

DATE: October 12, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review: Certain Welded  
Carbon Steel Pipe and Tube from Turkey for the period of review  
May 1, 2008, through April 30, 2009

### **Summary**

We have analyzed the case and rebuttal briefs of a domestic interested party, U.S. Steel Corporation (“US Steel”), and respondent the Borusan Group<sup>1</sup> (collectively “Borusan”), for the final results of the antidumping duty administrative review covering certain welded carbon steel pipe and tube (“pipe and tube”) from Turkey. We recommend that you approve the positions we have developed in the Department’s Position sections of this memorandum.

### **Background**

On July 11, 2010, the Department of Commerce (“the Department”) published the preliminary results of this antidumping duty administrative review of pipe and tube from Turkey.<sup>2</sup> The period of review (“POR”) is May 1, 2008 through April 30, 2009. On July 30, 2010, we received case briefs from Borusan, and U.S. Steel. On August 5, 2010, and August 6, 2010, we received rebuttal briefs from the same parties, respectively.

---

<sup>1</sup> The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Holding A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., and Borusan Ithicat ve Dagitim A.S.

<sup>2</sup> Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 75 FR 33262, (June 11, 2010) (“Preliminary Results”).

## **List of Comments**

**Comment 1:** Treatment of “Negative Dumping Margins” (Zeroing)  
**Comment 2:** Method of Indexing Quarterly Costs  
**Comment 3:** Borusan’s Duty Drawback

## **Discussion of Issues**

**Comment 1:** Treatment of “Negative Dumping Margins” (Zeroing)

Borusan argues that the Department should not set to zero negative dumping margins for calculation of the weighted-average dumping margin for the final results. Borusan adopted the positions taken by Dongbu Steel Co., Ltd., and Union Steel Manufacturing Co., Ltd., in their case briefs filed in Dongbu Steel Co., v. United States, Ct. No. 07-00125 (“Court of International Trade”). Borusan claims that the Department’s use of zeroing was inconsistent with U.S. obligations under the World Trade Organization (“WTO”) Antidumping Agreement. Borusan claims that the Department ended the practice of zeroing negative dumping margins in antidumping duty investigations and acknowledged that zeroing is not mandated by the statute in a proceeding under Section 123(a) (“Section 123”) of the Uruguay round Agreements Act (“URAA”). Borusan argues that the statute is silent with regard to zeroing, but that the Department is inconsistent by not zeroing in antidumping duty investigations, but zeroing in antidumping duty administrative reviews.

US Steel asserts that the arguments Borusan raises have been repeatedly considered and rejected by the Department in other cases.<sup>3</sup> US Steel argues that the use of zeroing is required by the Act for both antidumping duty investigations and antidumping duty administrative reviews. US Steel maintains that section 777(A)(d) of the Tariff Act of 1930, as amended (“the Act”), sets forth the comparison methodologies to be used by the Department in calculating a company’s dumping margin depending on the circumstances of the case, and that if zeroing is not used, 777(A)(d) will be meaningless because the calculated margin will be exactly the same regardless of the comparison methodology used.

US Steel reasons that even if zeroing is not mandated by statute, the courts have upheld the Department’s use of zeroing in administrative reviews as a reasonable interpretation of it. US Steel asserts that the Department’s policy of not zeroing in antidumping duty investigations and not in antidumping duty administrative reviews has been upheld by the U.S. Court of Appeals for the Federal Circuit (“CAFC”).<sup>4</sup>

---

<sup>3</sup> Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 75 Fed. Reg. 34980 (June 21, 2010) at Comment 8; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 74 Fed. Reg. 11082 (March 16, 2009) at Comment 2.

<sup>4</sup> Corus Staal BV v. United States, 502 F.3d 1370 (Fed.Cir 2007).

## Department's Position

We have not changed our calculations of the weighted-average dumping margin as suggested by Boursan for these final results of review. Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than the export price or the constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than the export price or the constructed export price, the Department will not offset the amount of dumping found with the “negative” margins calculated for the non-dumped sales. The CAFC has held that this is a reasonable interpretation of the statute.<sup>5</sup>

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular “dumping margin” in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which the export price or the constructed export price exceeds the normal value permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average dumping margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average dumping margin.

The CAFC explained in *Timken* that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.” *Timken*, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping,” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.<sup>6</sup>

---

<sup>5</sup> *Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004); *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied*; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) (“*Corus I*”).

<sup>6</sup> *Timken*, 354 F.3d at 1343; *Corus I*, 395 F.3d 1343; *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (“*Corus II*”); and *NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007).

The respondent has cited WTO dispute-settlement reports (“WTO reports”) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a [report] has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (“URAA”).<sup>7</sup> Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>8</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute, where implementation of WTO reports is discretionary.<sup>9</sup> Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.<sup>10,11</sup> With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (Apr. 18, 2006) (“US-Zeroing (EC)”), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.<sup>12</sup> In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.<sup>13</sup>

Consistent with the Department’s interpretation of the Act as described above, in the event that the export prices or constructed export prices for any U.S. transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other U.S. transactions.

## **Comment 2: Method of Indexing Quarterly Costs**

Borusan alleges that the Department has departed from its former quarterly cost methodology by shifting to “indexing costs based on the average unit value of coils withdrawn from BMB’s raw material inventory to produce slit coils in each quarter.”<sup>14</sup> Borusan cites Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 74 FR 53,468 (Oct. 19, 2009) (“SSPC from Belgium”) as an example of the Department’s prior methodology of indexing quarterly costs. According to Borusan, in SSPC from Belgium the Department “used indices calculated based on the submitted raw material costs for the subject merchandise averaged by grade.”<sup>15</sup> Borusan argues that the Department’s indexing calculation using the

---

<sup>7</sup> Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375.

<sup>8</sup> 19 USC 3538.

<sup>9</sup> 19 USC 3538(b)(4).

<sup>10</sup> 19 USC 3533(g).

<sup>11</sup> Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (Dec. 27, 2006) (“Zeroing Notice”).

<sup>12</sup> Id.

<sup>13</sup> Id. 71 FR at 77724.

<sup>14</sup> Borusan case brief at 3.

<sup>15</sup> Id.

company's inventory movement data results in distortions and is a departure from its prior practice.

Specifically, Borusan argues that in the preliminary results, the Department calculated indices by computing a single, weighted average unit value of consumption at slitting for two grades of coil substrate – ST 37 and ST44. Borusan states that grade ST 37 is used to make Grade A pipes and Grade ST 44 is used to make Grade B pipes, and both types of coils are also used to make non-subject merchandise. Borusan contends that the Department should calculate the indices from the costs of raw materials consumed only in the production of subject merchandise. Borusan reasons that the consumption value of the two grades should not be weight-averaged because 1) ST 44 coils are higher priced than ST 37 coils and fewer ST 44 coils than ST 37 coils are consumed in any given quarter; and 2) there are timing differences between the coil consumed in production at slitting in each quarter and the coil consumed in finished production in each quarter, resulting in indexing not based on the same universe of costs. According to Borusan, basing the index on submitted quarterly raw material costs will eliminate the timing problem.

Borusan states that it submitted indexed quarterly costs to the Department on the record using the indexing methodology of SSPC from Belgium. Borusan argues that the Department should “revert to its former methodology because it is far more accurate in the circumstances of this case.”<sup>16</sup>

US Steel contends that Borusan is wrong in how it characterizes the Department's practice. Citing the recent cases which the Department applies the quarterly cost averaging methodology, US Steel argues that the Department's well-established practice is to calculate indexed quarterly costs based on the respondent's quarterly weighted-average per-unit consumption costs of the raw material in question. US Steel reasons that the Department should not segregate costs of raw materials because it does not represent the complete costs to the company of its raw material purchases. With regard to Borusan's claim of inventory lag between slitting and welding and between welding and packing the coils for entry into finished goods inventory, US Steel maintains that the consumption cost of hot-rolled coil is used to calculate quarterly indices and that even if there is a month time lag, it is of no consequence and would not distort the indices.

The recent cases cited by US Steel where the Department has applied the quarterly cost averaging methodology include: Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 18788 (April 13, 2010) (“Circular Welded Carbon Steel Pipes and Tubes from Thailand”), and accompanying memorandum “Cost of Production and Constructed Value Adjustment for the Preliminary Results – Saha Thai Steel Pipe (Public) Company, Ltd., Circular Welded Carbon Steel Pipes and Tubes from Thailand, POR 03/01/08-02/28/09” (Apr. 7, 2010); Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review, 74 FR 64670 (Dec. 8, 2009) (“Circular Welded Non-Alloy Steel Pipe from Korea”), and the accompanying memorandum “Cost of Production

---

<sup>16</sup> Id at 5.

and Constructed Value Adjustment for the Preliminary Results – SeAH Steel Corporation, Circular Welded Non-Alloy Steel Pipe from Korea, POR 11/01/07 – 10/31/08” (Nov. 30, 2009); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010) (“Korea Corrosion 15AR”), and accompanying Issues and Decision Memorandum at Comment 1.

US Steel contends that the Department should continue to index quarterly costs based on Borusan’s quarterly weighted-average per-unit consumption costs for hot-rolled coils in the final results.

### **Department’s Position**

We disagree with Borusan’s contention that the quarterly cost indexing methodology based on consumption data, as applied in the instant case, is less accurate than indexing using submitted raw materials, as used in previous cases.

The Department started calculating indices based on the submitted raw material (DIRMAT) costs averaged by grade in SSPC from Belgium. In subsequent cases, the Department has continued to request and calculate indices using respondents’ inventory purchase/consumption data.<sup>17</sup> Indeed, the Department’s standard questionnaire requests such data, as did the section D second cost supplemental questionnaire issued to Borusan:

Provide company-wide inventory movement schedules for hot-rolled sheet, including quantities and values for beginning and ending inventory, purchases, consumption and sales, by month. Please aggregate the various types or grades into a single summary POR inventory movement schedule by month.<sup>18</sup>

Because a respondent’s DIRMAT field will necessarily be based on the raw material consumption data, the differences in results from using DIRMAT or raw material consumption data will be minimal. The difference will be attributable to the fact that DIRMAT is based solely on the merchandise under consideration, sold in the U.S. and comparison market, whereas consumption data from the inventory records provides the company’s overall experience. Other differences may be attributable to any work-in-process differences or material consumption differences between subject and non subject merchandise. While we recognize that exceptions may arise, our general practice, as reflected in the section D questionnaire, is to use raw material consumption data, as it reflects the overall price change experienced by the company during the POI or POR, and thus is a more appropriate basis for an index.<sup>19</sup>

---

<sup>17</sup> Circular Welded Carbon Steel Pipes and Tubes from Thailand, Circular Welded Non-Alloy Steel Pipe from Korea, and Korea Corrosion 15AR; see also Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review, 74 FR 39285 (August 6, 2009) (Pasta from Italy), (unchanged in the final results), in which the Department states “we used quarterly indexed annual average direct material costs.”

<sup>18</sup> The Department’s November 20, 2009, Section D Second Supplemental Questionnaire at page 1.

<sup>19</sup> Circular Welded Carbon Steel Pipes and Tubes from Thailand, Circular Welded Non-Alloy Steel Pipe from Korea, Korea Corrosion 15AR, and Pasta from Italy.

In the Preliminary Results, the Department calculated indices based on the inventory consumption data provided by Borusan. Company-wide monthly purchase/consumption data provides enhanced accuracy because the data shows the underlying amounts (prices, quantities and values) used to calculate the reported material costs. In addition, the monthly purchase/consumption data shows whether there has been a significant change in the cost of the raw material in question.

We also disagree with Borusan that the indices should be based solely on the costs of raw materials consumed only in the production of subject merchandise. Similar to our normal methodology for calculating raw material costs, as long as the same input is used to produce both subject and non-subject merchandise, we do not make a distinction between the costs of each; we include the cost of all comparable inputs consumed regardless of whether they were used to produce subject or non-subject merchandise.<sup>20</sup>

Regarding Borusan's inventory lag argument, we find no evidence of significant lag between the time hot-rolled coil leaves the inventory and the time the hot-rolled coil is used for production.<sup>21</sup> Moreover, even if there is a short lag, it will not distort the indices because the consumption cost of hot-rolled coil is used to calculate quarterly indices.

With regard to Borusan's comments on the cost difference between ST 37 and ST 44, we have further analyzed Borusan's inventory purchase/consumption data, provided in Borusan's December 18, 2009, submission at Exhibit 7. We find that there is enough cost difference to treat the two grades separately.<sup>22</sup> Thus, for the final results, we have calculated grade-specific indices, including ST 52, which were inadvertently missed in the Preliminary Results. For the general purpose pipes, *i.e.*, overrollings sold in the home market, we have applied an index calculated based on weighted-average consumption costs of all the three grades.<sup>23</sup>

### **Comment 3: Borusan's Duty Drawback**

US Steel argues that Borusan has failed to calculate the import duties it was exempted from paying for the imported hot-rolled coil that it used to produce subject merchandise exported to the United States, and account for such duties in the calculation of the cost of production ("COP") of subject merchandise. US Steel asserts that the Department's practice is to adjust the COP to include the exempted import duties for the raw materials used to produce subject merchandise in cases where a duty drawback adjustment has been made to U.S. price. US Steel maintains that although the Department has not required Borusan to calculate the import duties it was exempted from paying in previous reviews, it is not obligated to maintain that position in the

---

<sup>20</sup> Korea Corrosion 15AR, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>21</sup> Verification of the Cost Response of Borusan Mannesmann Boru Sanayi ev Ticaret A.S. (BMB) in the Antidumping Review of Certain Welded Carbon Steel Standard Pipe (Welded Pipe) from Turkey (Cost Verification Report) from Joy Zhang and Christopher Hargett to Melissa Skinner, Office Director, through James Terpstra, Program Manager, dated April 19, 2010, at pages 3-4, and cost verification exhibit 8.

<sup>22</sup> Cost of Production and Constructed Value Calculation Adjustments for the Final Results – the Borusan Group (collectively "Borusan") for detailed analysis and index calculations.

<sup>23</sup> Id.

current review. US Steel reasons that not including the exempted import duties in COP would result in a distortion to the calculated COP. US Steel maintains that the Department should disallow any duty drawback adjustment for the final results, or should calculate the approximate amount of import duties that Borusan was exempted from paying under the duty drawback program and include such duties in COP.

Borusan maintains that the Department has never solicited information on unpaid duties from Borusan and that the statute does not condition the duty drawback adjustment upon the provision of information of this type. Borusan argues that US Steel had the opportunity to request that the Department solicit the necessary data from Borusan during the response stage of this administrative review to calculate a cost adjustment for exempted duties. Borusan maintains that the Department is required to base COP on the costs recorded in its books and records, and that their books are kept in accordance with generally accepted accounting principles (“GAAP”) in Turkey, and do not include either an accrued cost or provision for unpaid import duties on raw materials.

Borusan urges the Department to reject US Steel’s request for disallowing any duty drawback adjustment, or including the cost of duty drawback in Borusan’s COP. Borusan claims that section 772(c)(1)(B) of the Act requires an upward adjustment to the export price for claimed duty drawback. Borusan maintains that they have quantified their duty drawback claim using a consistent methodology in all the administrative reviews of Certain Welded Carbon Steel Pipe and Tube from Turkey in which it has participated, and that there has been no relevant change in the underlying statute or regulations during this period. Further, Borusan maintains that including any exempted duties on imported hot-rolled coil that was not a part of BMB’s cost is contrary to section 773(b)(3) of the Act.

Finally, Borusan argues that the Department observes strict deadlines on the submission of new factual information in administrative reviews in order to permit all parties to analyze the submitted data, and decide whether any additional information should be solicited, or if changes in methodology are warranted. Borusan maintains that US Steel did not take advantage of the time allowed to request that the Department collect and verify information on the unpaid import duties.

#### **Department’s Position:**

We disagree with the petitioners’ arguments relating to the application of duty drawback with regard to an adjustment to the export price or the constructed export price. Section 772(c)(1)(B) of the Act states that “the price used to establish export price and constructed export price shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” To determine if a duty drawback adjustment is warranted, the Department has employed a two-prong test which determines whether: (1) the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, if the exemption is linked to the exportation of the subject



merchandise; and (2) the respondent has demonstrated that there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise.<sup>24</sup>

The court in Allied Tube held that “the statute provides for a duty drawback adjustment without reference to any finding that the home-market price is reflective of duties.”<sup>25</sup> The court further stated that “the clear language of section 772(c)(1)(B) does not require an inquiry into whether the price for products sold in the home-market includes duties paid for imported inputs.”<sup>26</sup> Therefore, consistent with the court’s decision in Allied Tube, we find that Borusan’s duty drawback adjustment is not conditional on Borusan proving that import duties are included in either the cost or price of subject merchandise sold in the home market.

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.<sup>27</sup> 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.<sup>28</sup> During the verification, the Department reviewed the Turkish import system including the Inward Processing Certificates, which showed imports of raw materials and a commitment to export a certain amount of finished goods; duty rates as published by the Turkish government; and the connection between commercial invoices to customs declaration forms which tied Borusan’s duty drawback calculations to the values in the U.S. sales database and found no discrepancies.<sup>29</sup>

Consistent with the Department’s practice, the Department agrees with US Steel that an adjustment to the COP to include the exempted import duties for the raw materials used to produce subject merchandise is appropriate.<sup>30</sup> The Department has stated that “[i]t uniformly calculates a single cost of production which incorporates the cost of producing both exported and domestically sold finished products, that calculation must include the cost of duties. Because the coils were dutiable, the rebate “revenue” (i.e., the official notification from the GOT that MMZ is no longer liable for the exempted duties) and duty (i.e., the cost) should have been reflected in the company’s books.”<sup>31</sup> Thus, consistent with Light-Walled Pipe from Turkey, the Department has added to the COP, the import duties Borusan was exempted from paying.

---

<sup>24</sup> Allied Tube, 374 F. Supp. 2d at 1261.

<sup>25</sup> Allied Tube, 374 F. Supp. 2d at 1262, (citing Avesta Sheffield Inc. v. United States, 838 F. Supp. 608 (1993)).

<sup>26</sup> Allied Tube, 374 F. Supp. 2d at 1262, (citing Timex V.I. v. United States, 157 F. 3d 879 (Fed. Cir. 1998)

(“Because a statute’s text is Congress’ final expression of its intent, if the text answers the question, that is the end of the matter.”))

<sup>27</sup> Verification of the Sales Response of the Borusan Group in the Antidumping Review of Certain Welded Carbon Steel Standard Pipe from Turkey (Sales Verification Report) from Joy Zhang and Christopher Hargett to Melissa Skinner, Office Director, through James Terpstra, Program Manager, dated April 19, 2010 at pg. 15.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 45611 (September 3, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>31</sup> Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) (Light-Walled Pipe from Turkey), and accompanying Issues and Decision

The Department disagrees with Borusan's contention that US Steel's argument regarding adding duty drawback to COP is untimely. Specifically, Borusan argues that petitioners should have requested that the Department "solicit the necessary data from BMB" earlier in the proceeding, when Borusan first submitted its questionnaire responses.<sup>32</sup> However, the information needed to calculate the duty drawback adjustment has already been placed on the record by Borusan, including the Internal Processing Certificates associated with the importation of raw materials and exportation of finished goods.<sup>33</sup> US Steel, in this case, is requesting an adjustment to the calculation of COP, just as Borusan is in comment 2, supra.

The Department recognizes that it has not included duty drawback in the COP calculations in past administrative reviews of the instant case. However, the Department is not obligated to "accept an incorrect methodology and perpetuate a mistake because it was accepted" in previous reviews.<sup>34</sup> Moreover, courts have affirmed the Department's discretion to change its position as long as the agency provides an explanation for doing so.<sup>35</sup> As explained above, the Department's practice is to offset the exempted duty drawback amount by adding the amount of duty drawback to COP, in order to avoid distortion of the antidumping duty margin.<sup>36</sup> The Department further finds that because the practice of adding duty drawback to COP is well established, and the Department is adjusting the COP based on Borusan's submitted data, it is not an application of either facts available or adverse facts available as described in section 776 of the Act.

---

Memorandum at Comment 2.

<sup>32</sup> Rebuttal Brief of Borusan Mannesmann Boru Sanayi ve Ticaret A.S., dated August 5, 2009, at page 5.

<sup>33</sup> FINAL COST CALC MEMO; Borusan's volume IV, sections B-C, of the Borusan Group's Response in the 2008-2009 Antidumping Duty Administrative Review Involving Certain Welded Carbon Steel Pipe and Tube from Turkey, dated September 25, 2009, at page C-36.

<sup>34</sup> Certain Hot-Rolled Flat-Rolled Carbon-quality Steel Products from Brazil, 64 FR 38756, 38789 (July 19, 1999).

<sup>35</sup> Timken Co. v. United States, 23 C.I.T. 509, 515 (1999); Asociacion Colombiana de Exportadores v. United States, 6 F. Supp. 2d 865, 879-80 (Ct. Int'l Trade 1998); Anshan Iron & Steel Co. v. United States, 28 C.I.T. 1728, 1735 (2004).

<sup>36</sup> Light-Walled Rectangular Pipe and Tube from Turkey, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 2; Circular Welded Carbon Steel Pipes and Tubes from Thailand, 73 FR 61019 (October 15, 2009), and accompanying Issues and Decision Memorandum at Comment 5; Certain Steel Concrete Reinforcing Bars from Turkey, 74 FR 45611 (September 3, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

**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 \_\_\_\_\_

---

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

---

Date