial Error Comments were filed untimely, and Nucor failed to exhaust its administrative remedies. Def.’s Resp. Br. at 11–14, 16–18; Def.-Interv.’s Resp. Br. at 15–19. In addition, Defendant-Intervenor argues that the issue raised by Nucor was methodological, not ministerial. Def.-Interv.’s Resp. Br. at 14–15. Nucor counters that Commerce’s mistake was ministerial, not methodological, and because the mistake of inserting zero values did not occur until the Final Results, Commerce’s ministerial errors in its calculations of

Maquilacero's dumping margin were not discoverable until the publication of the Final Results and Nucor's comments were thus timely. Pl.'s Reply Br. at 4–12.

Ministerial errors are errors “in addition, subtraction, or other arithmetic function, clerical error[s] resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error[.]” 19 C.F.R. § 351.224(f). Errors resulting from a computer programming error in Commerce's antidumping margin calculation computer program are ministerial in nature. Am. Signature, Inc. v. United States, 598 F.3d 816, 823–24 (Fed. Cir. 2010). Conversely, errors resulting from considerations involving factual components are not ministerial in nature. See Nakornthai Strip Mill Pub. Co. v. United States, 32 CIT 1272, 1281–82, 587 F. Supp. 2d 1303, 1311–12 (2008) (holding that Commerce's choice of a particular invoice date over potential alternatives involved factual components and was therefore not within the regulation's meaning of “ministerial”).

The Government does not argue that the errors were methodological rather than ministerial; the Government merely repeats its argument that Nucor's ministerial error comments were filed untimely. See Def.'s Resp. Br. at 11–14. The Government explains that in the Preliminary Results, Commerce excluded Maquilacero's reported home market sales made during the quarter preceding the period of review, but Commerce did not exclude U.S. sales made during the quarter preceding the period of review for the purpose of calculating costs of

production. Id. at 11. The Government explains further that Commerce performed the cost recovery test using “almost identical” calculations in the Preliminary Results and Final Results, with a “small difference” of “certain adjustments to the calculations.” Id.

This “small difference” is the crux of Nucor’s ministerial error allegation: Nucor argues that the “small difference” of using zeros instead of the sequential placeholder values resulted in an incorrect reduced quarterly cost for Maquilacero, while the Government offers no explanation of why it used zeros as the cost values in the Final Results. The Government does not argue, for example, that it deliberately chose to use zeros as the correct cost values and therefore any error is methodological or factual in nature rather than ministerial. The Government does not dispute Nucor’s contention that the zeros used in the cost calculations resulted from a computer programming error, but rather repeats its arguments that Nucor’s allegations were untimely and should be disregarded.

It is apparent to the Court that the errors alleged by Nucor more closely resemble arithmetic errors in a computer programming mistake (i.e., unintentional errors) because there is no evidence that Commerce deliberately chose to use zeros in its cost calculations that would support methodological or factual considerations outside the meaning of “ministerial.” Absent any contrary argument from the Government, it is reasonable to conclude that Commerce intended in the Final

Results to disregard the placeholder numbers that had been used to calculate Maquilacero's quarterly costs in the Preliminary Results, and that the Government's lack of explanation for why it used zeros for the values in calculating quarterly costs for Maquilacero requires further inquiry. Because Nucor has sufficiently raised the question of whether an unintentional error resulted in the use of zeros for the cost calculations, and the Government has failed to contest this allegation adequately, the Court concludes that the alleged mistake constitutes a ministerial error pursuant to 19 C.F.R. § 351.224(f).

Defendant and Defendant-Intervenor argue that Nucor's Ministerial Error Comments were untimely. Def.'s Resp. Br. at 10–14; Def.-Interv.'s Resp. Br. at 15–16. Comments concerning ministerial errors in the preliminary results of a review should generally be included in a party's administrative case brief. 19 C.F.R. § 351.224(c)(1). A party is precluded from making arguments on appeal that were omitted before the agency. See Carpenter Tech. Corp. v. United States, 30 CIT 1373, 452 F. Supp. 2d 1344 (2006). An exception to the general rule exists, however, when the comments address an error in the final results that was not present in the preliminary results. See U.S. Steel Corp. v. United States, 36 CIT 534, 539, 2012 WL 1259085 at **4 (2012) (remanding Commerce's final results "to allow for correction of a certain ministerial error in computer programming" which became apparent only after publication of the final results);

see also LTV Steel Co. v. United States, 21 CIT 838, 869, 985 F. Supp. 95, 97, 120 (1997) (holding that comments following the final results were timely when the respondent could not challenge Commerce's methodology until Commerce articulated that methodology and applied it to the program at issue). This exception helps to ensure that Commerce meets its obligation to calculate antidumping duty rates as accurately as possible. Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

Defendant and Defendant-Intervenor argue that Nucor's allegations of ministerial errors should have been raised in Nucor's Administrative Case Brief and were properly rejected as untimely pursuant to 19 C.F.R. § 351.224(c)(1). Def.-Interv.'s Resp. Br. at 9; Def.'s Resp. Br. at 6, 7, 10. Because the unintentional errors became apparent only in the Final Results, the Court concludes that the exception applies here, and Nucor was permitted to address new ministerial errors that arose after Commerce completed its constructed cost calculations for normal value in the Final Results. See U.S. Steel Corp., 36 CIT at 539, 2012 WL 1259085 at **4.

Nucor filed timely Ministerial Error Comments and the Court concludes that Nucor did not fail to exhaust its administrative remedies. Because Nucor should have been allowed to raise ministerial error concerns regarding Maquilacero in response to apparent unintentional mistakes in Commerce's Final Results, the

Court remands for Commerce to reconsider Nucor's ministerial error comments and respond accordingly.

II. Nucor's Ministerial Error Comments Regarding Prolamsa

The second issue raised by Nucor is a challenge to Commerce's rejection of Nucor's ministerial error comments with respect to Prolamsa. Defendant requests a remand to reconsider information in Commerce's calculation of normal value for Prolamsa in the Final Results. Oral Arg. at 1:13:08, Dec. 20, 2022, ECF Nos. 49, 50. During oral argument, Defendant explained that after analyzing the information highlighted by Nucor regarding calculations of home market prices using faulty currency conversions, Commerce wished to reanalyze its calculations to correct any potential double-conversion errors. Id.

The Court has considerable discretion in deciding whether to grant a request for remand by the Government. See SKF USA Inc. v. United States, 254 F.3d 1022, 1029 (Fed. Cir. 2001); Home Prod. Int'l, Inc. v. United States, 633 F.3d 1369, 1378 (Fed. Cir. 2011). If the agency's concern is substantial and legitimate, a remand may be appropriate. SKF USA Inc., 254 F.3d at 1029. This Court has concluded that an agency's concerns are substantial and legitimate if: (1) the agency has provided compelling justification for its remand request, (2) the need for finality does not outweigh the agency's justification, and (3) the scope of the remand request is appropriate. See, e.g., Sea Shepherd N.Z. v. United States, 44

CIT __, __, 469 F. Supp. 3d 1330, 1335–36 (2020) (quoting Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 29 CIT 1516, 1522–26, 412 F. Supp. 2d 1330, 1336–39 (2005)).

Remand of Commerce’s determination regarding Prolamsa will allow Commerce to reassess its home market price calculations and correct any potential errors in its currency conversions. Commerce has an obligation to calculate dumping margins as accurately as possible. See Rhone Poulenc, Inc., 899 F.2d at 1191. The Court concludes that Defendant has provided a compelling justification for its remand request, the need for finality does not outweigh the agency’s justification, and the scope of Defendant’s remand request is appropriate. The Court grants Defendant’s remand request regarding Prolamsa.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that this action is remanded to Commerce for reconsideration consistent with this opinion; and it is further

ORDERED that this case shall proceed according to the following schedule:

- (1) Commerce shall file its remand determination on or before March 17, 2023;
- (2) Commerce shall file the administrative record on or before March 31, 2023;

- (3) Comments in opposition to the remand determination shall be filed on or before April 28, 2023;
- (4) Comments in support of the remand determination shall be filed on or before May 26, 2023; and
- (5) The joint appendix shall be filed on or before June 23, 2023.

/s/ Jennifer Choe-Groves
Jennifer Choe-Groves, Judge

Dated: January 18, 2023
New York, New York