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DATE: August 21, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for Final Results of Countervailing Duty
(CVD) Administrative Review: Circular Welded Carbon Steel
Pipes and Tubes from Turkey

I. Summary

On April 23, 2014, the Department of Commerce (Department) published the *Preliminary Results* in the CVD review referenced above.¹ On May 23, 2014, the Department received a case brief from Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively, the Borusan Companies).² No interested party submitted a rebuttal brief.

After analyzing the comments, we made certain modifications to the *Preliminary Results*. The “Analysis of Programs” section below describes the methodology followed in this review with respect to the Borusan Companies, the sole producer/exporter of subject merchandise subject to individual examination in this review. Also below is the “Analysis of Comments” section, which contains the Department’s response to the issue raised in the case brief.

II. Period of Review

The period for which we are measuring countervailable subsidies, *i.e.*, the period of review (POR), is January 1, 2012, through December 31, 2012.

¹ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Circular Welded Carbon Steel Pipe and Tube Products From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part*, 79 FR 22625 (April 17, 2014) (*Preliminary Results*).

² See the Borusan Companies’ May 23, 2014, submission (Borusan Companies’ Case Brief).



III. Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. Rescission of the 2012 Administrative Review, in Part

Yucel Group and affiliates including Yucel Boru ye Profil Endustrisi A.S, Yucelboru Ihracat Ithalat ye Pazarlama A.S, and Cayirova Born Sanayi ye Ticaret A.S. (collectively, Yucel), Umran Celik Boru Sanayii A.S. (Umran), and Guven Celik Boru San. Ve Tic. Ltd. (Guven) each claimed no shipments during the POR, and Customs and Border Patrol (CBP) did not provide any information contradicting the claims made by these companies. Based on our analysis of record evidence, we determine that Yucel, Umran, and Guven did not ship subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,³ we are rescinding the review for Yucel, Umran, and Guven.

V. Attribution of Subsidies

The Department made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies.⁴

VI. Allocation Period

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Results* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.⁵

VII. Subsidies Valuation Information – Benchmarks and Discount Rates

The Department made no changes to benchmarks or discount rates used in the *Preliminary Results* and no issues were raised by interested parties in case briefs regarding benchmarks or discounts rates.⁶

VIII. Non-Selected Rate

³ See, e.g., *Aluminum Extrusions from the People's Republic of China: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 79 FR 2635 (January 15, 2014).

⁴ For descriptions of the methodologies used for these final results, see *Preliminary Results*, and accompanying Decision Memorandum at 5.

⁵ For a description of allocation period and the methodology used for these final results, see *id.*, and accompanying Decision Memorandum at 4-5.

⁶ For a description of the benchmarks and discount rates used for these final results, see *id.*, and accompanying Decision Memorandum at 5-6.

The Tariff Act of 1930, as amended (the Act), and the Department's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, the Department looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs the Department to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis* or based entirely on facts available. Accordingly, the Department's usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁷ However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

Consistent with our findings in the *Preliminary Results* and as indicated in the final results to be published in the *Federal Register* and dated concurrently with this accompanying Issues and Decision Memorandum, we determine that the Borusan Companies, the only mandatory respondent in this review, received a *de minimis* net subsidy rate during the POR.

In past reviews, the Department determined that a "reasonable method" to use when all the rates of selected mandatory respondents are zero or *de minimis* is to assign non-selected respondents the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available.⁸ However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, the Department found it appropriate to apply that calculated rate to the non-selected respondent, even when that rate is zero or *de minimis*.⁹

In the *Turkey Pipe 2011 Final Results*, the most recently completed administrative review of this order, the Department calculated a *de minimis* net subsidy rate for Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB), (collectively Erbosan) and a net subsidy rate of 0.83 percent *ad valorem* for Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), (collectively, Toscelik).¹⁰ Therefore, consistent with the Department's practice, as described above, the Department is assigning a rate of 0.83 percent to Toscelik and a *de minimis* net subsidy rate to Erbosan for these final results, based on the individual rates

⁷ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

⁸ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194-95 (September 15, 2009).

⁹ *Id.*

¹⁰ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, 64917 (October 30, 2013) (*Turkey Pipe 2011 Final Results*).

calculated for those companies in the prior review. Our approach in this regard is unchanged from the *Preliminary Results*.¹¹

IX. Analysis of Programs

A. Programs Determined To Be Countervailable

The Department considered parties' comments and made no changes to its preliminary findings with regard to the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see the Preliminary Results*.¹² The final company-specific program rates for each of the following programs are unchanged from *Preliminary Results* and are as follows:

1. Deduction from Taxable Income for Export Revenue
The Borusan Companies: 0.01 percent *ad valorem*
2. Short-Term Pre-Shipment Rediscount Program
The Borusan Companies: 0.12 percent *ad valorem*

B. Programs Determined Not To Confer Countervailable Benefits

The Department made no changes to its preliminary finding with regard to this program. No issues were raised in the case briefs regarding this program. Therefore, for these final results, we continue to determine that the Borusan Companies did not benefit from these programs during the POR:

1. Inward Processing Certificate Exemption¹³
2. Investment Encouragement Program (IEP): Customs Duty Exemptions¹⁴

The Department made a minor correction to the following program in response to our analysis of comments raised by interested parties in their case brief and addressed in the "Analysis of Comments" section below. As a result of our correction, the net subsidy rate for this program is less than 0.005 percent *ad valorem* and, therefore consistent with our practice does not confer a numerically significant benefit during the POR.¹⁵

¹¹ *See Preliminary Results*, 79 FR at 22626 and accompanying Decision Memorandum at 6-7.

¹² *Id.*, and accompanying Decision Memorandum at 8-10.

¹³ For additional discussion of this program, *see id.*, and accompanying Decision Memorandum at 11.

¹⁴ For additional discussion of this program, *see id.*, and accompanying Decision Memorandum at 10. We note, in the *Preliminary Results*, we placed this program under the "Programs Preliminarily Determined To Be Countervailable" category. *See Preliminary Decision Memorandum* at 10. However, for purposes of the final results, we have placed the program under "Programs Determined Not To Confer Countervailable Benefits" because the benefit under the program is less than 0.005 percent *ad valorem*, which consistent with our practice does not confer a numerically significant benefit during the POR. *See, e.g., Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (*Steel Wheels Decision Memorandum*) at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

¹⁵ *See, e.g., Steel Wheels Decision Memorandum* at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

3. Pre-Export Credits¹⁶

The Borusan Companies: less than 0.005 percent *ad valorem*

C. Programs Determined To Be Not Used

We examined and determined that during the POR the Borusan Companies did not apply for or receive benefits under the programs listed below. Our findings in this regard are unchanged from the *Preliminary Results*.¹⁷

- Stamp Duties and Fees Exemptions under the Free Zones Law
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentive for Employers' Share in Insurance Premiums
- Law 5084: Allocation of Free Land and Purchase of Land for less than Adequate Remuneration (LTAR)
- Law 5084: Energy Support
- Corporate Income Tax Exemption under the Free Zones Law
- Deductions on Social Security Payments Program under Law 5510
- Deductions on Social Security Payments Program under Law 5921
- Customs Duties and Value-Added Tax (VAT) Exemptions under the Free Zones Law
- Provision of Buildings and Land Use Rights for LTAR under the Free Zones Law
- Post-Shipment Export Loans
- Export Credit Bank of Turkey Buyer Credits
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Regional Subsidies
- VAT Support Program (Incentive Premium on Domestically Obtained Goods)
- IEP: VAT Exemptions
- IEP: Reductions in Corporate Taxes
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Regional Incentive Scheme: Reduced Corporate Tax Rates
- Regional Incentive Scheme: Social Security Premium Contribution for Employees
- Regional Incentive Scheme: Allocation of State Land
- Regional Incentive Scheme: Interest Support
- Organized Industrial Zone (OIZ): Exemption from Property Tax
- OIZ: Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received

¹⁶ For an additional discussion of this program, *see id.*, and accompanying Decision Memorandum at 8.

¹⁷ *See Preliminary Results*, and accompanying Decision Memorandum at 12-13.

- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain Regional Development” Investments, and Investments Moved from Developed regions to “Regions of Special Purpose
- Foreign Trade Companies Short Term Export Credits
- Pre-shipment Export Credits
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges

X. Analysis of Comments

Borusan

Comment: Whether the Department Double-Counted Subsidy Benefits the Borusan Companies Received in Connection with Certain EXIMBANK Loans

Case Brief Arguments of the Borusan Companies

- The Department found that the Borusan Companies’ use of EXIMBANK pre-export credits and short-term pre-shipment rediscount loans provided countervailable subsidies due to the difference between the interest payments the Borusan Companies made on the loans and the interest payments that the Borusan Companies would have made at the benchmark interest rates calculated based on their short-term commercial loans during the POR.¹⁸
- In determining the benefit the Department combined the loans from both of these programs and countervailed them twice.¹⁹
- The Department failed to distinguish between the pre-export credits and the pre-shipment rediscount loans and that the currency of the pre-export credits was only Turkish Lira and that the currency of the pre-shipment rediscounts loans was only U.S. dollars. As a result, the Department countervailed the same loans twice.²⁰
- The Department should delete the benefit calculated for Program 2 and label the current Program 6 as Pre-Export Credits – TL. This would eliminate the double-counting.²¹

Petitioners did not comment on the issue.

¹⁸ See the Borusan Companies’ Case Brief at 9.

¹⁹ *Id.* at 3

²⁰ *Id.*

²¹ *Id.*

Department's Position: We agree with the Borusan Companies that the Department erred in its preliminary calculation by inadvertently including duplicates of certain loans in our benefit calculations. In these final results, we removed these duplicate loans from our benefit calculations. For additional information, *see* the final calculation memorandum.²²

XI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register*.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

August 21, 2014

Date

²² See Final Calculations for the Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively the Borusan Companies) from John Conniff to the File, dated concurrently with this Issues and Decision Memorandum.