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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Certain Welded Carbon
Steel Pipe and Tube from Turkey

Summary

We have analyzed the case and rebuttal briefs of the domestic interested parties¹ and the respondent² for the final results of the antidumping duty administrative review covering certain welded carbon steel pipe and tube (welded pipe) from Turkey. We recommend that you approve the positions we have developed in the Department's Position sections of this memorandum.

Background

On April 6, 2004, the Department of Commerce (the Department) published the preliminary results of this antidumping duty administrative review of welded pipe from Turkey.³ The period of review (POR) is May 1, 2002, through April 30, 2003. On May 6, 2004, and May 13, 2004, we received case and rebuttal briefs from domestic interested parties and the respondent.

¹ Domestic interested parties are Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company.

² The respondent in this administrative review is the Borusan Group (Borusan).

³ See *Notice of Preliminary Results of Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 69 FR 18049 (*Preliminary Results*).

List of Comments

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Discussion of Issues

Comment 1: Exchange Rates

Borusan claims that the Department used the incorrect daily exchange rates in its calculation of the preliminary results. Borusan states that the Department meant to use the daily exchange rates from the Dow Jones Business Information Services. However, claims Borusan, the Department's rates differ from those obtained from Dow Jones. Borusan requests that the Department correct this error and use the proper Dow Jones daily exchange rates in its final results.⁴

The domestic interested parties (DIP) argue that the Department might have adjusted its exchange rates due to rate fluctuation, such that the benchmark rate was used as the official rate instead of the actual daily rate. The DIP argue that the Department should use its official daily exchange rates from the Department's website, providing accuracy and transparency.⁵

Department's Position:

The Department normally uses the daily exchange rates published on its website in its calculations of preliminary and final results. However, in the case of the Turkish lira, if the Department used such rates, the rate would be the same for most of the POR. *See* <http://www.ia.ita.doc.gov/exchange/turkey.txt>. This distortion occurs because our website lists exchange rates with six decimal places. Due to the large difference in exchange between U.S. dollars and Turkish lira, more decimal places are needed. The Department obtains such exchange rates from Dow Jones and expands them to 10 decimal places to provide better accuracy in calculating its preliminary and final results.

The exhibited differences that Borusan cites in its case brief exist due to the Department's benchmarking method. *See* Policy Bulletin 96-1 (March 4, 1996) on the Department's website at <http://www.ia.ita.doc.gov/policy/bull96-1.txt>. Attached at Exhibit 1 is a sample printout of the

⁴ *See* Letter to the Department from Borusan (May 6, 2004) (Borusan Case Brief) at 3-5.

⁵ *See* Letter to the Department from DIP (May 13, 2004) (DIP Rebuttal Brief) at 4-6.

Department's benchmark program, using the exchange rates in question. The exhibit and the policy bulletin both demonstrate how the Department used its exchange rates in the current review. The Department did not err in utilizing its exchange rates and has, therefore, used the same exchange rate database in its final results.

Comment 2: Programming Errors

Borusan alerted the Department to four errors in the Department's calculation of the preliminary results. First, the Department used the incorrect product-matching hierarchy in the Margin Program. Second, the level of trade (LOT) percentage should have been calculated over the entire POR rather than on a month-by-month basis. Third, the Department subtracted the LOT adjustment in its calculation instead of adding it. Fourth, the Department incorrectly recalculated certain movement expenses.⁶

The DIP argue that the Department properly calculated the LOT percentage on a monthly basis. They state that in other administrative reviews, the Department has matched by LOT in the same month of the U.S. sale. The DIP also state that standard Department practice is to calculate the LOT adjustment on the basis of the contemporaneous window over which the normal value is calculated, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 69 FR 2566 (January 16, 2004), Decision Memorandum at Comment 2, page 4. The DIP argue that because in this case the contemporaneous window is one month, due to high inflation, the Department should continue to calculate the LOT percentage on a monthly basis.⁷

In their rebuttal brief, the DIP argue that the Department correctly subtracted the LOT adjustment in its calculation of the preliminary results. The DIP state that the Department should not change its calculation in this regard. They argue that the Department properly adjusted for the difference in LOT by subtracting the LOT adjustment amount, thereby increasing the normal value.⁸

Department's Position:

We agree that the Department erred in its calculation of the preliminary results, as detailed by Borusan. The Department has corrected its product-matching hierarchy in the Margin Program by ranking the matching characteristics as follows: grade, size, wall thickness, surface finish, and end finish.

The Department incorrectly calculated the LOT percentage on a month-by-month basis. It is the Department's practice to match sales of the foreign like product and sales of the subject merchandise in the same month in high-inflation cases. However, it is not Department practice to calculate the LOT

⁶ See Borusan Case Brief at 2-3 and 5-8.

⁷ See DIP Rebuttal Brief at 7-8

⁸ See DIP Rebuttal Brief at 8-10.

percentage on a monthly basis in high-inflation cases. The Department has consistently calculated the LOT percentage over the entire POR in previous reviews of this antidumping duty order. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 65 FR 37116 (June 13, 2000). *See also Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 63 FR 35190 (June 29, 1998).

We have, accordingly, corrected our calculation of the LOT adjustment for the final results.

The Department erred in its calculation of foreign unit price in U.S. dollars (FUPDOL) by subtracting the LOT adjustment instead of adding it. The Department intended to decrease the FUPDOL by the amount in the LOT adjustment. However, because the LOT adjustment factor is negative, the Department has now added the LOT adjustment factor, thereby decreasing the FUPDOL, as intended.

Comment 3: Cash Deposit Instructions

Borusan requests that the Department indicate in its final results and in its instructions to U.S. Customs and Border Protection (CBP) that the Borusan Group includes Borusan Birlesik Boru Fabrikalari A.S. and Mannesmann Boru A.S.⁹

Department's Position:

In its instructions to CBP, the Department will include the entities Borusan Birlesik Boru Fabrikalari A.S. and Mannesmann Boru A.S. as part of the Borusan Group.

Comment 4: Duty Drawback

The DIP argue that the Department should deny Borusan's claim for duty drawback because Borusan failed to provide evidence that it paid import duties on inputs used to produce the foreign like product sold in the home market. The DIP claim that the Department's verification report confirms that Borusan did not pay its reported amounts for duty drawback, but Borusan was exempt from paying such fees. Borusan did not present any evidence that it paid import duties on inputs used to produce the subject merchandise or foreign like product, argue the DIP.

The DIP cite a recent decision from the Court of International Trade (CIT), which they argue establishes a requirement for payment of import duties on inputs used in producing the foreign like product as a prerequisite to accept an adjustment for duty drawback to export price. The case the DIP cite is *Hornos Electricos de Venezuela, S.A. (HEVENSA) v. United States*, 285 F. Supp. 2d 1353, 1360 (CIT 2003). The DIP state that the facts in *HEVENSA* are nearly identical to those in the present review of welded pipe from Turkey in that the respondents in both cases did not show that import duties were paid on the inputs used to produce the merchandise sold in the home market.

⁹ *See* Borusan Case Brief at 8-9.

The DIP also cite *Far East Machinery Co., Ltd. v. United States*, 699 F. Supp. 309, 314 (CIT 1988), stating that in the present case, there is no imbalance and no need for a duty drawback adjustment because the import duty is not included in the cost of the home-market product. The DIP argue that Borusan did not actually pay any duties on inputs used to produce the subject merchandise.

Last, the DIP state the drawback does not create dumping when the cost of the import duty is not included in the cost of the input used to produce the foreign like product sold in the home market, and the import duty is not included in the cost of the input used to produce the subject merchandise exported to the United States, as in this review.¹⁰

Borusan argues that the DIP's claim is incorrect as a matter of fact, as a matter of law, and as a matter of consistent practice in this proceeding dating back many years. Borusan begins its argument by citing the Department's verification report, stating that Department officials verified that Borusan did indeed pay import duties on imported raw materials that were incorporated into products sold in the home market.

Borusan adds that it established that it would have had to pay import duties on the imported raw materials used to produce the subject merchandise had it not exported that merchandise to the United States. Borusan states that it was allowed to import such inputs duty-free under an inward processing license issued by the government of Turkey which required that Borusan export a sufficient amount of finished pipe to incorporate all of the raw materials imported duty-free.

Last, Borusan addresses the *HEVENSA* case, stating that it is the only case in which there has been any discussion of the new requirement proposed by the DIP. Borusan notes that the plaintiff was chastised by the Court for presenting the case with essentially no argument on any of the issues raised. Borusan continues, allowing that the Court cites the two-prong test found in *Far East Machinery*. Borusan concedes that the Court held that the Department could reasonably impose a third requirement – that the respondent show that it actually paid import duties on imported raw materials used to produce goods for sale in the domestic market, but that such issue is mooted by the fact that Department officials verified that Borusan paid such duties.

Department's Position:

We agree with Borusan regarding the facts of this case. We find that Borusan has met the requirements of the Department's two-prong test for a duty drawback adjustment. First, Borusan proved that the relevant import duties and rebates were directly linked to, and dependent upon, one another. Second, Borusan demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product. Therefore, we have accepted Borusan's duty drawback adjustment for the final results.

¹⁰ See *id.* at 10.

Moreover, we find that the DIP's argument regarding Borusan's duty drawback adjustment was based on an incorrect factual assumption concerning duties paid on imported raw material used in the production of merchandise sold in the home market. Therefore, there is no need to address their arguments which were premised on those non-existent facts.

Comment 5: Financial Expense Ratio

The DIP argue that Borusan's foreign exchange translation losses related to accounts receivable should be included in calculating the financial expense ratio for the cost of production (COP). The DIP state that Borusan's financial expense ratio does not include a foreign exchange translation loss, which would increase its financial expense ratio. The DIP claim that the Department traditionally excludes translation losses related to accounts receivable from the financial expense calculation, but recently changed its practice. The DIP cite *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813, 13814 (March 24, 2004) (*Silicomanganese from Brazil*) as support for the Department changing its practice and including translation losses related to accounts receivable in the calculation of the financial expense ratio.¹¹

Borusan disagrees with the DIP and argues that foreign exchange translation losses related to accounts receivable should not be included in calculating the financial expense ratio, or, alternatively, credit finance income should be included. Borusan explains that it revised its financial expense ratio from 2.25% to 3.39% in order to exclude most of Borusan's total credit finance income from the calculation because that income was related to interest on receivables. Borusan's financial expense ratio did not include the amount for foreign exchange translation loss because it too was related to accounts receivable.

Borusan states that the Department first changed its policy to include all foreign exchange gains and losses in the financial expense ratio in *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11045, 11048 (March 7, 2003) (*Mushrooms from India*). Borusan quotes the Department's acknowledgment that "there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We will address exceptions on a case-by-case basis."¹² Borusan argues that an exception should be made in this case because Turkey was a hyper-inflationary country during the POR.

In such cases, Borusan states, the Department excludes foreign exchange gains and losses on the acquisition of raw materials because the inclusion of those gains and losses would double-count the step-up in raw material costs to a replacement-cost basis. Borusan cites *Certain Cold-Rolled Carbon Steel Flat Products from Turkey*, 67 FR 62126 (October 3, 2002), *Issues and Decision Memorandum* at Comment 11. The Department's rationale for including all exchange gains and losses

¹¹ See DIP Case Brief at 11-12.

¹² *Mushrooms from India* at 11048.

fails, argues Borusan, if exchange gains and losses on raw materials are to be excluded. For the same reason, Borusan asserts, exchange gains and losses on receivables should also be excluded based on the Department's previous reasons for excluding those expenses.

In conclusion, Borusan states that if the Department decides that all exchange gains and losses should be included in interest expense, then interest expense should also include interest income on receivables. If not, argues Borusan, the Department's final results would be unbalanced.¹³

Department's Position:

The Department agrees with the DIP. It is, in fact, Department policy to include the entire amount of net foreign exchange gains and losses on accounts receivable in the calculation of a respondent's financial expense ratio. *See, e.g., Mushrooms from India; Silicomanganese from Brazil; Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004) at Comment 6.

Borusan's claim that the Department should include credit finance income in the financial expense ratio calculation is unwarranted because the Department accounts for such income in Borusan's credit calculation in the sales response to the Department's questionnaire. Including credit finance income in the financial expense ratio would effectively double-count such income.

The Department's practice in high-inflation cases is to exclude foreign exchange gains and losses generated through the purchase of raw materials. *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 68 FR 53127 (September 9, 2003), *Issues and Decision Memorandum* at Comment 15. Moreover, Borusan's argument with respect to foreign exchange gains and losses on raw material purchases is inapposite because Borusan did not provide any such information to the Department, and the information does not otherwise exist on the record. Without access to such information, the Department is not in a position even to consider such a request. *See, e.g., Silicomanganese from Brazil.*

Accordingly, the Department has recalculated Borusan's financial expense ratio for the final results. Now the ratio includes foreign exchange gains and losses attributable to accounts receivable. The new financial expense ratio and calculation can be found in the *Final Results Analysis Memorandum* (August 4, 2004) and in the *Comparison Market Program* at line 379.

Comment 6: Valuation of Hot-Rolled Coil Inputs Purchased from Affiliates

The DIP argue that the highest of the market price, transfer price, or the COP should be used to value Borusan's hot-rolled coil inputs purchased from affiliates. The DIP cite the Department's verification

¹³ *See* Borusan's Rebuttal Brief at 14-15.

report and state that Exhibits 1 and 2 consist of untranslated invoices and worksheets in Turkish, with no indication in English of affiliation. The DIP ask that the Department describe its examination of such documents at verification and state whether such purchases of hot-rolled

coil from affiliates were made at arm's-length prices. If they were not, argue the DIP, the Department should value such inputs at the highest of the market price, transfer price, or the COP for the final results.¹⁴

In its rebuttal brief, Borusan argues that the Department should not make an adjustment to Borusan's reported costs of hot-rolled coil inputs because Borusan proved that its transfer price is at market price. Borusan provided further explanation of the documents in Exhibit 1 and 2, stating that they are invoices from affiliated and unaffiliated parties of coil and zinc, demonstrating that Borusan purchases both raw material inputs from affiliates at market prices. Therefore, argues Borusan, no adjustment to the transfer price is justified.¹⁵

Department's Position:

The Department agrees with Borusan. At verification, Department officials verified this issue at length in order to be sure that the transfer prices paid by Borusan were arm's-length prices. As evidence, Department officials collected Exhibits 1 and 2, showing that Borusan purchased zinc and coil from both affiliated and unaffiliated parties at similar prices. Therefore, the Department will not make an adjustment to Borusan's transfer prices in the final results of this review.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

AGREE____ DISAGREE____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date

¹⁴ See DIP Case Brief at 12-13.

¹⁵ See Borusan Rebuttal Brief at 15-16.

Attachment 1