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January 14, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017-2018 Administrative Review of the Antidumping Duty Order
on Circular Welded Carbon Steel Standard Pipe and Tube from
Turkey

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in the 2017-2018 administrative review of the antidumping duty order on circular welded carbon standard steel pipe and tube (circular welded pipe) from Turkey. This review covers the following companies: Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan);¹ Toscelik Profil ve Sac Endustrisi A.S., Tosityali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik);² Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Holding

¹ In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674 (December 10, 2015). For the final results we continue determine that there is no evidence on the record that warrants altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity. The record does not support treating the following companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity: (1) Borusan Birlesik; (2) Borusan Gemlik; (3) Borusan Ihracat; (4) Borusan Ithicat; and (5) Tubeco. Accordingly, as discussed *infra*, each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

² In prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosityali Dis Ticaret A.S., and Toscelik Metal as a single company. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674, 76674 n.2 (December 10, 2015). We preliminarily determine that there is no evidence on the record for altering our treatment of Toscelik Profil ve Sac Endustrisi A.S., Tosityali Dis Ticaret A.S., and Toscelik Metal as a single company.

(BMBYH), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Borusan Mannesmann Yatirim Holding (BMYH), Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); Kale Baglanti Teknolojileri San. ve Tic. (Kale Baglanti), Noksel Selik Boru Sanayi A.S. (Noksel Selik), Yucel Boru ve Profil Endustrisi A.S. (Yucel), Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru), Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova). Cinar Boru Profil San. ve Tic. As (Cinar Boru).

Following the *Preliminary Results*³ and based on our analysis of the comments received, we made certain changes to the margin calculations for the final results (*see* Section IV below). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

General Issues:

- Comment 1: Allegation of a Particular Market Situation (PMS) in Turkey
- Comment 2: Adjusting for PMS Based on Proposed Regression Analysis

Borusan-Specific Issues

- Comment 3: Whether Section 232 Duties Should be Deducted from U.S. Price
- Comment 4: Borusan Constructed Export Price (CEP) Sales
- Comment 5: Whether Borusan Reported Theoretical Weight Correctly
- Comment 6: Whether Borusan’s Overrun Sales are Outside the Ordinary Course of Trade
- Comment 7: Reallocation of Material Costs
- Comment 8: Adjustment for Hot-rolled Coil (HRC) Cost to Account for the Effects of a PMS

Toscelik-Specific Issues

- Comment 9: Application of the PMS Adjustment to Toscelik’s Costs

II. BACKGROUND

On July 18, 2019, we published the *Preliminary Results* of this administrative review.⁴ On September 13, 2019 and September 24, 2019, we received case briefs from interested parties,⁵

³ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ *Id.*

⁵ See Borusan’s Letter, “Administrative Review of the Antidumping Order on Circular Welded Pipe and Tubes from Turkey: Redacted Case Brief,” dated September 24, 2019 (Borusan’s Case Brief); *see also* Petitioner’s Letter, “Circular Welded Pipe and Tubes from Turkey: Case Brief,” dated September 24, 2019 (Petitioner’s Case Brief); and Letter on behalf of Independence Tube Corporation (Independence Tube) and Southland Tube, Incorporated (Southland Tube), Nucor companies (collectively, Nucor Company), “Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Case Brief,” dated September 13, 2019. The Nucor Company submitted its brief in

and on September 27 and 30, we received rebuttal briefs from interested parties.⁶ On August 14, 2019, Borusan requested that Commerce conduct a hearing in this proceeding.⁷ We held a hearing on October 23, 2019. On November 1, 2019, Commerce extended the deadline for the final results by 60 days to January 14, 2020.⁸

III. SCOPE OF THE ORDER

The products covered by this order are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53 or A-135.

VI. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made the following changes to our margin calculations for Borusan and Toscelik.⁹

1. As a result of the regression analyses followed in these final results, we have recalculated the rate used to adjust the cost of hot-rolled coil, given Commerce's finding that a particular market situation exists in Turkey. Moreover, for Borusan, we applied the revised PMS adjustment percent to the cost of purchased HRC reported in the DIRMAT1 computer field. *See* Comment 8.

2. As a result of the regression analyses followed in these final results, we have recalculated the rate used to adjust the cost of hot-rolled coil, given Commerce's finding that a particular

support of Wheatland's case brief, concurring and adopting by reference the arguments set forth in Wheatland's brief. Wheatland Tube Company (Wheatland, or petitioner) was a member of the Committee of Pipe and Tube Imports who filed the petition requesting the imposition of an antidumping order (*See Initiation of Antidumping Duty Investigations: Certain Welded Carbon Steel Pipe and Tube Products From Turkey*, August 9, 1985 (50 FR 32245)).

⁶ *See* Petitioner's Letter, "Circular Welded Pipe and Tubes from Turkey: Rebuttal Brief" dated September 30, 2019 (Petitioner's Rebuttal Brief); *see also* Borusan's Letter, "Circular Welded Pipe and Tubes from Turkey Case No. A-489-501: BMB's Rebuttal Brief," dated September 30, 2019 (Borusan's Rebuttal Brief); and the Nucor Company's Letter "Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Rebuttal Brief," dated September 27, 2019. The Nucor Company submitted its rebuttal brief in support of Wheatland's rebuttal brief, concurring and adopting by reference the arguments set forth in Wheatland's rebuttal brief.

⁷ *See* Borusan's Letter, "Circular Welded Pipe and Tubes from Turkey Case No. A-489-501: Request for Hearing," dated July 18, 2019.

⁸ *See* Memorandum, "Circular Welded Carbon Standard Steel Pipe and Tubes from Turkey: Extension of Deadline for Final Results of 2017-2018 Antidumping Duty Administrative Review," dated November 1, 2019.

⁹ *See* Memorandum, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results Analysis Memorandum for Borusan," dated January 14, 2020 (Borusan's Final Analysis Memorandum); *see also* Memorandum, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results Analysis Memorandum for Toscelik," dated January 14, 2020 (Toscelik's Final Analysis Memorandum).

market situation exists in Turkey. Moreover, for Toscelik we applied the revised PMS adjustment percent to the portion of the steel cost reported in the STEEL computer field that represents the cost of purchased HRC. *See* Comment 9.

V. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Allegation of a PMS in Turkey

1. Commerce's Adjustment to Cost of Production (COP) for the Sales-Below-Cost Test to Address a PMS

*Borusan's Arguments:*¹⁰

- Commerce's PMS adjustment to Borusan's costs for purposes of the sales-below-cost test violates the plain language of the statute.
- Section 504(b) of the Trade Preferences Extension Act (TPEA) amended the constructed value (CV) of section 773(e) of the Act of 1930, as amended (the Act) to allow for an adjustment of costs in CV if a PMS exists in the exporting country. However, Section 504 of the TPEA did not make any changes to the existing statutory language regarding the calculation of COP for application of the sales-below-cost test of section 773(b) of the Act.
- By not making a change to section 773(b) of the Act Congress did not authorize Commerce to modify the calculation of COP for the sales-below-cost test based on a PMS finding. There is no support for the argument that by amending the definition of "ordinary course of trade" of section 771(15) of the Act to include sales affected by a PMS, Congress intended to incorporate the cost-based PMS adjustment under section 773(e) of the Act into the separate calculation of COP under section 773(b) of the Act.
- Commerce's decision to apply a PMS adjustment to the below-cost test ignores the fact that there is a separate provision of section 773(f) of the Act that contains calculation rules which apply equally to COP and CV. This demonstrates that Congress expressly says where it intends a provision to apply to both COP and CV. Had Congress intended for the cost-based PMS adjustment to CV to also apply to the calculation of COP, it could have done so by placing the PMS adjustment in section 773(f) of the Act alongside those other cost-based adjustments.
- Because Commerce did not calculate normal value (NV) based on CV, the PMS provision has no applicability to this case, and the adjustment to Borusan's COP is not in accordance with law.

*Petitioner's Arguments:*¹¹

- The statute unambiguously permits Commerce to make a PMS adjustment to respondents' COP for the sales-below-cost test. The TPEA amended section 773(e) of the Act to authorize Commerce to use another calculation methodology under the part "or

¹⁰ *See* Borusan's Case Brief at 1-8.

¹¹ *See* Petitioner's Rebuttal Brief at 1-10.

any other calculation methodology” in the event a PMS exists. The fact that the authorization is contained in a section of the statute concerning CV does not in itself limit the scope of the explicit authority to use any other calculation methodology. Thus, Commerce permissibly determined that it had the authority to adjust the respondents’ cost of production to account for the PMS that was found to exist, as the adjustment to respondents’ COP qualifies as “any other calculation methodology.”

- Borusan argues that the adjustment should not be applied to COP because such authorization was codified in section 773(e) of the Act which is entitled “Constructed Value” and as such it only applies to CV. However, the courts, including the Supreme Court, have explicitly rejected attempts to limit or narrow plain statutory language based on the section where that language appears.
- Even if that the statute was ambiguous regarding Commerce’s authority to adjust respondents’ COP, Commerce’s interpretation of the ambiguous statute was reasonable. Borusan’s interpretation would produce absurd results and undermine the remedial purpose of the statute.
- The fact that the COP and CV provisions rely on nearly identical language to define the first element of each, *i.e.*, the cost of materials and fabrication, made it reasonable for Commerce to conclude that TPEA added the PMS concept to the CV provisions “and through these provisions for purposes of the COP under section 773(b)(3) of the Act.”¹²
- The inclusion of the term “ordinary course of trade” in the new provisions and throughout the statute also supported Commerce’s interpretation. Commerce has previously addressed similar claims from respondents regarding the limited nature of the new authority enacted by TPEA.¹³
- Therefore, it was reasonable and consistent with the statute for Commerce to interpret its authority so as to permit it to adjust respondents’ COP to account for the PMS that was found to exist.

Commerce Position:

We disagree with Borusan’s interpretation of the Act. Contrary to Borusan’s argument that Commerce’s adjustment to COP for the sales-below-cost test to address a PMS is not in accordance with the law, the TPEA amendments permit Commerce to address distortions in reported costs through various calculation methodologies, including cost adjustments. Borusan maintains that Section 504(b) of the TPEA does not apply to the calculation of the cost of production when determining whether home market sales are below cost, but applies only when constructed value is used instead of home market sales prices for determining NV.¹⁴ In other words, Borusan contends that, because Congress did not modify the specific statutory provision governing the sales-below-cost analysis for determining which sales to exclude from the

¹² *Id.* at 6 (citing Memorandum, “2017-2018 Administrative Review of Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from Turkey: Decisions on Particular Market Situation Allegations,” dated July 10, 2019 (PMS Memo), at 9).

¹³ *Id.* (citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 51927 (October 15, 2018), and accompanying Issues and Decision Memorandum (IDM) at 10).

¹⁴ See Borusan’s Case Brief at 1-8.

calculation of NV, Commerce has no statutory authority, under the particular market provision, to adjust costs of production when not using constructed value to calculate NV.

The statute requires Commerce in antidumping proceedings to determine NV based on the rules set forth in Section 773 of the Act to achieve a “fair comparison” between NV and export price.¹⁵ The statute in its definition of NV requires that NV reflect a price that is in the “ordinary course of trade.”¹⁶

The TPEA generally expanded the meaning of “ordinary course of trade” to include “situations in which the administering authority determines that the particular market situation prevents a proper comparison {of NV} with the export price or constructed export price.”¹⁷ Thus, where a PMS affects the COP for the foreign like product through distortions to the cost of inputs, it is reasonable to conclude that such a situation may prevent a proper comparison of the export price with NV based on home market prices just as with NV based on CV. The claim that an examination of a PMS for purposes of the sales-below-cost test goes beyond the plain language of the Act fails to consider that the provision at issue, section 773(e) of the Act, specifically includes the term “ordinary course of trade.” Thus, the definition of that term, again, found in section 771(15) of the Act, is integral to that PMS provision.

Similarly, Section 773(e) of the Act discusses constructed value and provides Commerce with broad authority to use “*any* other calculation methodology” if it determines that a “particular market situation exists such that the cost of materials . . . does not accurately reflect the cost of production in the ordinary course of trade.”¹⁸ (emphasis added). Although section 773(e) of the Act is the subsection that is applicable to constructed value, it is unreasonable to conclude that while Congress intended for Commerce not to rely on costs distorted by a particular market situation for constructed value, it would have intended Commerce still to rely on those same distorted costs for purposes of cost of production and the sales below-cost test. Thus, Borusan’s arguments in support of its statutory interpretation are unpersuasive, given the language of the statute and its context, which support the conclusion that Congress intended for Commerce to have flexibility in this area.¹⁹

Further, relevant legislative history indicates that the TPEA permits Commerce to adjust Borusan’s costs based upon the PMS HRC in Turkey. One Senate Report indicated that the amendments ultimately enacted in the TPEA “provide that where a particular market situation exists that *distorts pricing or cost in a foreign producer’s home market*, {Commerce} has *flexibility* in calculating a duty that is not based on distorted pricing or costs.” S. Rep. No. 114–45, at 37 (2015) (emphasis added).²⁰

¹⁵ See section 773(a) of the Act.

¹⁶ See section 773(a)(1)(B)(i) of the Act.

¹⁷ See section 771(15)(C) of the Act (Commerce “shall consider” such transactions outside ordinary course of trade).

¹⁸ *Id.*

¹⁹ See also *Norfolk & W. Ry. Co. v. American Train Dispatchers’ Ass’n*, 499 U.S. 117, 129 (1991) (declining to resort to a canon of construction that supported a particular interpretation of a statute when the “whole context,” including the statute’s plain language, “dictate a different conclusion” process).

²⁰ See *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT January 2, 2019) (quoting same).

Based on the statutory language and evidence of legislative intent, Commerce has consistently found that Section 504 of the TPEA added the concept of particular market situation in the definition of the term “ordinary course of trade,” for purposes of constructed value, “and through these provisions for purposes of the cost of production under { 19 U.S.C. § 1677b(b)(3)}.”²¹ Thus, where a particular market situation affects the cost of production for the foreign like product, such as through distortions in the cost of inputs, for example, it is reasonable to conclude that such a situation may prevent a proper comparison with the export price or constructed value.²²

2. Whether Evidence Demonstrates Distortion in The Turkish HRC Market and a Basis for Finding of a PMS

a. Global Overcapacity and Price Suppression

*Borusan’s Arguments:*²³

- There is no price suppression in the HRC market in Turkey and global steel overcapacity is not evidence of a particular market situation in the Turkish HRC market.
- With respect to the effects of global steel overcapacity, Commerce’s analysis focuses solely on the volume and average unit values (AUVs) of imports from Russia which have allegedly been pushed into Turkey due to global overcapacity (primarily caused by China).
- Commerce fails to explain why a comparison with import levels in 2012 (five and a half years prior to the POR) is relevant to the question of whether market prices during the POR are distorted. A comparison to more recent periods of time yields totally different trends with respect to AUVs suggesting that the selection of 2012 is, at best, arbitrary.
- Similarly missing from the record is any factual demonstration that these Russian import volumes are something out of the ordinary or that AUVs were declining during the POR. Russia is Turkey’s closest geographical trading partner (meaning it is natural that imports would be significant) and the evidence shows that prices from Russia, as well as average unit values of all imports, increased over the POR, the period of time that should be at issue for purposes of consideration of a potential PMS.

²¹ See, e.g., *Final Results of Administrative Review, Certain Oil Country Tubular Goods from the Republic of Korea*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 3; *Final Results of Administrative Review, Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 83 FR 27541 (June 13, 2018), and accompanying IDM at Comment 1.

²² In a recent Court of International Trade (CIT) holding in *Saha Thai Steel Pipe Public Co. Ltd. v. United States*, Court No. 18-00214, Slip Op. 19-165 (CIT December 18, 2019), the CIT held that because Commerce determined it could compare the respondents’ U.S. and home market sales, Commerce was not permitted to apply a cost-based particular market situation adjustment, particularly when applying the below-cost test under section 773(b)(3) of the Act. That decision is not final and conclusive, and remains subject to appeal. Accordingly, it does not apply to Commerce’s application of its PMS methodology in this administrative review.

²³ See Borusan’s Case Brief at 8-19.

- These price increases are also consistent with the HRC prices reported in Steel Business Briefing over the POR both for exports from Turkey, China, and Russia and for HRC imports into Turkey and the European Union (EU).²⁴
- This is particularly important because in the recently released Final Results in the 2016-2017 AD review of Standard Pipe from the UAE,²⁵ Commerce found that a PMS did not exist based in part on the fact that there was insufficient evidence on the record to support the claim that global steel overcapacity significantly lowered HRC prices in the UAE.²⁶
- While the petitioner argued in Standard Pipe from the UAE that Commerce should look as far back as 2012 when comparing import data, Commerce said that “we disagree that Commerce must consider data as far back as four and a half years prior to the POR in determining the impact of global steel overcapacity on HRC pricing” and focused on the AUV trends during the POR.²⁷
- Commerce fails to cite any source for its assertion that HRC imports from China, India, Japan, and Russia, among others, are “subsidized, dumped, and tainted by other non-market distortions” when sold to the Turkish market during the POR.
- Even if imports from these countries were found to have been dumped and/or subsidized when imported into a third country, there is no evidence on the record that the prices at which they were sold in Turkey were “tainted” or that they otherwise distorted the Turkish market.
- Further, contrary to Commerce’s assertion regarding the “similar phenomenon” that affected the Thai market for HRC in *Standard Pipe from Thailand*,²⁸ there is no evidence that imports are entering Turkey at dumped, subsidized, or otherwise distorted prices.
- Commerce erroneously found the fact that the Government of Turkey (GOT) initiated a safeguard investigation is evidence of a PMS in the HRC market, despite the fact that the investigation was terminated without the impositions of definitive safeguard measures.²⁹ Moreover, we disagree with Commerce’s statement that the GOT’s initial finding that an increase in imports threatened the domestic Turkish industry is not negated by the fact that the GOT later determined not to impose definitive safeguard measures.
- The only “data on HRC prices” that Commerce cites to support its finding of price suppression³⁰ is the data that shows that Russian import AUVs are lower in 2017 than they were in 2012 and were imported in larger volumes in 2017 than in 2012.
- Commerce’s conclusory statements do not elucidate the existence of a quantifiable link between certain market factors and a distortion of the cost of production of any respondent in the Turkish market.

²⁴ See Borusan’s Case Brief at 11 (citing Borusan’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Rebuttal to Factual Information used in the Preliminary Results,” dated July 31, 2019, at Attachment 6.)

²⁵ This case is, in fact, Circular Welded Pipe from the UAE. See *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 44845 (August 27, 2019), and accompanying IDM at 6-7.

²⁶ *Id.*

²⁷ *Id.* at 7.

²⁸ See Borusan’s Case Brief at 13.

²⁹ *Id.* at 14-15 (citing Borusan’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Submission of Additional Factual Information,” dated May 9, 2019, at Attachment 1.

³⁰ *Id.*

*Petitioner's Arguments:*³¹

- Borusan argues that because global steel overcapacity is a global problem, this argument cannot support a finding that a “particular” market situation exists in any one country. However, Commerce rejected this argument in its *Preliminary Results*. While the overcapacity crisis is global in nature, its impacts on national steel markets are “country-specific” and create incentives that play out differently from country to country.
- Regardless of whether AUVs for imports from Russia rose during the twelve-month period of review, Commerce found that those AUVs had fallen by 21.9 percent from 2012 to 2017.³² During the same period, imports from Russia nearly quadrupled and imports from Russia nearly tripled their share of the Turkish market for imported HRC, driving down overall import AUVs by 20.2 percent.³³ This rapid increase in Turkey’s imports from Russia at falling prices came as Russian exports were being pushed out of Asian export markets by that region’s own massive excess capacity. Moreover, imports from Russia were still priced 9.1 percent below imports from other countries.
- By focusing solely on increases in AUVs during the most recent period, Borusan ignores the fact that the Turkish market remained distorted by a more long-term surge in low-priced Russian imports that depressed overall import prices. Moreover, Borusan ignores the fact that Russian import prices were but one of many factors Commerce examined in determining that the “cumulative” impact of factors including global excess capacity, subsidies, and government control of steel producers contributed to a single particular market situation based on the “totality of the conditions in the Turkish HRC market.”³⁴
- Commerce should therefore reject Borusan’s claims and continue to find that Russian import trends supported a determination that global steel overcapacity contributed to a particular market situation that distorted HRC prices in Turkey during the period of review.
- Commerce’s conclusion that imports from key sources such as China, India, Japan, Korea, Russia, and the Ukraine were tainted by unfair trade practices including dumping and subsidization is amply supported by the record. Specifically, petitioner’s PMS allegation identified various antidumping duty, countervailing duty and/or safeguard measures on HRC from these countries.³⁵ As a result of these measures, imports from these six countries to Turkey increased and accounted for 56.9 percent of all Turkish imports of HRC during 2017.³⁶
- The GOT’s lack of trade remedy measures compared to other markets, combined with rising volumes of imports from 2013 to 2017 and falling prices from 2013 to 2016, led the GOT to initiate a safeguard investigation towards the end of the period review; that

³¹ See Petitioner’s Case Brief at 10-17.

³² *Id.* (citing PMS Memo at 10).

³³ *Id.*

³⁴ *Id.* at 12.

³⁵ See Petitioner’s Letter, “Circular Welded Carbon Steel Standard Pipes and Tubes from Turkey: Particular Market Situation Allegation” dated January 29, 2019 (PMS Allegation), at 13 – 14 and Exhibit 10.

³⁶ *Id.* at 13 – 14 and Exhibits 8 and 10.

the GOT later declined to impose safeguard measures as a result of this investigation does not negate that it was concerned enough with these trends to launch the investigation.³⁷

- The statute does not require that Commerce demonstrate tangible or quantifiable links between the factors that support its PMS finding and the extent to which prices of HRC in the Turkish market are distorted.³⁸ In fact, the statute grants Commerce broad discretion to employ any alternative calculation methodology if a particular market situation is found to exist. The CIT recently rejected an argument very similar to Borusan's, stating: "There is no language {in the statute}... that would require a causal analysis between a specific government action and the PMS."³⁹

b. GOT's ownership of the largest producers of HRC in Turkey, Erdemir and Isdemir, and subsidies to HRC producers

Borusan's Arguments:

- The other bases for Commerce's PMS determination, the GOT's ownership interests in and subsidies to HRC producers, are also unsupported by the record and are contradicted by numerous Commerce's determinations. Recently, Commerce found that the hot-rolled sheet (HRS) market in Turkey is not distorted by any alleged government ownership in the large HRC producers Erdemir and Isdemir.⁴⁰
- Commerce found in multiple investigations that the Turkish market is not distorted by any government ownership interests in Erdemir or Isdemir, the largest producers of HRC in Turkey or by any government subsidization of HRC. It is simply not credible to suggest that definition of "distortion" in the countervailing duty (CVD) context is different from the definition in the antidumping duty (AD) context.⁴¹
- In 2015, the CIT held that Commerce's finding of distortion in the Turkish market for HRS was unlawful.⁴² The Court of Appeals for the Federal Circuit (CAFC) affirmed this decision.⁴³
- For example, in the recent final results in the antidumping duty administrative review of *Hot-Rolled Steel Flat Products from the Republic of Turkey*, Commerce calculated a zero percent dumping margin.⁴⁴ In its calculation, Commerce used home market prices and

³⁷ *Id.* at 15 and Exhibit 11.

³⁸ See Borusan's Case Brief at 16 – 17. Borusan's argument ignores that in this case Wheatland's regression analysis has in fact quantified the extent to which global excess capacity distorted Turkish HRC costs during the POR. This quantification is not required by the statute, and it is more than sufficient to support Commerce's PMS determination.

³⁹ See Petitioner's Rebuttal Brief (citing *Vicentin, S.A.I.C. v. United States*, Slip Op. 19-120 (CIT September 10, 2019)).

⁴⁰ See Borusan's Case Brief at 17 (citing *Large Diameter Welded Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying IDM at 9-11, and cases cited therein).

⁴¹ *Id.* at 9.

⁴² See *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1329 (CIT 2015).

⁴³ See *Maverick Tube Corp. v. United States*, 857 F. 3d 1353, 1362 (Fed. Cir. 2017).

⁴⁴ See *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 30694 (June 27, 2019).

costs as the basis for NV and made no finding that the Turkish hot-rolled steel market was in any way distorted.⁴⁵

Petitioner's Arguments:

- The only support Borusan cites is Commerce's determination that the government provision of HRC through Erdemir and Isdemir did not dominate the market to such an extent that reliance on external benchmarks was justified in separate CVD proceedings.⁴⁶ These are two completely separate inquiries. In the CVD context, Commerce is required to determine whether government providers of an input predominate in the market to such an extent that domestic prices cannot be used as commercial benchmarks.⁴⁷ One of the main reasons Commerce could not make such a finding in the CVD cases on Turkey is because government providers could not predominate in a market that was so highly reliant on imports.⁴⁸
- In order to find a PMS in this case, by contrast, government predominance is not required. Government subsidies to and control over domestic producers, combined with a high level of import penetration reflecting global overcapacity and widespread unfair trade practices, strongly support a finding that the Turkish market overall was distorted by a PMS such that the costs of HRC do not reflect the cost of production in the ordinary course of trade. Because these two inquiries, as explained above, are distinct, Commerce should continue to reject Borusan's attempt to conflate the two in the final results.
- For all of these reasons, Commerce should continue to find that a PMS distorted the acquisition costs of HRC during the period of review and rendered those costs non-reflective of costs in the ordinary course of trade.

Commerce's Position:

For these final results, we continue to find that a PMS existed in Turkey during the POR concerning the cost of HRC.

In this administrative review, the petitioner alleged that a PMS exists in Turkey during the POR which distorts the cost of HRC, a main input in the production of subject merchandise, based on the following factors: (1) the GOT's control of Erdemir and Isdemir; (2) Turkish subsidies on the HRC inputs; and (3) Turkish imports of HRC from Russia as a result of Chinese overcapacity. Section 504 of the TPEA does not specify whether to consider these allegations individually or collectively. We considered the three components of the petitioner's allegation as a whole, based on their cumulative effect on the Turkish HRC market. Based on the totality of conditions in the Turkish market, we continue to find that a PMS existed in Turkey as a result of

⁴⁵ *Id.*

⁴⁶ See Borusan's Case Brief at 17-19.

⁴⁷ See Petitioner's Rebuttal Brief at 16 (citing 19 C.F.R. § 351.511).

⁴⁸ See, e.g., *Large Diameter Welded Pipe From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 11 ("The record information shows that for 2015, 2016 and 2017, the combined domestic HRC production of {government controlled suppliers} Erdemir and Isdemir accounted for 40.27, 38.44, and 36.22 percent of supply, respectively, while imports of HRC accounted for 39.63, 38.67, and 34.15 percent in the same years, respectively.").

the collective impact of the continued effects of global steel overcapacity, the GOT's subsidization of HRC, and GOT ownership of the largest producers of HRC in Turkey.

This is similar to Commerce's PMS determination in the antidumping investigation of large diameter welded line pipe (LDWP) from Turkey. In that case, Commerce found that a PMS existed in Turkey with regard to the costs of producing LDWP during the 2017 calendar year based on its determination that the acquisition prices of HRC in Turkey are not reflective of the ordinary course of trade for this input.⁴⁹ Similarly, in this review, we determine based on the record of this review that a PMS existed in Turkey during the POR.⁵⁰ For example, HRC is the primary input to CWP in this case, as it was for LDWP, accounting for 80 to 90 percent of the cost of producing CWP.⁵¹

With respect to Borusan's arguments, we disagree first and foremost that the AUV of imported Russian steel in the Turkish market increased during the POR refutes the assertion that global overcapacity resulted in lowered HRC import prices in Turkey during the POR. As Commerce explained in its *Preliminary Results*, during 2012-2017, imports of HRC from Russia nearly quadrupled, and Russia nearly tripled its share of the Turkish market for imported HRC, driving down overall import AUVs by 20.2 percent.⁵² This rapid increase in Turkey's imports from Russia at falling prices (comparing prices in 2012 to prices in 2017) came as Russian exports were being pushed out of Asian export markets by that region's own massive excess capacity.⁵³ Moreover, imports from Russia were still priced 9.1 percent below imports from other countries.⁵⁴ Accordingly, it is reasonable to conclude that Russian prices of HRC had a significant impact on the price of HRC in Turkey, and therefore on the price Borusan paid for its inputs. Despite Borusan's contention that AUVs for imports from Russia rose during the twelve-month period of review, Commerce found that those AUVs had fallen by 21.9 percent from 2012 to 2017.⁵⁵

Moreover, the World Trade Organization's (WTO) initiation and investigation of whether Turkey should impose safeguard duties, analyzed a similar time period between 2013-2017.⁵⁶ Thus, contrary to Borusan's argument that Commerce used an inappropriate time period in its comparison of import volumes and prices of HRC imported to Turkey, we find that Commerce

⁴⁹ See *Large Diameter Welded Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019) (*LDWP Turkey*), and accompanying IDM at Comment 1.

⁵⁰ See *LDWP Turkey* IDM at Comment 1. The POR in this proceeding includes eight of the twelve months in which a PMS was found to exist in Turkey in the LDWP investigation.

⁵¹ See Borusan's October 18, 2018 Section D Response at 5 & 7 – 8; see also Toscelik Sept. 26, 2018 Section D Response at 88,89. There are other similarities. For example, as in the LDWP investigation, we have found that (1) GOT control over the largest flat-rolled producers in Turkey; (2) Turkish government subsidies on HRC inputs; and (3) imports of HRC from Russia and other countries that entered at prices were distorted by dumping, subsidization, and global overcapacity. See PMS Allegation at 5-18.

⁵² See PMS Memo at 10.

⁵³ See PMS Allegation at 12 – 13.

⁵⁴ See PMS Memo at 10.

⁵⁵ *Id.*

⁵⁶ See Petitioner's PMS Allegation at Exhibit 11 (Notification under Article 12.1(a) of the Agreement on Safeguards on the Initiation of an Investigation and the Reasons for It, G/SG/N/6/TUR/24 (May 3, 2018)) and Exhibit 12.

used a similar, and therefore, reasonable time period as compared to that selected by the GOT in its initiation of safeguard duties.

The record demonstrates that during the POR, imports of low priced HRC from Russia and five other countries entered at prices that were distorted by dumping, subsidization, and global overcapacity and such imports accounted for 56.9 percent of total Turkish HRC imports in 2017. Each of these countries was subject to numerous trade remedy measures in third countries during the POR.⁵⁷ During the POR, Russian exports of HRC which were subject to antidumping measures in at least six countries, including the EU, India, Indonesia, Mexico, Thailand, and the United States⁵⁸ were shifted to Turkey due to global overcapacity. Similar to Russia, a number of other countries were driven by global excess capacity to export unfairly traded steel to Turkey during the POR, further distorting Turkey's overall market for HRC.⁵⁹ In addition, Turkey had substantial imports from many other countries suffering from overcapacity and engaging in unfair trade practices such as dumping and subsidization.⁶⁰ Thus, global overcapacity was one of the factors increasing the flow of low priced HRC exports to Turkey during the POR.

Further, we agree with petitioner that by focusing solely on increases in Russian AUVs during the most recent period, Borusan ignores the fact that the Turkish market remained distorted by a more long-term surge in low-priced Russian imports that depressed overall import prices. Moreover, by focusing solely on Russian import prices, Borusan ignores the fact that this was one of many factors Commerce examined in determining that the collective and cumulative impact of factors including global excess capacity, subsidies, and government control of steel producers contributed to a PMS based on the "totality of the conditions in the Turkish HRC market."⁶¹ Accordingly, we continue to find that Russian import trends of HRC starting in 2012 were one of several factors that support a determination that global steel overcapacity contributed to a PMS that distorted HRC prices in Turkey during the POR.

Second, we disagree with Borusan's argument that global steel overcapacity is not evidence of a PMS in the Turkish HRC market. As Commerce stated in its *Preliminary Results*, the global overcapacity crisis has manifested itself differently in different markets.⁶² Exports of HRC from Russia, Ukraine, Korea, Japan, India, and China have been subject to an array of antidumping, countervailing duty, and safeguard measures around the world, but no such measures were in place in Turkey during the POR to offset these distortions to the prices of imported HRC.⁶³ Further, the GOT itself confirmed that its HRC market was distorted by global overcapacity and rising imports during the POR, which prompted it to initiate a safeguard investigation on steel imports at the end of the POR.⁶⁴

⁵⁷ See PMS Allegation at 11 – 15, Exhibit 8 (UN Comtrade Turkey Import Data), Exhibit 9 (UN Comtrade Russia Export Data) and Exhibit 10 (Selected Trade Remedy Measures on HRC).

⁵⁸ *Id.* at Exhibit 10 (Selected Trade Remedy Measures on HRC).

⁵⁹ *Id.* at 13-14.

⁶⁰ *Id.*

⁶¹ See PMS Memo at 9.

⁶² *Id.* at 11.

⁶³ See PMS Allegation at 9 – 17.

⁶⁴ *Id.* at 15-17 and Initiation of Safeguard Investigation on imports of iron and steel products to Turkey in Exhibit 11.

Additionally, as stated in the safeguard initiation, the recent trade measures taken by the U.S., EU, and other countries on imports of iron and steel products led the GOT to initiate the investigation *ex-officio* in order to determine whether imports have caused, or threaten to cause, serious injury to the Turkish steel industry.⁶⁵ In initiating its safeguard investigation on imports of a variety of iron and steel products, including hot rolled products, on April 27, 2018, the GOT identified that it initiated the safeguard investigation, in part, because of an increase in the quantity of imports from 2013 to 2017 and a decline in import prices from 2013 to 2016. Moreover, the GOT itself recognized its failure to impose any remedial measures on its own imports of HRC.

We agree with Borusan that the GOT's determination not to impose definitive safeguard measures takes away from its initial concern that an increase in imports of HRC threatened the Turkish industry. However, this finding is not an affirmative finding of *no* injury to the Turkish HRC market. This finding merely demonstrates that, for purposes of the GOT's safeguard investigation, insufficient evidence existed for the GOT to satisfy its criteria, under Turkish law, to justify the imposition of safeguard duties. This determination does not detract from other evidence on the record, including statements made during the safeguard investigation, demonstrating price suppression and overcapacity of HRC in Turkey.

For example, as shown in Turkey's preliminary determination on safeguard duties,⁶⁶ even though Turkey did not impose definitive safeguard measures at the end of the safeguard investigation, it did recognize that global excess capacity existed and influenced imports of low-priced HRC which shifted to the Turkish market. The GOT also recognized a significant increase in imports, a change in the course of trade flow of HRC, and the attractiveness of the Turkish market for steel products, which are subject to increasing protective measures in other parts of the world, by the very fact of the GOT's initiation of the investigation. As stated in the provisional determination: "Turkey notes that total imports increased by 22%, reaching 10.9 million tonnes between the related period....In addition to that, the value of imports and the import prices decreased between 2013-2016."⁶⁷

Further, contrary to Borusan's argument, the GOT was not focused solely on 232 duties or retaliatory measures in its safeguard investigation.⁶⁸ Instead the GOT stated, in the section "*The reasons for the initiation of investigation*" of WTO's Committee on Safeguards: "Taking into account **import taxes imposed by the United States, the safeguard investigation initiated by the**

⁶⁵ *Id.*

⁶⁶ See PMS Allegation at Exhibit 12 (Notification under Article 12.4 of the Agreement on Safeguards Before Taking a Provisional Safeguard Measure Referred to in Article 6 G/SG/N/7/TUR/13 (5 October, 2018)) at p.2.

⁶⁷ *Id.* at p. 2 under 3. *The reasons for the initiation of investigation*, where WTO's Committee on Safeguards states: "Taking into account import taxes imposed by the United States, safeguard investigation initiated by the European Union and increasing tendency worldwide towards protectionist measures against steel products, the investigation was initiated *ex-officio* in order to determine whether imports have caused serious injury and/or threat thereof to domestic producers of related products. The information currently available indicates that there has been an increase in imports of the product concerned in the period 2013-2017. Turkey notes that total imports increased by 22%, reaching to 10.9 million tonnes between the related period....In addition to that, the value of import and the imports prices decreased between 2013-2016."

⁶⁸ See Borusan's Case Brief at 15.

European Union and increasing tendency worldwide towards protectionist measures against steel products, investigation was initiated...”⁶⁹⁷⁰ Instead, the GOT stated, in the section “*The reasons for the initiation of investigation*” of WTO’s Committee on Safeguards: “Taking into account *import taxes imposed by the United States, the safeguard investigation initiated by the European Union and increasing tendency worldwide towards protectionist measures against steel products*, investigation was initiated...”⁷¹

Accordingly, in the initiation of a safeguard investigation on imports of iron and steel products, the GOT cited not only “import taxes imposed by the United States,” but also a “safeguard investigation initiated by the European Union and increasing tendency worldwide towards protectionist measures against steel products.”⁷² And, as stated above, these measures were taken as a result of global excess capacity of certain steel products.

Therefore, contrary to Borusan’s assertion that Turkey has not recognized the increase of imports of HRC, the documents related to the initiation and preliminary determination of safeguard measures clearly demonstrate that the GOT was concerned that Turkish prices of HRC are suppressed and distorted by a global excess capacity of the products under investigation, including HRC.⁷³ That the GOT ultimately determined this evidence was insufficient for purposes of imposing safeguard duties does not negate that these findings demonstrate the GOT’s concerns regarding price suppression and overcapacity of HRC in Turkey.

Further, at the conclusion of its investigation, while the GOT ultimately determined that insufficient evidence existed for the GOT to impose safeguard duties, the GOT did determine that global overcapacity and third country trade measures to counteract unfair trade practices contributed to an increase in Turkish imports that threatened the domestic Turkish industry.⁷⁴

Additionally, Commerce found that a PMS existed in Turkey with regard to the acquisition costs for HRC in the LDWP investigation without relying on the GOT’s safeguard investigation to any degree.⁷⁵ Thus, the fact that GOT’s investigation concluded without relief does not in any way change the underlying facts in this AR: (1) the GOT controls the largest flat-rolled producers in Turkey (Erdemir and Isdemir); (2) the GOT subsidizes HRC inputs; and (3) rising imports of HRC from Russia and other countries entered at prices that were distorted by dumping, subsidization, and global overcapacity.⁷⁶

Record evidence indicates government assistance in the production of HRC both through subsidies and through the GOT’s ownership of Erdemir and Isdemir, which account for a

⁶⁹ See PMS Allegation at Exhibit 11 (Notification under Article 12.1(a) of the Agreement on Safeguards on the Initiation of an Investigation and the Reasons for It, G/SG/N/6/TUR/24 (May 3, 2018)).

⁷⁰ See Borusan’s Case Brief at 15.

⁷¹ See PMS Allegation at Exhibit 11 (Notification under Article 12.1(a) of the Agreement on Safeguards on the Initiation of an Investigation and the Reasons for It, G/SG/N/6/TUR/24 (May 3, 2018)).

⁷² *Id.*

⁷³ See PMS Allegation at Exhibits 11 and 12.

⁷⁴ See PMS Allegation at 16 and Exhibit 12.

⁷⁵ See LDWP Turkey IDM at Comment 1.

⁷⁶ See PMS Allegation at 5-18.

significant portion of Turkey's market of HRC. Erdemir's and Isdemir's involvement in the Turkish flat rolled steel market, coupled with a significant increase in low-priced imports from Russia, result in low-cost sales of HRC to domestic consumers, including producers of welded standard pipe.

As we stated in the *Preliminary Results*, the record supports Commerce's finding that the GOT subsidized the biggest HRC producers in Turkey, Erdemir and Isdemir.⁷⁷ Erdemir and Isdemir account for the majority of HRC production in Turkey. In *LDWP CVD from Turkey*, Commerce identified Erdemir as the largest steel producer in Turkey (this includes the production of HRC, the major input in the production of circular welded standard pipe and tubes in this administrative review).⁷⁸ Also, in that case, Commerce concluded that the GOT controls Erdemir and Isdemir, whose annual reports state that their goal is to meet the needs of Turkish industry, a goal that is in line with government policies to improve the balance of payments.⁷⁹ Further, consistent with the GOT's policies, Erdemir increased exports in 2016 and 2017 and invested in high value-added production in 2016.⁸⁰

We agree with the petitioner that global excess capacity is largely driven by excess capacity in China. As Commerce explained in its *Preliminary Results*, the global excess capacity crisis is driven largely by China, whose steelmaking capacity soared from 100 million metric tons in 1996 to 1,089 million metric tons in 2016.⁸¹ Commerce noted that the "policy driven nature of steel production in China has been most evident in the aftermath of the global financial crisis," due in part to a \$586 billion stimulus program China implemented at the end of 2008 to sustain investments that were not justified by market fundamentals.⁸² As a result, China's steelmaking capacity continued to grow even as capacity utilization rates fell, leading to a rapid increase in exports.⁸³ The overcapacity and rising exports from Russia and other countries, driven by China, which started to become particularly acute as a result of the global financial crisis, had numerous spillover effects on steel-importing countries as other countries sought to subsidize their own steel industries to compete.⁸⁴

Borusan points to Commerce's finding in CVD investigations on pipe products from Turkey to demonstrate that the GOT's ownership interest in Erdemir and Isdemir, in and of itself, did not distort prices for HRC in Turkey to such an extent that they cannot be used as benchmarks to measure the adequacy of remuneration of subsidized hot-rolled steel inputs.⁸⁵ Borusan also asserts that it is simply not credible to suggest that the definition of "distortion" in the CVD context is different from the definition in the AD context.⁸⁶

⁷⁷ See PMS Memo at 3 and 8.

⁷⁸ See *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 30,697 (June 29, 2018) (*LDWP CVD from Turkey*), and accompanying PDM at 8.

⁷⁹ *Id.* at 9.

⁸⁰ *Id.*

⁸¹ See PMS Memo at 14-15

⁸² *Id.* at 15.

⁸³ *Id.*

⁸⁴ *Id.* at 16.

⁸⁵ See Borusan's Case Brief at 9.

⁸⁶ *Id.* at 18.

We disagree with these assertions. Contrary to Borusan's argument, the fact that domestic HRC prices in Turkey may be useable as commercial benchmarks in a CVD investigation does not establish the fact that such prices reflect the COP in the ordinary course of trade. One of the main reasons Commerce could use domestic HRC prices as benchmarks in a CVD investigation is because government controlled suppliers (*i.e.*, Erdemir and Isdemir) could not predominate in a market that was so highly reliant on imports.⁸⁷ In a market economy where goods are competitively priced, domestic and imported prices will converge at an equilibrium. This is particularly true with a common and fungible commodity such as HRC. Thus, because domestic subsidies lower the cost of production and the price of HRC in Turkey, it is logical to find that, to remain competitive, imported HRC will sell at even lower prices, competitive with the domestically produced and subsidized HRC. In other words, "domestic and imported prices of HRC converge to a lower market equilibrium price than if the domestically produced Turkish HRC did not benefit from GOT subsidies."⁸⁸ For these reasons in AD cases involving the same Turkish market, HRC prices are considered distorted and as a result of this, the COP of circular welded standard pipes is outside the ordinary course of trade.

Consequently, for the final results, we continue to find that the GOT's control over Erdemir and Isdemir, which account for a substantial majority of the domestic HRC production in Turkey and a significant portion of overall HRC supply, contributed to distorted acquisition costs of HRC in Turkey during the POR. Additionally, we note that a separate finding regarding the impact of government ownership alone, under a different legal standard, is insufficient to defeat an affirmative PMS determination in this case.

All market conditions discussed above suggest that the acquisition prices of HRC in Turkey are not reflective of the ordinary course of trade for the HRC input. Thus, based on the totality of the circumstances and record evidence, for the final results, we continue to find that various market forces cause distortions which affect the COP for circular welded standard pipe from Turkey and support a finding that a PMS existed during the POR in this proceeding.

Finally, we disagree with Borusan's assertion that Commerce must demonstrate some tangible or quantifiable link between the factors that support its PMS finding and the extent to which prices of HRC in the Turkish market are distorted. There is nothing in the statute that requires Commerce to quantify a causal link between factors that are distorting an input market and the extent of that distortion. We also agree with the petitioner that it would be unnecessarily burdensome to require parties or Commerce to quantify the exact extent to which "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade" in order to conclude that a particular market situation exists and to therefore use an alternative methodology.⁸⁹ The CIT recently rejected an argument very similar to Borusan's argument stating: "There is no language {in the statute}... that would

⁸⁷ See, *e.g.*, *LDWP CVD From Turkey* PDM at 11 ("The record information shows that for 2015, 2016 and 2017, the combined domestic HRC production of {government controlled suppliers} Erdemir and Isdemir accounted for 40.27, 38.44, and 36.22 percent of supply, respectively, while imports of HRC accounted for 39.63, 38.67, and 34.15 percent in the same years, respectively.").

⁸⁸ See *LDWP Turkey* IDM at Comment 1, p. 8.

⁸⁹ See section 773(e) of the Act.

require a causal analysis between a specific government action and the PMS.”⁹⁰ Therefore, for the final results, we disregard Borusan’s argument that Commerce must demonstrate some tangible or quantifiable link between the factors that support its PMS finding and the extent to which prices of HRC in the Turkish market are distorted.

For the reasons stated above for these final results, Commerce continues to find that the combination of government control over Erdemir and Isdemir and the GOT’s subsidies to HRC producers, further exacerbated by the large presence of low-priced imports in Turkey marked by unfair trade practices and driven by global excess capacity, all have contributed to the creation of a PMS distorting the acquisition costs of HRC during the POR.⁹¹

We also agree with the petitioner that a PMS adjustment is necessary to account for HRC price distortions in Turkey. Reasonable quantification of the price effect, including specification of the relevant economic variables and the relationships between them is discussed in Comment 2.

Comment 2: Adjusting for PMS Based on Proposed Regression Analysis

*Borusan’s Arguments:*⁹²

- Commerce acknowledged in the *Preliminary Results* that there are concerns with the data in the petitioner’s regression analysis, but failed to acknowledge that these “concerns” invalidate the analysis as a whole.
- Borusan’s analysis demonstrates that the petitioner’s regression analysis is fundamentally flawed and establishes no positive correlation between Chinese overcapacity and HRS prices in Turkey.⁹³
- The regression analysis does not account for the effects of the outlier years of the global financial crises in 2008 and 2009. If those years are excluded or adjusted, the relationship between uneconomic capacity and Turkish AUVs evaporates.
- The regression analysis does not control for an important driver of the cost of steel-energy costs. When energy costs are accounted for, the relationship between uneconomic capacity and national AUVs is dramatically diminished and the implied adjustment factor becomes zero.
- The petitioner’s econometric model is incorrectly specified- it fails to account for the confounding effects of the market conditions in other countries on each country’s AUV. When market interdependencies are accounted for, the relationship between uneconomic capacity and national AUVs is not statistically significant.
- The relationship found by the petitioner’s regression analysis between uneconomic capacity and national AUVs is misleading due to the petitioner’s use of price data at the four-digit HTS level, rather than the six-digit level. Any relationship between uneconomic capacity and Turkish AUVs is not representative of Turkish imports because based on the respondent’s run of the regression where the dependent variables are each for six-digit HTS import AUVs, the results of the analyses for only six of the 14 six-digit HTS categories show a statistically significant relationship between uneconomic capacity

⁹⁰ See *Vicentin*, Slip- Op. 19-120 at 25-26, n.27 (CIT September 10, 2019).

⁹¹ See PMS Memo at 12.

⁹² See Borusan Case Brief at 19-24 and Attachment 1.

⁹³ *Id.* at Attachment 1.

and the national import AUVs; and these six product categories were not the products primarily imported into Turkey in 2017.

- The petitioner's adjustment factor includes unrealistic assumptions regarding a capacity utilization rate of 85 percent, which further distort the analysis.

Petitioner's Arguments:

- Most of Borusan's analysis is based on alternative regressions for which it has provided Stata code and output but no SAS data files, programming, or output.⁹⁴ Thus, Commerce is unable to re-create Borusan's alternative analyses using its standard SAS format, while in contrast Commerce was able to re-create and validate the results of the regression analyses submitted by the petitioner.⁹⁵ For this reason alone, Borusan's attempts to discredit the petitioner's analysis through alternative regressions that it has not provided in SAS should be rejected.
- Data from 2008 and 2009 must be included in the analysis because these years are essential to understanding the dramatic shift in global steel markets driven by the growth in excess capacity that took off in response to the financial crisis. It is essential that the model include both years preceding the explosion in excess capacity – 2008 and 2009 – as well as subsequent years when excess capacity grew, so that the model compares both “before” and “after” data to estimate the impact of global overcapacity on steel prices.
- Energy prices should not be added to the analysis because (1) it was reasonable to include the variable more directly related to HRC production – scrap prices – and not include the less directly related variable that follows the same price trends (Brent crude oil); (2) including both variables would effectively double count an input variable and thus distort the results of the analysis; and (3) the results of its OLS regression model compared to the results of a 2SLS model that does include oil prices resulted in highly consistent results. Thus, exclusion of the Brent crude oil variable from the OLS analysis did not render the results of that analysis unreliable.
- The petitioner's regression model uses a fixed effects model and focuses on intra-country (within) variation. This fixed effects approach restricts all of the action in the regression to within-country action – eliminating the key source of omitted variable bias, namely, unobservable across-country differences. Borusan's alternative approach attempts to dilute the causal link between uneconomic capacity and national AUVs by overlaying an intervening indicator (global average AUVs) on top of the key driving indicator (uneconomic capacity). While global AUVs may be one of the transmission mechanisms that allows global uneconomic capacity to affect national prices, adding global AUVs to the model only obscures the fact that the underlying driver is global uneconomic capacity.
- Indeed, Borusan's suggested approach contradicts its own earlier argument that a PMS finding must be “particular” to an individual country.⁹⁶ As Commerce has already

⁹⁴ See Petitioner's Rebuttal Briefs at 18 (citing *Borusan's Case Briefs* at Attachment 1 and Borusan Post-Prelim Rebuttal Factual Information (August 1, 2019) at Ex. 5).

⁹⁵ *Id.* (citing PMS Memo at 16; see also Wheatland Response to Request for Particular Market Situation Information (June 13, 2019) and Wheatland Response to Request for Particular Market Situation Information (June 17, 2019)).

⁹⁶ See Petitioner's Rebuttal Briefs at 23 (citing Borusan's Case Brief at 9 – 10).

recognized, the petitioner's regression model does capture country-specific characteristics by including a fixed-effects parameter.⁹⁷

- In addition, while the petitioner's model shows a strong relationship between global uneconomic steel capacity and prices for HRC, it also finds that there are different coefficients for uneconomic capacity for different countries, and, as a result, estimates different PMS adjustments for different countries.⁹⁸ The model is therefore appropriate for quantifying country-specific price distortions due to global uneconomic capacity and Commerce should reject Borusan's arguments to the contrary.
- Finally, while not mentioned in Borusan's case brief itself, the attachment to the case brief asserts that the regression analysis fails to demonstrate causality because, while production affects prices, prices also affect production.⁹⁹ However, the regression model is built to avoid endogeneity bias and reverse causation. While an OLS model could potentially have an endogeneity bias, the standard test for such a bias shows that the regression model in this case has a degree of endogeneity bias that is statistically insignificant.¹⁰⁰ In addition, the petitioner's model intentionally seeks to avoid reverse causality problems by using a definition of excess capacity – uneconomic capacity – that does not rely on current steel production (because current production could arguably itself reflect current prices).¹⁰¹ While Borusan recognizes this fact, it hypothesizes that past price shocks may impact past production as well as current prices, changing the direction of causality.¹⁰² Borusan provides no evidence of these speculative claims, nor does it attempt to propose how this concern should be addressed in the regression analysis.
- In addition, while Borusan recognizes that consistent results between an OLS model and a 2SLS model with instrumental variables can resolve concerns about reverse causality and omitted confounding variables (as is the case here),¹⁰³ Borusan nonetheless claims that identifying the proper instrumental variables for the 2SLS model in this case is “virtually impossible” without much further explanation.¹⁰⁴
- The consistency between the results of the 2SLS and OLS models confirms that the OLS model's results are not plagued by endogeneity bias and provide strong evidence that global uneconomic capacity impacts national HRC AUVs. Therefore, Borusan's claims in this regard should be dismissed.
- Borusan's argument that the regression should analyze AUVs at the six-digit HS level rather than the four-digit HS level is flawed because the adjustment applies to all purchases of HRC, including those not isolated within particular six-digit product categories. Borusan misunderstands the purpose of the regression analysis, which is not designed to evaluate whether and to what extent any individual producer's costs are distorted by a PMS, but whether and to what extent the overall Turkish HRC market has been distorted by a PMS.

⁹⁷ *Id.* at 23-24 (citing PMS Memo at 16).

⁹⁸ See Wheatland Rebuttal Factual Information (Apr. 30, 2019) at Exhibit 1 (at internal Exhibit 1.7).

⁹⁹ See Petitioner's Rebuttal Briefs at 24 (citing Borusan's Case Brief at Att. 1, p. 11 – 12).

¹⁰⁰ See Wheatland Rebuttal Factual Information (April 30, 2019) at Exhibit 1 (at p. 7 and internal Exhibit 1.7).

¹⁰¹ *Id.* at Exhibit 1 (at p. 12 -13 and internal Exhibit 1.1).

¹⁰² See Petitioner's Rebuttal Briefs at 24 (citing Borusan's Case Brief at Att. 1, p. 11).

¹⁰³ See Wheatland Rebuttal Factual Information (Apr. 30, 2019) at Exhibit 1 (at internal Exhibit 1.1).

¹⁰⁴ See Petitioner's Rebuttal Briefs at 25 (citing Borusan's Case Brief at Att. 1, p. 12).

- In addition, the adjustment does not apply only to imports under particular six-digit HTS codes, but to all purchases of HRC, including domestic HRC, in recognition that the PMS has market-wide impacts and is not isolated within particular product categories.
- Commerce has explained that a company-specific distortion analysis is not necessary “where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted, and a PMS exists such that the cost of material and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade.”¹⁰⁵ The same is true in this case, and Borusan’s argument should therefore be rejected.
- Further, assuming *arguendo* that a company-specific analysis would be appropriate, Borusan has failed to identify under which six-digit HTS codes it imported HRC during the POR and Borusan used simple AUVs rather than weighted average unit values for its six-digit HTS AUVs. Borusan states: “For each reporter and six-digit product, the six-digit unit value was computed as a simple average over all partners (source countries).”¹⁰⁶ These simple averages are completely useless, as they do not reflect the actual weighted-average price for HRC imported into Turkey.
- The only import AUVs for HRC available on the record that represent actual prices experienced in the market – that is, prices representing the actual relative volumes of imports both from different countries and of different HRC products – are the weighted-average four-digit AUVs provided by the petitioner and used in its regression analysis. Commerce should therefore reject Borusan’s arguments and continue to rely on this four-digit weighted average AUV data in the final results.
- Reports by the Bureau of Industry and Security and McKinsey & Company find that capacity utilization rates of 80 to 90 percent are necessary for long-term sustainability and profitability of the global steel industry. As such, 85 percent is a reasonable assumption and benchmark for the analysis, given these expert sources.

Borusan’s Alternative Argument:

- If Commerce continues to use the petitioner’s regression analysis, at a minimum it must calculate the difference between the flawed regression model-generated price and the price actually paid by Borusan for HRC.
- Commerce took a similar approach in *Steel Nails from Korea* when it stated that a PMS allegation must demonstrate the impact of “allegedly distortive market conditions” on “reported costs for the particular industry or respondents.”¹⁰⁷
- When analyzing whether or not a respondent’s costs were “distorted” by an alleged PMS, Commerce’s starting point is the respondent’s own costs, which it then uses to compare to some benchmark of what the costs should have been absent any distortion.
- If Commerce is going to adjust Borusan’s costs, the adjustment should not exceed the difference between what the price “should be” and the price actually paid by Borusan to its suppliers- the “experience of respondents” in the market.

¹⁰⁵ See *Large Diameter Welded Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at 14.

¹⁰⁶ *Id.*

¹⁰⁷ See *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4028 (January 29, 2018) (*Steel Nails from Korea*), and accompanying IDM at 11-12.

No other interested party provided comments on this issue.

Commerce's Position:

As an initial matter, we note that neither section 773(e), section 771(16), nor any other provision of the Act mandates either what constitutes a cost-based PMS or how Commerce may “use another calculation methodology” to establish the “cost of materials and fabrication” of the merchandise covered by the scope of an order. As a result, Commerce has established “another calculation methodology” where it has adjusted the respondent’s reported costs of production to account for distortions in input costs based on a determination of a cost-based PMS. For the *Preliminary Results*, Commerce quantified an adjustment to the respondents’ costs for HRC based on a regression analysis proposed by Wheatland, the results of which were used to determine a counterfactual Turkish import AUV for HRC in 2017, based on the reduction of global steel production “uneconomic capacity” to a “healthy” level. The respondents’ HRC costs were then adjusted based on the relative difference between the counterfactual Turkish HRC import AUV in 2017 and the actual Turkish HRC import AUV in 2017. Based on the comments included in interested parties’ case and rebuttal briefs, for these final results, Commerce has continued to adjust the respondents’ HRC costs based on the results of a regression analysis, with the changes described below.

The regression analyses on the record of this review, including those used in the *Preliminary Results* and these final results, are based in general on the science of economics, and specifically on econometrics. Econometrics is the quantitative application of economic theory whereby a statistical model is developed and applied to economic data to empirically understand the economic relationships of observed phenomena.¹⁰⁸ Whereas an observed economy, or some part thereof, offers voluminous data with unending complexities, a statistical model must, by nature and intent, be a simplification of that observed economy. Any statistical model is limited by the types and availability of observed and measured economic data; and must be administratively feasible given the resources of the investigators. In general, such a statistical model will examine the relationship between a number of “explanatory” “independent” factors (or variables) and a “dependent” variable. The regression analysis will estimate the relationship between the dependent variable and each of the explanatory independent variables as well as other estimated fixed coefficients.¹⁰⁹ In general, for the OLS model based on panel data, these relationships are represented in the following linear equation:¹¹⁰

¹⁰⁸ See *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR _____, issued on January 9, 2020, and publication in the *Federal Register* notice forthcoming, and accompanying IDM at 64 (Pipe and Tube India IDM) (citing Wooldridge, Jeffrey M., *Introductory Econometrics: A Modern Approach*, Fifth Edition; South-Western, Cengage Learning (2013, 2009) (Wooldridge), page 1 (“Econometrics is based upon the development of statistical methods for estimating economic relationships, testing economic theories, and evaluating and implementing government and business policy.”)).

¹⁰⁹ *Id.* (citing Wooldridge at 847 (“Econometric Model: An equation relating the dependent variable to a set of explanatory variables and unobserved disturbances, where unknown population parameters determine the ceteris paribus effect of each explanatory variable.”)).

¹¹⁰ See letter from petitioner “Circular Welded Pipe from Turkey: Rebuttal Factual Information,” dated April 30, 2019 (Wheatland PMS Rebuttal) at Exhibit 1.1; see also Pipe and Tube India IDM at 64 (citing Wooldridge at 83).

$$y_{i,t} = \beta_0 + \beta_1 \cdot x_{1,i,t} + \beta_2 \cdot x_{2,i,t} + \dots \beta_n \cdot x_{n,i,t} + \hat{\alpha}_i + \varepsilon_{i,t}$$

Where β_0 is the y-intercept of the linear equation, $\hat{\alpha}_i$ denotes the country-specific fixed effects parameter capturing the time-invariant differences in countries' AUVs, “ i ” denotes the country, “ t ” denotes the year of the dependent (y) and independent (x) variables, and $\varepsilon_{i,t}$ represents the unobserved country- and time-period-specific error term determined as part of the OLS regression analysis.

In this administrative review, Wheatland has provided several regression analyses which they argue can be used to quantify the impact of the alleged cost-based PMS during the POR.¹¹¹ These proposed statistical models are based on two general types of regression: OLS and two-stage least squares (2SLS). For the *Preliminary Results*, Commerce relied on one of Wheatland's regression analyses based on OLS. Commerce did not use a 2SLS model in the *Preliminary Results* or in these final results. Consequently, Commerce finds that issues raised by parties specifically related to the 2SLS models are moot and has not addressed these comments for these final results. Further, we find that the OLS model, which is recognized in econometrics as being the best unbiased estimator for determining a linear relationship between variables,¹¹² provides an acceptable means of quantifying a PMS adjustment for these final results, as long as the regression model includes a reasonable number of independent variables and data points that account for all relevant categories of factors from a price determination standpoint (*i.e.*, supply and demand), while at the same time, minimizing the endogeneity problem through the use of proxies where necessary, *e.g.*, the variable gross fixed capital formation (GFCF) for the variable national steel demand. Therefore, we find that Wheatland's regression model provides a reasonable means to quantify a distortion in HRC prices that Commerce finds to have existed in Turkey during the POR, as a result of a PMS.

In the *Preliminary Results*, the results of the OLS regression analysis were accepted and used to calculate a counterfactual Turkish HRC import AUV in 2017 based on a reduction of the uneconomic capacity to a “healthy” level where the capacity utilization rate is 85 percent (*i.e.*, the “implied capacity”) during 2017. For the *Preliminary Results*, the reduction of global steel production capacity in 2017 to the implied capacity level resulted in a counterfactual Turkish HRC import AUV of US\$ 657.48 in 2017. When compared with the actual Turkish HRC import AUV of US\$ 512.69 in 2017, an adjustment factor of 28.24 percent (*i.e.*, PMS adjustment factor) was calculated to upwardly increase respondents' reported HRC costs in the *Preliminary Results*.¹¹³

As further discussed below in addressing parties' comments on quantifying the adjustment for the distortions of the Turkish HRC market, Commerce has made two changes to how the PMS adjustment factor was calculated and used in the *Preliminary Results*. First, rather than relying on a counterfactual Turkish HRC import AUV in 2017, Commerce based its adjustment solely on the estimated regression coefficient (*i.e.*, the estimated “beta”) for the “uneconomic capacity”

¹¹¹ See Wheatland PMS Rebuttal at Exhibit 1.7.

¹¹² *Id.* at Exhibit 1.1 (page 5); see also *Pipe and Tube India* IDM at 64 (citing *Wooldridge* at 101-102).

¹¹³ See Petitioner's Letter, “Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Response to Request for Particular Market Situation,” dated June 17, 2019, at 6.

explanatory variable, derived from Wheatland’s proposed OLS regression analysis.¹¹⁴ Second, Commerce calculated a PMS adjustment factor by determining that the desired reduction of the uneconomic capacity is reasonably attained by a capacity utilization rate of 80 percent, instead of 85 percent.

Specifically, the regression analysis based on the OLS model submitted by Wheatland results in an estimated regression coefficient for uneconomic capacity of -0.5886 (*i.e.*, a 10 percent decrease in uneconomic capacity will result in a 5.886 percent increase in Turkish HRC import AUVs). To compute a PMS adjustment factor, this “beta” rate is multiplied by the percent reduction in uneconomic capacity that is required to reduce overall production capacity to the “implied capacity” level.

The equation, values,¹¹⁵ and the result for the needed percent reduction in capacity is as follows (values are in million MTs):

$$\frac{capacity_{2017} - implied\ capacity_{2017}}{capacity_{2017} - production_{max}} = \frac{2251.20 - 2113.10}{2251.20 - 1669.50} = 23.74\%$$

where *implied capacity*₂₀₁₇ is calculated as follows:

$$\frac{production_{2017}}{capacity\ utilization\ rate} = 1690.48/0.80 = 2113.10$$

The 23.74 percent required reduction in uneconomic capacity, when multiplied by the “beta” for uneconomic capacity (*i.e.*, -0.5886) determined as a result of the OLS model on which Commerce is relying for these final results¹¹⁶, results in a 13.97 percent increase in Turkish HRC import AUVs. Therefore, for the final results, Commerce will increase respondents’ reported HRC costs by 13.97 percent to account for the cost-based PMS that existed in Turkey during the POR.

Commerce finds that use of the regression coefficient for uneconomic capacity as the basis for the PMS adjustment is directly related to the principal cause for a cost-based PMS in the Turkish HRC market. The adjustment proposed by Wheatland is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in uneconomic capacity as well as the other independent variables which are not directly related to the alleged cost-based PMS. Therefore, in order to isolate the factors contributing to the cost-based PMS in the Turkish HRC market, and in order to capture the *ceteris paribus* effect (*i.e.*, holding all other factors constant) for global uneconomic capacity in the steel industry on HRC AUVs in Turkey, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to Respondents’ reported HRC costs.

¹¹⁴ See Petitioner’s Letter, “Circular Welded Pipe from Turkey: Rebuttal Factual Information,” dated June 13, 2019, at Exhibit 1.2.

¹¹⁵ See Wheatland PMS Rebuttal at Exhibit 1.3 and Exhibit 1.5.

¹¹⁶ See Petitioner’s Letter, “Circular Welded Pipe from Turkey: Rebuttal Factual Information,” dated June 13, 2019, at Exhibit 1.2.

Commerce also recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,¹¹⁷ and that all the steel production and capacity data included in the model are from a period where the prevailing capacity utilization rate was substantially lower than the level assumed by Wheatland as being “healthy.” Commerce has in the past endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 Investigations.¹¹⁸ Additionally, we note that according to the report on global steel overcapacity submitted by Wheatland,¹¹⁹ the economically sustainable level for steel mills is around 80 percent capacity utilization. Therefore, in its final results of this review, Commerce has lowered the target capacity utilization rate to 80 percent. Borusan argues that Wheatland’s regression results are driven by two “outlier” years, 2008 and 2009, which correspond to the global financial crisis. They contend that removing data for these two years from the regression results in a relationship between uneconomic capacity and import AUVs that is approximately zero and statistically insignificant. However, Commerce finds that the financial crisis of 2008-2009 is the main event of interest in the analysis, because the subsequent decline in global steel demand resulting from the crisis instigated the Chinese stimulus and increased GOC investment and spending to boost the steel industry. Therefore, omitting 2008-2009 from the analysis fails to account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today. Inclusion of these years is essential to fully capture the nature of the relationship. Further, we note that omitting these two years from the analysis raises the possibility of degrees of freedom issues, as a regression with six independent variables may not be able to quantify a relationship if data in annual time series are limited to a period of less than ten years.

With respect to Borusan’s argument that the regression should account for energy costs, we acknowledge that accounting for energy as a cost variable in the regression might be appropriate, if the evidence on the record contained the appropriate energy costs that could be used in such a calculation. However, Borusan has provided no explanation as to why Brent Crude oil, alone, is the most appropriate form of energy to include, rather than electricity, natural gas, or a combination of all (or some) of these forms of energy, for example. Therefore, we have rejected this argument for purposes of these final results, because making such an adjustment absent accurate energy cost information could in fact result in an overall less, not more, representative calculation.

Commerce acknowledges the validity of Borusan’s argument that the effect of global uneconomic capacity on import AUVs implies the interdependence between national markets and global steel production overcapacity. However, given the complex nature of the global economy and the multitude of economic forces that likely affect import prices, a quantitative model capturing every relevant economic factor that determines Turkish import AUVs of HRC is not realistically feasible. Any quantitative model is also limited by the availability of economic

¹¹⁷ See Wheatland’s PMS Allegation at Exhibit 4 (Brun, Lukas, “Overcapacity in Steel: China’s Role in a Global Problem,” Duke University Center on Globalization, Governance & Competitiveness, September 2016)

¹¹⁸ See PMS Allegation at Exhibit 2, containing “The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended,” U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation (January 11, 2018).

¹¹⁹ See Wheatland’s PMS Allegation at Exhibit 4 (Brun, Lukas, “Overcapacity in Steel: China’s Role in a Global Problem,” Duke University Center on Globalization, Governance & Competitiveness, September 2016).

data on which to apply any such model. However, a well specified quantitative model that includes a reasonable number of independent variables that account for both global and country-specific supply and demand factors that affect the dependent variable (*i.e.* Turkish AUVs of HRC imports) is a necessarily simplified, yet reasonable, approach to quantify the effects of a complicated global phenomenon. In fact, the majority of independent variables used in Wheatland's model are global variables, such as global uneconomic capacity and the global price of iron ore, steel scrap and aluminum, while some are country-specific (such as GFCF and the exchange rate). Therefore, Wheatland's regression analysis, while unavoidably imperfect, includes an appropriate number of national and global input variables, and provides a reasonable approach to quantifying the distortions associated with the PMS found in Turkey during the period of review.

Under the right facts on the record, the alternative regression models provided by Borusan that seek to correct Wheatland's model by accounting for the confounding effects of market conditions of other countries on import AUVs could potentially be workable alternatives to Wheatland's regression analysis.¹²⁰ However, the results of the model based on the average AUV of all countries are unreliable due to the small sample size (10 observations) and the resulting small number of degrees of freedom. As to the second model, Borusan itself acknowledges that its use of average exchange rates and average GFCF for all countries likely overstates the statistical significance of the independent variables due to potential correlation of error terms.¹²¹ Therefore, the validity of the results of this alternative regression model are likewise compromised. In sum, the alternative regression models provided by Borusan are themselves imperfect and Borusan provides no information on the record definitively demonstrating that they are more reasonable than, or superior to, the OLS model used in the *Preliminary Results*.

With respect to Borusan's argument that the import AUV data in the dependent variable should be disaggregated, we note that Borusan has submitted a series of regression analyses where the dependent variable is the import AUV for each of the six-digit HTS headings that fall under the four-digit HTS subchapter used by Wheatland as the basis for its regression analysis. We disagree with Borusan and find that an analysis based on import AUVs at the four-digit level on this record will better reflect the extent to which the overall Turkish HRC market has been distorted. The purpose of the regression analysis is to determine the relationship between the dependent variable, *i.e.*, the Turkish import AUV of HRC, and the independent variables, including uneconomic capacity. The import AUVs should reflect as closely as possible the market for the material input to produce in-scope merchandise, the market for which Commerce has found that a PMS existed during the POR. While the range of products encompassed by the four-digit HTS subchapter may be overinclusive of the products used to produce circular welded pipe, the individual six-digit subheading product groups used by Borusan exclude many products that may be used to produce circular welded pipe. If the six-digit HTSUS headings for all HRC potentially imported and used to produce circular welded pipe in Turkey were reported by the respondents clearly on the record and then appropriately analyzed by Borusan, Commerce might

¹²⁰ See letter from Borusan "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Rebuttal to Factual Information Used in Preliminary Results," dated July 31, 2019 at Attachment 5 (lines 37-41 in the regression output).

¹²¹ See Borusan Case Brief at page 8 of Attachment 1.

have been able to consider and address the merits of Borusan's arguments. However, the record does not reflect such a comprehensive and complete reporting and analysis of imported HRC used in the production of circular welded pipe in Turkey. Accordingly, the regression analysis where the dependent variable is the import AUV at the four-digit HTS level is the more appropriate model to quantify the relationship between the prices of all of the HRC products which may be used to produce circular welded pipe and uneconomic capacity.

With respect to Borusan's argument that the PMS adjustment should be calculated based on the difference between the counterfactual AUV and Borusan's own costs, this argument is moot because we are no longer calculating the adjustment in this manner. The PMS adjustment we calculated, as described above, is applied to the actual purchase price for HRC that respondents reported in their cost databases.

Lastly, concerning Borusan's argument about the model's likely estimation bias caused by reverse causality and the omission of confounding variables,¹²² Borusan did not provide an alternative regression model that adequately addresses both of these concerns. As such, as discussed previously and given the complexities of the effect of uneconomic capacity on the global economy, we find that the OLS regression model used in the *Preliminary Results* provides a reasonable quantification of the relationship between prices and uneconomic capacity, with which to make an adjustment for the cost-based PMS of HRC in Turkey.

Borusan-Specific Issues

Comment 3: Whether Section 232 Duties Should be Deducted from U.S. Price

Borusan's Arguments:

- In the *Preliminary Results*, Commerce reduced Borusan's reported U.S. price in its dumping calculation by the amount of any section 232 duties. In so doing, Commerce found that section 232 duties are analogous to U.S. import duties that are properly deducted from EP and CEP pursuant to the statute, rather than to antidumping duties or section 201 duties, which the CAFC has determined should not be deducted from U.S. price.¹²³
- However, Commerce's decision is contradicted by its analysis of section 201 duties conducted in *SSWR from Korea* and upheld by the CAFC in *Wheatland*.¹²⁴ Such analysis demonstrates that section 232 duties are special duties very similar to section 201 duties and not U.S. import duties. Accordingly, Commerce should again conclude that section 232 duties are special duties that should not be deducted from the U.S. price.¹²⁵
- In the *Preliminary Results*, Commerce stated that Section 232 duties are not akin to antidumping or section 201 duties, because section 232 duties are not focused on

¹²² See Borusan's Case Brief at page 11 of Attachment 1.

¹²³ See Borusan's Case Brief at 24-25; and *Preliminary Results* PDM at 14-15.

¹²⁴ See Borusan's Case Brief at 25 – 26; *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) (*SSWR from Korea*); and *Wheatland Tube Co. v. United States*, 495 F.3d 1355 (Fed. Cir. 2007) (*Wheatland*).

¹²⁵ See Borusan's Case Brief at 25 – 26

remedying injury to a domestic industry. However, this statement is belied by multiple statements made by the President, the Secretary of Commerce, and Commerce during the section 232 investigation into steel imports, which make clear that a central purpose of the section 232 duties, similar to section 201 duties, was also to remedy alleged dumping of steel products from around the globe and to bolster the domestic steel industry.¹²⁶

- The statutory language of section 232 defines the term “national security” to include the adverse effect of imports on individual domestic industries that face competition from imports. Whether or not the practice identified was technically “dumping,” the national security provisions contemplate that national security includes economic security.¹²⁷
- In *Wheatland*, the CAFC agreed with Commerce and held that section 201 duties were more similar to antidumping duties because they were temporary in nature while normal customs duties have no termination provision and are permanent unless modified by Congress.¹²⁸ Similarly, section 232 duties are also temporary in nature, under current circumstances, as they are put in place to eliminate a perceived threat to national security.¹²⁹
- Moreover, in *Wheatland*, the CAFC agreed with Commerce that deducting section 201 duties from export price would run the risk of imposing a double remedy in that section 201 duties were similar to antidumping duties, which Congress did not intend to do.¹³⁰
- In its *Preliminary Results*, Commerce indicated that the concern of a double remedy resulting from deducting section 232 duties from the U.S. price is not present because the function of antidumping duties and section 232 duties is separate and distinct, such that there would be no overlap between the two in providing the remedies sought by each. However, many public statements by the President and the Secretary of Commerce regarding section 232 demonstrate that the purpose of section 232 was to stop unfair trade practices including dumping via the use of a measure that is akin to a global safeguard under section 201.¹³¹ Accordingly, deducting section 232 duties from the U.S. price risks imposing a double remedy.¹³²
- Section 232 duties are imposed pursuant to a specific congressional delegation of tariff making authority to the executive branch and, therefore, they are not U.S. import duties within the meaning of the antidumping statute.¹³³
- Only Congress has the authority to impose U.S. import duties. Congress delegated a limited authority to the President to impose special duties in certain specific circumstances, such as section 201 safeguard duties and section 232 duties. Consistent with this delegation, the President acted pursuant to section 232 and, in adopting the duties, such duties were placed in Chapter 99 of the Harmonized Tariff Schedule, the designated location for the reporting of special duties pursuant to delegated Congressional authority.¹³⁴

¹²⁶ *Id.* at 27 - 30.

¹²⁷ *Id.* at 30 - 31.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 31 - 34; *see also Wheatland*, 495 F. 3d at 1363; and *SSWR from Korea*, 69 FR at 19160.

¹³¹ *See Borusan’s Case Brief* at 31 - 34.

¹³² *Id.*

¹³³ *Id.* at 24 - 27.

¹³⁴ *Id.* at 34 - 38.

Petitioner's Arguments:

- Borusan's arguments that Commerce should reverse its preliminary decision regarding the duties imposed on imports of steel products under section 232 by not adjusting U.S. price for such duties are unconvincing and would result in Commerce subverting both the antidumping law and the President's section 232 findings. Therefore, Commerce should reject Borusan's arguments and continue to deduct section 232 duties from the U.S. price.¹³⁵
- Borusan's argument that section 232 duties imposed to address national security concerns are remedial and equivalent to antidumping or safeguard duties is misplaced and does not withstand scrutiny.¹³⁶
- While Title VII of the Act, as amended, authorizes Commerce to impose antidumping and countervailing duties on imports that cause injury to a competing domestic industry, the text of section 232 of the Trade Expansion Act of 1962 does not include the term "remedy" or any derivative word such as "remedial." Notably, however, the term "remedy" does appear elsewhere in the Trade Expansion Act of 1962, in particular, it appears in sections 301, 351, and 352, all of which relate to safeguards.¹³⁷
- Accordingly, the language of the statutes themselves make clear that duties imposed under section 232 do not have the same remedial purposes as antidumping, countervailing, and safeguard duties.¹³⁸
- Borusan further argues that deducting section 232 duties from U.S. price risks imposing a double remedy. However, section 232 does not offset unfair trade practices in the same sense as antidumping or safeguard duties, as section 232 is about national security and is thus focused on an entirely different issue.
- Further, if Commerce were to not deduct section 232 duties from U.S. price, it would effectively be refunding such duties to affected importers and undermining the President's objectives in imposing duties under such a section. Also, by not adjusting for section 232 duties, Commerce would not be engaging in an apples-to-apples comparison of NV and U.S. price and it would be preventing the full amount of dumping from being eliminated or remedied under the antidumping law.¹³⁹
- Borusan also points to no evidence in support of its contention that section 232 duties are temporary. There is no indication that the circumstances leading the President to impose the duties to protect national security will abate, and the relevant Presidential declaration provides no indication when the duties might be lifted.
- Borusan's discussion of how duties imposed by the President pursuant to section 232 are unlike ordinary customs duties established by Congress misses the point. Even if section 232 duties are not like ordinary customs duties, the policy reasons that support past decisions not to deduct antidumping safeguard duties from U.S. price do not apply in the section 232 context.

¹³⁵ See Wheatland's Rebuttal Brief "Welded Carbon Steel Standard Pipe and Tube Products from Turkey," dated September 30, 2019 (Wheatland's Rebuttal Brief), at 32-33.

¹³⁶ *Id.*

¹³⁷ *Id.* at 34.

¹³⁸ *Id.*

¹³⁹ *Id.*

- There is no overlap between the policy concerns that section 232 duties and antidumping duties are designed to address, as section 232 duties are functionally distinct from antidumping and address entirely distinct policy concerns.¹⁴⁰ In this regard, there is nothing in section 232 that requires the Secretary of Commerce or the President to determine whether the threat to national security reflects dumping or may be more appropriately remedied by antidumping duties.¹⁴¹
- In addition, nothing in section 232 directs the President to consider existing antidumping duties when determining what measures to impose to adjust imports so that national security will no longer be threatened or impaired.¹⁴²
- The Proclamation imposing section 232 duties expressly states that “{a}ll anti-dumping, countervailing, or other duties and charges applicable to such goods shall continue to be imposed” and shall be applied “in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles.”¹⁴³
- Because the President has explicitly determined that section 232 duties are entirely independent from, and assessed in addition to, antidumping duties, Commerce’s concerns expressed in *SSWR from Korea*, that the agency’s reduction of section 201 duties from the U.S. price in an antidumping proceeding would “upset the balance” struck by the President in setting the level of section 201 duties, is not implicated here.¹⁴⁴

Commerce’s Position:

We disagree with Borusan’s argument that section 232 duties are special duties similar to section 201 safeguard or antidumping duties and continue to find in these final results section 232 duties to be analogous to U.S. import duties that are properly deducted from EP and CEP pursuant to the statute.¹⁴⁵ As noted in the *Preliminary Results*, the section 232 duties covering steel products at issue in this case were implemented to address national security concerns.¹⁴⁶ According to Proclamation 9705, the particular national security risk is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”¹⁴⁷

In *Wheatland*, the CAFC sustained Commerce’s determination in *SSWR from Korea* not to adjust U.S. price in antidumping proceedings for section 201 duties under the statutory provision.¹⁴⁸ Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of

¹⁴⁰ *Id.* at 35.

¹⁴¹ *Id.* at 37.

¹⁴² *Id.*

¹⁴³ *Id.*; see also Proclamation 9705, 83 FR 11627, 11629 (March 8, 2018).

¹⁴⁴ *Id.*; see also *SSWR Korea*, 69 FR at 19160.

¹⁴⁵ See section 772(c)(2)(A) of the Act (directing Commerce to adjust EP and CEP “for the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties ...”).

¹⁴⁶ See Memorandum, “2017-2018 Administrative Review of Circular Welded Carb Steel Standard Pipe and Tube Products from Turkey: Section 232 Duties,” dated July 10, 2019 (Section 232 Duties Memo), at 6-7.

¹⁴⁷ See also Proclamation 9705, 83 FR at 11627.

¹⁴⁸ See Section 232 Duties Memo at 7; see also *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007).

1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”¹⁴⁹ The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”¹⁵⁰

In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “[l]ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;” (2) “[n]ormal customs duties, in contrast, have no remedial purpose;” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “[section] 201 duties are like antidumping duties ... because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”¹⁵¹ In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “[t]o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”¹⁵²

Here, however, we find that section 232 duties are not akin to antidumping or section 201 duties. In particular, we find that section 232 duties are not focused on remedying injury to a domestic industry. Underpinning section 201 and antidumping duties is that antidumping duties “remedy sales by a foreign exporter in the U.S. market at less than fair value” and section 201 duties “remedy the injurious effect on the U.S. industry of significant surge in imports.”¹⁵³ Furthermore, “[c]ountervailing duties remedy unfair competitive advantages that foreign exporters have over domestic producers as a result of foreign countervailable subsidies.”¹⁵⁴ Thus, these types of duties “are all directed at the same overarching purposes – protecting the bottom line of domestic producers.”¹⁵⁵ By contrast, we find that section 232 duties are not focused on remedying injury to a domestic industry. As Commerce noted in the *Preliminary Results*, the text of the President’s various proclamations is telling. Proclamation 9705, for example, states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security*. . .”¹⁵⁶ Commerce noted that the text of

¹⁴⁹ *Id.* at 1361.

¹⁵⁰ *Id.* at 1362.

¹⁵¹ *Id.* at 1362-63.

¹⁵² *Id.* at 1365.

¹⁵³ *Id.* at 1362; section 201 of the Trade Act of 1974; section 731(1) of the Act; *see also* Section 232 Duties Memo at 8.

¹⁵⁴ *See Wheatland*, 495 F. 3d at 1363.

¹⁵⁵ *Id.* at 1364.

¹⁵⁶ *See* Proclamation 9705, 83 FR at 11627 (emphasis added); *Proclamation 9711 of March 22, 2018*, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); *Proclamation 9740 of April 30, 2018*, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); *Proclamation 9759 of May 31, 2018*, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); *Proclamation 9772 of August 10, 2018*, 83 FR 40429 (August 15, 2018)

section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the article.”¹⁵⁷

Borusan cites to the Secretary’s report and the President’s comments, arguing that the primary purpose of section 232 duties, similar to section 201 duties, is to remedy alleged dumping of steel products from around the globe and to bolster the domestic steel industry.¹⁵⁸ However, this is not our understanding of the law or the purpose behind the section 232 duties. The President’s powers regarding section 232 duties arise from a statute, and that statute authorizes preventative, national security powers.¹⁵⁹ For example, the statute allows the President to impose section 232 duties if the President concurs with the Secretary that an article is being imported under circumstances “as to threaten to impair the national security.”¹⁶⁰ The Bureau of Industry and Security (BIS), in doing its overall analysis, referenced the existence of dumping and the existence of subsidization in the steel global market. That fact, however, does not suggest that the section 232 duties were implemented in response to the existence of dumping or subsidization. Further, unlike antidumping or countervailing duty measures, the section 232 duties were implemented pursuant to a concern of safety and security for the entire United States, and not to protect a single enterprise or industry. Accordingly, we find that the national security purpose of Section 232 duties is vastly different than the purpose of antidumping duties or section 201 safeguard measures.¹⁶¹

Borusan argues that many public statements by the President and the Secretary of Commerce regarding section 232 demonstrate that the purpose of section 232 was to stop unfair trade practices, including dumping, via the use of a measure that is akin to a global safeguard under section 201.¹⁶² Accordingly, Borusan contends that deducting section 232 duties from the U.S. price risks imposing a double remedy.¹⁶³ However, reducing U.S. EP and CEP by section 232 duties in the context of this administrative review is consistent with section 772(c)(2)(A) of the Act, because it directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties.”¹⁶⁴ Moreover, as explained in the *Preliminary Results*, we find that the function of antidumping duties and section 232 duties are separate and distinct, such that there would be no overlap between the two in providing the remedies sought by each.¹⁶⁵

(Proclamation 9772) (similar); *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar); and Section 232 Duties Memo at 8.

¹⁵⁷ See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “[n]o action shall be taken ... to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

¹⁵⁸ See Borusan’s Case Brief at 27-30.

¹⁵⁹ See section 232 of the Trade Expansion Act of 1962.

¹⁶⁰ *Id.*

¹⁶¹ See Section 232 Duties Memo at 8-9.

¹⁶² See Borusan’s Case Brief at 31 - 34.

¹⁶³ *Id.*

¹⁶⁴ See section 772(c)(2)(A) of the Act.

¹⁶⁵ See Section 232 Duties Memo at 9.

The Presidential Proclamation is critical to this point in that it states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamation.¹⁶⁶ The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “[a]ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are treated as any other duties. No express reduction to antidumping duties by the amount of the section 232 duties is contained in the Presidential Proclamation. Had the President intended that antidumping duties be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

Borusan argues that section 232 duties are imposed pursuant to a specific congressional delegation of tariff making authority to the executive branch and that such duties were placed in Chapter 99 of the HTSUS, the designated location for the reporting of special duties, such as section 201 duties, pursuant to delegated Congressional authority.¹⁶⁷ However, we do not agree that section 232 duties are analogous to section 201 or antidumping duties, for the reasons discussed above (*i.e.*, section 232 duties were implemented to address national security concerns; they are not focused on remedying injury to a domestic industry; they do not overlap with antidumping duties; and they have no termination provision). Regardless, although we made this point in *SSWR from Korea* regarding section 201 duties being included in Chapter 99 of the HTSUS, this was not the sole basis upon which Commerce declined to adjust U.S. price for section 201 duties.¹⁶⁸ For example, Commerce also explained in *SSWR from Korea* that “[t]o some extent, section 201 duties are interchangeable with special {antidumping} duties,” such that section “201 duties are more appropriately regarded as a type of special remedial duty, rather than ordinary customs duties.”¹⁶⁹

Therefore, for the final results, consistent with the *Preliminary Results* and the reasons noted above, we have determined that section 232 duties are U.S. import duties, which are deductible from Borusan’s U.S. price pursuant to section 772(c)(2)(A) of the Act.

Comment 4: Borusan CEP Sales

a. Whether to Apply AFA to Borusan’s CEP Sales

Petitioner’s Arguments:

- In the *Preliminary Results*, Commerce recognized that Borusan failed to report section 232 duties on CEP sales it made on or after the effective date of section 232 duties and, consequently, applied partial facts available to Borusan’s CEP

¹⁶⁶ See Proclamations 9705, 83 FR at 11627; Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that section 232 duties receive different treatment.

¹⁶⁷ See Borusan’s Case Brief at 34-38.

¹⁶⁸ See *SSWR from Korea*, 69 FR at 19160.

¹⁶⁹ *Id.*

sales. However, Commerce’s application of facts available falls short, because Borusan failed to maintain the information necessary to accurately report section 232 duties, as requested.¹⁷⁰

- Instead of conducting the manual review of its records that would have yielded the necessary information, Borusan claimed that the CEP sales were not subject to section 232 duties according to an alternative analysis of its inventory turnover.¹⁷¹ In light of Borusan’s unwillingness to conduct the manual review of its records, Commerce should apply total adverse facts available (AFA) for the relevant sales, consistent with its past practices.¹⁷²
- The CIT has recently reviewed similar facts in *Diamond Sawblades v. United States*, in which a respondent did not retain information identifying the country of origin (COO) for its CEP sales.¹⁷³ Given the missing information in that case, the responding company proposed an alternative inventory methodology to distinguish sales, which Commerce accepted. However, the CIT found that the alternative methodology “would not have been necessary had {the company} ‘maintain{ed} full and complete records’ of the origin of the sawblades sold in the United States in the first place.”¹⁷⁴
- In that case, the CIT further questioned whether the acceptance of the company’s alternative methodology “comports with judicial articulations of the ‘best of its ability’ standard, or alternately how it can lawfully substitute for that standard a ‘looser’ one that does not require a respondent to ‘maintain full and complete records’ of relevant data.” On remand, Commerce reversed its decision, finding that the respondent did not act to the best of its ability by not maintaining this information. Accordingly, Commerce applied total AFA.¹⁷⁵
- Here, while the missing information relates to the deduction of section 232 duties from starting price, as opposed to COO, the CIT’s decision in *Diamond Sawblades v. United States* stands for the general principle that affiliated importers are expected to maintain information necessary to calculate accurate dumping margins in order to meet “best of ability” standard in section 782(e) of the Act. Borusan failed to maintain or provide such information.¹⁷⁶
- Borusan has no excuse for not providing the requested information. In describing its CEP sales process, Borusan explained that when the material is picked up from the warehouse by the customer, its U.S. affiliate sends the customer the invoice, packing slip, and mill test report.¹⁷⁷ Mill test certificates are also required documents for all

¹⁷⁰ See petitioner’s Case Brief at 1-3.

¹⁷¹ *Id.*

¹⁷² *Id.*; see also *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 17-00167, Slip. Op. 18-146 (CIT October 23, 2018) (*Diamond Sawblades v. United States*) at 9-12.

¹⁷³ *Id.*

¹⁷⁴ See Petitioner’s Case Brief at 1-4.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 3.

¹⁷⁷ See Borusan’s Section A Questionnaire Response, dated September 13, 2018, at 22.

imports of steel.¹⁷⁸ Moreover, CBP regulations require importers to maintain copies of all paperwork for a period of five years.¹⁷⁹

- At the time of the sale, Borusan necessarily had the information required to accurately respond to Commerce's request for section 232 duty information and should still have it by operation of CBP regulation. Indeed, Borusan admits that it could have accurately provided the required information through a manual process using mill test reports.¹⁸⁰ Instead, however, Borusan suggested an alternative inventory methodology.¹⁸¹
- For the reasons noted above, Commerce should assign a margin for CEP sales based on total AFA because Borusan failed to supply information in the form required or within the timelines and failed to act to the best of its ability pursuant to section 782(e) of the Act.¹⁸²

Borusan's Arguments:

- Wheatland's assertion that Borusan failed to maintain the information necessary to accurately report section 232 duties or that it declined to provide such information in the form required is false. Borusan responded fully to Commerce's requests for information and no AFA is warranted here.¹⁸³
- Borusan did not suggest an alternative inventory methodology as Wheatland claims. Rather it followed the alternative reporting methodology proposed by Commerce and fully complied with Commerce's instructions in the questionnaire.¹⁸⁴
- In its May 20, 2019 response to Commerce's 3rd Supplemental Section C Questionnaire regarding section 232 duties, Borusan explained again why it was unable to link its CEP sales to the U.S. entry dates and corresponding entry documentation.¹⁸⁵ Borusan then followed Commerce's instructions in providing the total section 232 duties paid from March 23, 2018 to the end of the POR, the total quantity in metric tons of pipe that entered Borusan's U.S. affiliate's inventory during the same period, and the per-metric ton amount of section 232 duties.¹⁸⁶
- Petitioner cites to *Diamond Sawblades v. United States* in support of its argument. However, the facts of that case are dissimilar to those present in this case. First, in *Diamond Sawblades v. United States*, the reporting at issue determined the entire universe of the respondent's U.S. sales, that is, which sales were subject to the review and which were not.¹⁸⁷ Moreover, in that case, not only could the respondents not

¹⁷⁸ See Petitioner Case Brief at 3 (citing 19 C.F.R. § 141.89).

¹⁷⁹ *Id.* (citing 19 C.F.R. § 163.4).

¹⁸⁰ See Petitioner's Case Brief at 3; *see also* Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to 3rd Supplemental Section C Questionnaire," dated May 20, 2019 (Borusan's 3rd Supp. C Response), at 2. Wheatland notes that while Borusan claims that the process would involve "well over 1,000 transactions," the actual sales database shows that only a small number of sales observations are involved.

¹⁸¹ See Petitioner's Case Brief at 2-3.

¹⁸² *Id.* at 3-4.

¹⁸³ See Borusan's Rebuttal Brief at 1.

¹⁸⁴ *Id.* at 2.

¹⁸⁵ *Id.* at 2-3; *see also* Borusan's 3rd Supp. C Response at 2-3.

¹⁸⁶ *Id.* at 3-5.

¹⁸⁷ See *Diamond Sawblades v. United States* at 12.

replicate the system they had implemented when asked to do so at verification, but Commerce also uncovered errors with other aspects of their reporting during the course of the proceeding.¹⁸⁸

- In this case, however, Borusan did not propose an alternative methodology to report section 232 duties paid on CEP sales. Rather, it followed the express directions of Commerce in its questionnaire to Borusan.¹⁸⁹ At no time was the information reported by Borusan found to be inaccurate and Borusan complied with Commerce's requests throughout the proceeding to the best of its ability. Accordingly, there is no basis upon which to apply AFA and Commerce should disregard Wheatland's comments regarding this issue.

b. Whether to deduct Section 232 Duties from Borusan's CEP Sales

Borusan's Arguments:

- Commerce should not deduct section 232 duties from Borusan's U.S. price of CEP sales transactions. In the *Preliminary Results*, Commerce recognized that Borusan did not keep records linking its CEP sales to actual entry dates. Commerce noted that Borusan's U.S. affiliate received a shipment from Borusan that entered the United States after March 23, 2018, the implementation date for section 232 duties. As facts available, Commerce deducted the section 232 duties paid on that shipment from the sales price of CEP sales transactions made after the implementation date of section 232 duties.
- However, even though Borusan could not tie all CEP sales and related expenses to a specific entry date, record evidence demonstrates that none of Borusan's CEP sales during the POR were from this shipment and, therefore, none of the CEP sales were subject to section 232 duties.
- Only a portion of the shipment in question entered Borusan's U.S. affiliate's inventory shortly before the end of the POR, and, theoretically, it is possible that this portion of the shipment could have been sold to unaffiliated U.S. customer before the end of the POR. However, the inventory turnover period of its U.S. affiliate and the fact that only a portion of the shipment entered the inventory shortly before the end of the POR demonstrate that it is not reasonable to conclude that the products from that one entry could have been sold to unaffiliated U.S. customers before the end of the POR.¹⁹⁰

Petitioner's Arguments:

- Commerce should not accept Borusan's argument that is based on its belief that later shipments to Borusan's U.S. affiliate probably did not include merchandise that arrived in the United States after the implementation of the section 232 duties.
- As discussed above, Commerce should apply total AFA for Borusan's CEP sales, occurring after the implementation of section 232 duties, in light of Borusan's failure to conduct the manual review of its records that would have yielded information necessary to determine whether the sales at issue included merchandise subject to section 232 duties.¹⁹¹

¹⁸⁸ *Id.* at 7.

¹⁸⁹ See Borusan's 3rd Supp. C Response at 3-5.

¹⁹⁰ *Id.*

¹⁹¹ See Petitioner's Rebuttal Brief's at 37-38.

Commerce's Position:

We disagree with the petitioner that Commerce should apply AFA to Borusan's CEP sales that occurred after the implementation date of section 232 duties. Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record or if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.¹⁹² Although Borusan reported that it was unable to link its CEP sales to actual entries, necessary for reporting the amount of 232 duties paid on its CEP sales, we find that the necessary requirements for us to apply AFA have not been met pursuant to sections 776(b) of the Act and thus AFA is not warranted in this review.

In the *Preliminary Results*, we noted that Borusan did not keep records linking its CEP sales to actual entry dates, despite the fact that it was the importer of record during the POR.¹⁹³ Also, we found that Borusan's average inventory turnover methodology is not actual record evidence that no section 232 duties were paid during the POR on any of its CEP sales of merchandise entered on or after the effective date (*i.e.*, March 23, 2018) of Section 232 duties, because it is possible that shipments received by Borusan on or after such a date could have been sold prior to the end of the POR.¹⁹⁴ While we acknowledged that the merchandise that entered before the effective date of the section 232 duties would not have been subject to these section 232 duties, we found that Borusan reported that its U.S. affiliate received a single shipment that entered the United States on or after the effective date of section 232 duties.¹⁹⁵ Accordingly, we found it reasonable to conclude that despite Borusan's average inventory turnover methodology, the merchandise from that entry may have been sold prior to the end of the POR.¹⁹⁶ Therefore, based on the above facts, at the preliminary stage of this review, we determined that the application of facts available pursuant to section 776(a) of the Act was warranted.¹⁹⁷ As facts available, we deducted the section 232 duties from the reported prices for the CEP sales that occurred on or after the entry date of the single shipment received by Borusan's U.S. affiliate before the end of the POR.¹⁹⁸ We calculated the section 232 duties for such sales based on the ratio of the actual section 232 duties paid for the shipment at issue in relationship to the value of the reported CEP sales that occurred on or after the date of the above-referenced entry.¹⁹⁹

¹⁹² See sections 776(a)(1) and (2) of the Act.

¹⁹³ See Section 232 Duties Memo at 10.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*; see also Memorandum, "Analysis for the Preliminary Results of The Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S.," dated July 10, 2019 (Preliminary Analysis Memorandum).

We also disagree with the petitioner’s argument that Borusan did not act to the best of its ability by not reporting section 232 duties on its CEP sales. While the “best of its ability” standard does not condone inattentiveness, carelessness, or inadequate record keeping, it does not require perfection.²⁰⁰ Accordingly, while Borusan originally did not report section 232 duties on any of its CEP sales, given the average turnover methodology it used, we find that Borusan has fully complied with Commerce’s request for additional information and reported the requested information regarding the single shipment of the subject merchandise that its U.S. affiliate received on or after the effective date of section 232 duties.²⁰¹ Pursuant to this information, as noted above, Commerce was able to calculate section 232 duties, as facts available, based on the ratio of the actual section 232 duties paid for the shipment at issue in relationship to the value of the reported CEP sales that occurred on or after the entry date of said shipment.²⁰² Accordingly, the information provided by Borusan enabled Commerce to develop a methodology to calculate section 232 duties for any CEP sales with entries after the effective date of section 232 duties that fully captures any possible section 232 duties that Borusan could have paid on any of its CEP sales during the remaining part of the POR. Additionally, we acknowledge that section 232 duties became effective less than six weeks before the end of this review period and that Borusan may not have anticipated the level of details to be provided for purposes of linking its CEP sales transactions to the date of entry for purposes of reporting section 232 duties for such sales. However, in subsequent administrative reviews, Commerce intends to examine closely the manner in which Borusan is able to link its CEP sales to actual entry dates for purposes of reporting section 232 duties.

Moreover, we disagree with Borusan’s argument that none of its CEP sales were merchandise from the shipment at issue, given that this argument is contradicted by Borusan’s own statement that it did not keep records linking its CEP sales to entry date, and the fact that part of the shipment at issue entered the inventory of Borusan’s U.S. affiliate prior to the end of the POR. Therefore, we find Borusan’s argument to be insufficient for purposes of demonstrating that none of its CEP sales during the POR were subject to section 232 duties.

Therefore, for the reasons noted above, and consistent with Commerce’s *Preliminary Results*, we continue in these final results to deduct section 232 duties from U.S. price of the CEP sales transactions occurring on or after the entry date of the single shipment that was made after the effective date of section 232 duties.²⁰³

Comment 5: Whether Borusan Reported Theoretical Weight Correctly

Petitioner’s Arguments:

- Borusan’s reported theoretical weight for the U.S. and home markets is inaccurate and Commerce should assign a margin to Borusan based on total AFA, because Borusan

²⁰⁰ See *Nippon Steel v. United States*, 337 F. 3d 1373, 1382 (CAFC 2003).

²⁰¹ See Borusan’s 3rd Supp. C Response at 2-3.

²⁰² See Section 232 Duties Memo at 10; and Preliminary Analysis Memorandum at 5.

²⁰³ See Section 232 Duties Memo at 10; and Preliminary Analysis Memorandum at 5.

failed to supply the information in the form required or within the established timelines and failed to act to the best of its ability.²⁰⁴

- Borusan explained that it reported all of its prices and adjustments based on the QTYH/U fields rather than the THEOH/U field, contrary to Commerce’s instructions, which require that all prices and adjustments be calculated using a theoretical weight based on Commerce’s formula that reflect nominal dimensional values.²⁰⁵
- Borusan claims that it has increased the accuracy of its reported weight by substituting actual length rather than nominal length. However, Borusan’s failure to follow Commerce’s instructions do not disclose the target that would allow it to claim increased accuracy. If Borusan’s target is actual weight, Commerce has already dismissed the substitution of an actual dimension into its standard formula, noting that doing so creates distortions.²⁰⁶ Accordingly, Borusan is using a discredited methodology.²⁰⁷
- Commerce has adopted a standard formula, which employs nominal dimensions as a way to ensure consistency and predictability across pipe cases. Therefore, by departing from Commerce’s explicit instructions, Borusan impeded this administrative review and failed to submit the data in the manner requested.²⁰⁸
- Borusan also made an additional methodological mistake by calculating the quantity in two different ways, departing from Commerce’s instructions to calculate theoretical weight on a consistent basis.²⁰⁹
- In its first supplemental response, Borusan explains that it calculated theoretical weight using either a standard kilograms/meter (kg/meter) constant or a calculated value.²¹⁰ Borusan also added a field to flag whether an observation’s weight is “C” (*i.e.*, calculated using Commerce’s standard methodology) or “S” (where Borusan substituted a precalculated kg/meter shortcut to Commerce’s formula). However, Commerce did not ask Borusan to use a shortcut kg/meter value, regardless of whether such a shortcut may exist in third party literature.²¹¹
- By using two different methods for calculating theoretical weight, Borusan has created distortions and failed to follow Commerce’s instructions to report its data in the manner requested.²¹²
- Even after Borusan claims to have corrected deficiencies in using a kg/meter constant rounded to two decimal places, there are still discrepancies and arithmetic errors that the

²⁰⁴ See Petitioner’s Case Brief at 5.

²⁰⁵ *Id.*

²⁰⁶ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016), and accompanying IDM at Comment 2.

²⁰⁷ See Petitioner’s Case Brief at 6.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 7.

²¹⁰ See Borusan’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Responses to 1st Supplemental Sections A-C Questionnaire & 1st Supplemental Section D Questionnaire,” dated February 27, 2019 (First Supplemental Response), at 3.

²¹¹ *Id.*

²¹² *Id.*

petitioner noted in Borusan's revised weights under the fields QTYH/U and THEOH/U in the U.S. and home market sales databases, as well as the cost database.²¹³

Borusan's Arguments:

- Wheatland's arguments that Borusan has defied Commerce's instructions and failed to report the correct theoretical weights for the reported sales, and that this failure requires the application of total AFA, are unavailing and should be rejected.²¹⁴
- In its First Supplemental Response, Borusan explained its product weight calculation in detail.²¹⁵ The only element of Commerce's theoretical weight formula that Borusan updated is the method of calculating the unit kg/meter. Borusan explained that, when the product specification itself (*e.g.*, ASTM A53, EN10255, *etc.*) provides a specific per unit kg/meter, it used that per unit kg/meter factor in the calculation of QTYH/U, and reported an "S" in field KGMTYPEH/U.²¹⁶ Borusan further explained that when there was no kg/meter factor available in the product specification, however, Borusan used Commerce's formula to calculate the unit kg/meter factor and reported "C" in the field KGMTYPEH/U.²¹⁷
- Borusan notes that a defined conversion factor in an industry specification is precise and verifiable, and indeed, Commerce can easily verify the particular kilogram per meter factor by simply consulting the product specification itself.²¹⁸
- Borusan did not use a precalculated kilogram per meter shortcut to Commerce's formula that exists in a third-party literature, as argued by the petitioner. Rather the per unit kg/meter factor used when KGMTYPEH/U equals "S" is the per unit kg/meter weight published in the standard industry specification, such as that of ASTM A53, and can be verified by the specification itself. The use of the published kg/meter factor from the applicable specification, when available, is more precise and reliable than a calculated formula.²¹⁹
- In *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico*, Commerce rejected the respondent's theoretical weight calculation, in part, because the wall thickness used in that calculation was "not a standard being applied consistently by the industry, and would not, in fact, be in an ASTM specification."²²⁰
- Wheatland again claims that there are discrepancies in the weights reported by Borusan. However, the petitioner's claim and calculations are misleading and ignore the explanations Borusan has repeatedly provided regarding the manner in which it calculated weight in this and all previous reviews, and used the same

²¹³ See Petitioner's Case Brief at 7-8 and Attachment 1.

²¹⁴ See Borusan's Rebuttal Brief at 4.

²¹⁵ *Id.*; see also Borusan First Supplemental Response at 2-5.

²¹⁶ See Borusan's Rebuttal Brief at 5; see also Borusan First Supplemental Response at 2-5.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*; see also *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty administrative Review and Final Determination of No Shipment; 2016-2017*, 84 FR 24473 (May 28, 2019), and accompanying IDM at Comment 4.

methodology for calculating the per-unit kg/meter factor in the theoretical weight in this review as in the previous administrative reviews.²²¹

- Based on its explanation, Borusan has reported all gross unit prices and related adjustments using the theoretical weight reported in QTYH/U rather than the theoretical weight reported in field THEOH/U. The theoretical weight reported in QTYH/U is accurate, not distortive, and calculated using a formula that was fully disclosed to Commerce.²²²
- Wheatland's use of percentages to describe the alleged differences between Borusan's reported QTYH and the QTYH that it calculated itself exaggerates such differences for home market sales. However, in actuality, such differences are very small.²²³ Had Wheatland used Borusan's reported figures correctly, such percentage would have been further reduced to *de minimis* differences due to rounding.²²⁴

Commerce's Position:

We disagree with the petitioner that the application of total AFA to Borusan is warranted for its reporting of theoretical weight. As an initial matter, Borusan's calculation of theoretical weights differed from Commerce's standard formula only with respect to the theoretical kilograms per meter (kg/meter) element of Commerce's formula that calculates the overall theoretical weight per unit on a transaction-specific basis.²²⁵ Commerce's formula is based on the theoretical weight (kg/meter), the number of pieces covered by an invoice line item and the nominal length per piece.²²⁶ Further, while Commerce's questionnaire provides a standard formula for calculating the theoretical kg/meter element of the above-referenced formula under the field KGMETERH/U, it did not preclude Borusan from relying on other formulas when reporting theoretical weight kg/meter. Specifically, Commerce's questionnaire states that ". . . for products for which a different formula is used, identify in your narrative response each such formula, and identify the source documentation supporting use of that different formula."²²⁷

In this regard, Borusan has provided sufficient explanation for the formulas it used to report the kg/meter element of Commerce's formula that calculates the overall theoretical weight per unit on a transaction-specific basis.²²⁸ In its supplemental questionnaire response, Borusan explained that, when the product specification, such as, ASTM A53, EN10255, *etc.*, provides a specific per unit kg/meter, it used that per unit kg/meter factor in the calculation of QTYH/U, and

²²¹ See Borusan's Rebuttal Brief at 5.

²²² *Id.* at 6.

²²³ *Id.* at 6.

²²⁴ *Id.* at 6-7.

²²⁵ See Commerce's Antidumping Questionnaire to Borusan, dated August 9, 2018, at B-10 and B-11 and C-8 to C-10 (AD Questionnaire); see also Borusan's First Supplemental Response at 2-5.

²²⁶ See, e.g., AD Questionnaire at B-10 and B-11.

²²⁷ See AD Questionnaire at "FIELD NUMBER 2.6: Theoretical Weight Per Meter, FIELD NAME: KGMETERH/U, DESCRIPTION: . . . {f} or products for which a different formula is used, identify in your narrative response each such formula, and identify the source documentation supporting use of that different formula."

²²⁸ See, e.g., Borusan's First Supplemental Response at 2-5.

reported an “S” in field KGMTYPEH/U.²²⁹ Borusan further explained that when there was no kg/meter factor available in the product specification, it used Commerce’s formula to calculate the unit kg/meter factor and reported “C” in the field KGMTYPEH/U.²³⁰ Therefore, based on record evidence, we do not find that Borusan failed to follow our instructions from our original questionnaire for reporting theoretical weight because Borusan fully explained its formula and the methodology used to report its theoretical weight. Furthermore, we agree that differences between Borusan’s reported weights and the weights calculated by petitioner may be overstated. Our review of Borusan’s reported weights shows that differences are either attributable to minor rounding errors that are present in reported U.S. or home market sales or due primarily to Borusan’s use of the per unit kg/meter factor reflected in the product specification, designated an “S” in the field KGMTYPEH/U, instead of using Commerce’s standard formula for calculating the weight in kg/meter.²³¹ Finally, we note that Borusan has followed the same method of reporting theoretical weights in this administrative review as in previous administrative reviews. However, we do agree with the petitioner that Borusan should have used the same method for calculating the theoretical kg/meter factor to ensure consistency in the reported unit per meter. Accordingly, we intend to examine this issue more closely in subsequent administrative reviews to ensure that Borusan’s unit per meter is reported on a consistent basis.

Comment 6: Whether Borusan’s Overrun Sales are Outside the Ordinary Course of Trade

Borusan’s Arguments:

- In the *Preliminary Results*, Commerce did not find Borusan’s sales of overrun merchandise in the home market to be outside the ordinary course of trade and included these sales in the margin calculation. This decision, however, is contrary to multiple findings in prior segments of this proceeding in which Commerce, based on virtually identical evidence, determined that Borusan’s home market sales of overruns were outside the ordinary course of trade.²³²
- In the past three administrative reviews, Commerce found Borusan’s sales of overruns to be outside the ordinary course of trade. For example, in the 2014-2015 administrative review, Commerce found Borusan’s overruns to be outside the ordinary course of trade because: 1) overruns are sold only in the home market; 2) the majority of overruns are purchased by a small subset of overall non-overrun buyers; 3) the average quantity of overrun sales is lower than the average quantity of non-overrun sales; and 4) the analysis of prices and profits of overrun sales are lower for overruns than for non-overrun sales.²³³
- There is no valid reason for Commerce to depart from its standard practice regarding Borusan’s overrun sales, particularly as no facts have changed substantively from prior reviews.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ See Borusan’s Final Analysis Memorandum at Attachment 1.

²³² See Borusan’s Case Brief at 43.

²³³ See *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 92785 (December 20, 2016), and accompanying IDM at Comment 3.

- In this administrative review, overruns are only sold in the home market. Also, the majority of overruns are purchased by a small number of purchasers, a matter which cannot be squared with Commerce’s statement that overruns “are purchased by a relatively large number of Borusan’s overall customers,” particularly in light of Commerce’s previous findings.²³⁴
- In this review, there is major difference in quantity between sales of overrun merchandise and sales of non-overrun. In this administrative review, the overall average sales quantity of an overrun sale was slightly higher than that of a non-overrun sale. However, of those CONNUMs sold both as overruns and non-overruns, the average quantity for the overrun was much lower than the average quantity for non-overrun sale.²³⁵
- Finally, in the *Preliminary Results*, Commerce acknowledged that the prices of overrun sales are consistently lower than those of non-overrun sales.²³⁶
- In this administrative review, Commerce should follow its practice from the previous three administrative reviews and find that Borusan’s sales of overruns are outside the ordinary course of trade and exclude the overrun sales from the margin calculation for these *Final Results*.²³⁷

No other interested party provided comments on this issue.

Commerce’s Position:

We disagree with Borusan. As an initial matter, each segment of a proceeding is separate and distinct from other segments and each segment’s administrative record is separate and distinct. Accordingly, based on record evidence in this administrative review, we found in the *Preliminary Results* that Borusan’s sales of overruns are not outside the ordinary course of trade.²³⁸

As discussed in the *Preliminary Results*, section 773(a)(1)(B)(i) of the Act, states, in relevant part, that NV is “the price at which the foreign like product is first sold (or, in absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.” Section 771(15) of the Act defines the term “ordinary course of trade” as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.” The Statement of Administrative Action (SAA) which accompanied the passage of the Uruguay Round Agreements Act of 1995 clarifies this portion of the statute by stating, “Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the

²³⁴ See Borusan’s Case Brief at 44-55; and Memorandum, “2017–2018 Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; Borusan Mannesmann Boru Sanayi ve Ticaret A.S.’s Home Market Sales of Overruns,” dated July 10, 2019 (Preliminary Results Overrun Memo), at 3.

²³⁵ See Borusan’s Case Brief at 45.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ See Preliminary Results Overrun Memo.

same market.”²³⁹ Thus, the statute and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act, *i.e.*, below-cost sales and sales between affiliates that are not at market prices) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. Accordingly, Commerce considered whether Borusan’s home market sales of overrun pipe and tube are ordinary in comparison with other home market sales of pipe and tube.²⁴⁰

The purpose of the ordinary course of trade provision “is to prevent dumping margins from being based on sales which are not representative” of the home market.²⁴¹ By basing the determination of NV upon representative sales, the provision ensures an appropriate comparison between NV and sales to the United States.²⁴² Congress has not specified any criteria that the agency should use in determining the appropriate “conditions and practices.” Thus, Commerce, “in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade.”²⁴³

In the *Preliminary Results*, Commerce considered certain factors in evaluating whether sales of overrun merchandise are outside the ordinary course of trade. These non-dispositive factors include, but are not limited to, the following:

1. Whether the merchandise is “off-quality” or produced according to unusual specifications;
2. the comparative volume of sales and the number of buyers in the home market;
3. the average quantity of the overrun and commercial sales and Frequency of Sale; and
4. the price and profit differentials in the home market.²⁴⁴

Based on our analysis of the above factors *in toto*, and consistent with the *Preliminary Results*, we continue to find that the record contains sufficient information to determine that Borusan’s home market sales of overrun merchandise are not outside the ordinary course of trade, because: (1) the overruns sold are of the same quality and specifications as non-overruns; (2) the sale of overruns represent a relatively large volume of Borusan’s overall sales during this POR and are purchased by a relatively large number of Borusan’s overall customers; and (3) the transaction-specific quantity of an overrun sale, on average, was higher than the quantity of a non-overrun sale, and the frequency with which Borusan sold overruns compared to non-overruns is not

²³⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 834.

²⁴⁰ See Overrun Memo at 2.

²⁴¹ See *Cemex, S.A. v. United States*, 133 F. 3d 897, 900 (Fed. Cir. 1998) (citing *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988)).

²⁴² *Id.*

²⁴³ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (August 11, 1995).

²⁴⁴ See Preliminary Results Overrun Memo at 2-4; see also, e.g., *China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 67428, 67430 (November 7, 2005), unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13080 (March 14, 2006).

insignificant.²⁴⁵ We agree with Borusan that the average price of overrun sales is lower than the average price of non-overrun sales. However, we find that the price alone, in and of itself, is not the determining factor in whether sales are outside or in the ordinary course of business.²⁴⁶

Accordingly, for the reasons noted above, and consistent with the *Preliminary Results*, we continued to include Borusan's sales of overruns in our margin calculation for purposes of these final results.

Comment 7: Reallocation of Material Costs

Borusan's Argument

- Borusan's reported material costs vary significantly among CONNUMs with the same grade and similar other characteristics.²⁴⁷
- The differences in material costs among CONNUMs are due to the reasons not related to product characteristics, such as timing of production, timing of coil purchases or the quantity produced.²⁴⁸
- In the 2015-2016 administrative review of Standard Pipe from Turkey, as in a number of other cases, Commerce weight-averaged the material costs after determining that cost differences could not be explained by differences in physical characteristics. Commerce should do the same in the final results of this review.²⁴⁹

No other interested party provided comments on this issue.

Commerce's Position:

We disagree with Borusan that its proposed adjustment to the material costs is appropriate. Pursuant to section 773(f)(1)(A) of the Act, "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, we are instructed by the Act to rely on the company's normal books and records if two conditions are met: (1) the books are kept in accordance with the home country's generally accepted accounting principles (GAAP); and (2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, Borusan's reported CONNUM-specific costs were based on the company's normal books and records that were kept in accordance with Turkish GAAP.²⁵⁰ Thus, the question facing Commerce is whether

²⁴⁵ See Preliminary Results Overrun Memo at 3-4.

²⁴⁶ *Id.*

²⁴⁷ See Borusan's Case Brief at 40-43.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ See Borusan's October 17, 2018 Section D response (SDR) at 12; see also *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments*; 2015-2016, 82 FR 26,053 (June 6, 2017), and accompanying PDM at 13, unchanged in *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping*

the CONNUM-specific per-unit costs from Borusan's normal books reasonably reflect the cost to produce and sell subject merchandise.

At the outset of this investigation, Commerce identified the CONNUM physical characteristics that are most significant in identifying price differences between products. These are the physical characteristics that define unique products (*i.e.*, the CONNUMs) for sales comparison purposes and to establish the level of detail to capture the important differences when comparing the products in price-to-price comparisons. Based on past practice, Commerce normally does not rely on a respondent's reported costs where significant cost differences between CONNUMs are driven by factors other than the CONNUM physical characteristics.²⁵¹ Borusan argues that this is the case here, as its reported costs reflect cost differences extraneous to physical characteristics and as such, the reported costs are not reasonable and should be adjusted. We disagree. As Borusan explained in its response:

“BMB's accounting system calculates, in the ordinary course of business, the total cost of direct materials (coil, zinc, coupling, varnish and thinner), direct labor and factory overhead for each coil as it becomes pipe and for each work-in-process pipe up to the point at which the pipe is entered into finished goods inventory. As a consequence, BMB's costing system calculates a specific cost for each particular finished product that takes account of its actual raw material cost and the actual cost of the specific operations which took place to produce the finished product. The submission costs are based on the costs generated by the system in the ordinary course of business and, as such, reflect all of the CONNUM-specific characteristics.”²⁵²

Thus, according to Borusan, the reported costs are based on their normal books and records and represent product-specific costs that reflect cost differences according to CONNUM characteristics. Borusan argues that its reported material costs should be adjusted because they vary significantly among CONNUMs with the same grade and similar other characteristics. Borusan further claims that the “record shows that these differences are due to reasons not related to product characteristics, such as timing of production or timing of the coil purchase, or the quantity produced.”²⁵³

First, nowhere in its responses did Borusan make this claim, or provide factual support for such a claim, about the reason behind the cost differences. Furthermore, Borusan made no effort to identify the specific factors affecting the costs allocated to specific product that resulted in unreasonable cost differences between similar products as Borusan claims. Borusan is the party in control of all the necessary information with regard to its production costs. It would be expected that if a respondent argues that there are problems with its normal product costs per books, the burden is on the respondent to provide an analysis showing what factors not related to the physical characteristics of products affect the costs, to specifically identify such cost

Duty Administrative Review and Final Determination of No Shipments; 2015-2016, 82 FR 49179 (October 24, 2017).

²⁵¹ See *Welded Line Pipe from the Republic of Korea: Final Determination in the Less-Than-Fair-Value Investigation*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 5.

²⁵² See Borusan's SDR at 19.

²⁵³ See Borusan's Case Brief at 41.

differences as well as adjustments to the cost of each product to remedy the situation, and to report a cost database reflecting such product-specific adjustments. Instead, Borusan proposes an overall, not product-specific, adjustment to weight-average its material costs by grade claiming, without supporting information and analysis, that its reported costs are unreasonable. Absent such information and analysis, Commerce has no way of knowing whether there are in fact factors beyond the physical characteristics that affect product-specific costs, how significant the cost differences among CONNUMs are due to these factors, and whether the adjustment to the reported costs is necessary or reasonable. Therefore, for the final results we did not weight-average Borusan's reported material costs as proposed by Borusan.

Comment 8: Adjustment for HRC Cost to Account for the Effects of a PMS

Petitioner's Argument

- At the *Preliminary Results* Commerce erred in adjusting Borusan's HRC costs to account for a PMS that Commerce found exists in Turkey.²⁵⁴
- Specifically, Commerce applied the PMS adjustment factor calculated for HRC to the total cost of manufacturing (TOTCOM), instead of the cost of materials, thereby, performing an additional step in the calculation of the PMS adjustment.²⁵⁵
- Such additional calculation was not necessary because Borusan separately reports its HRC cost in the DIRMAT1 field. For the final results, Commerce should directly adjust Borusan's HRC cost by applying the PMS adjustment factor to the DIRMAT1 field.²⁵⁶

Borusan's Argument

- If Commerce accepts that a PMS adjustment is justified, at the very least the PMS adjustment should be based on Borusan's actual costs and not on a country average cost for all HRC imported into Turkey. The petitioner's calculated adjustment is the difference between what average import AUVs for HRC were in 2017 and what they allegedly should have been if the market was not distorted. This bears absolutely no relationship to Borusan's actual costs for HRC over the POR (May 2017 to April 2018).²⁵⁷
- Applying the PMS adjustment in the manner proposed by the petitioner, *i.e.*, to the DIRMAT1 field rather than to TOTCOM, would be distortive as it would require applying an adjustment calculated using an *average* HRC import value to Borusan's *actual* HRC costs for each CONNUM which vary due to quality, time of purchase, and the percentage of HRC included in the final product.²⁵⁸
- The PMS adjustment factor was based on an overall average HRC cost, not a CONNUM-specific cost, and Commerce reasonably derived an average percentage of HRC relative to a product's total costs and then calculated an overall adjustment percentage to apply to

²⁵⁴ See Petitioner's Case Brief at 9-10.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ See Borusan's Rebuttal Brief at 7-9.

²⁵⁸ *Id.*

TOTCOM. Commerce's calculation is appropriate for applying one average adjustment to all CONNUMs.²⁵⁹

Commerce's Position:

We agree with the petitioner that the PMS adjustment should be applied directly to the DIRMAT1 field that represents the cost of purchased HRC, rather than to TOTCOM. Commerce strives to “determine current margins as accurately as possible.”²⁶⁰ In this regard, the application of the PMS adjustment to the DIRMAT1 field is more accurate and precise as it ensures that the adjustment is applied as intended, *i.e.*, only to the cost of purchased HRC. Conversely, the application of the PMS adjustment to TOTCOM would introduce additional distortions to the calculation in the form of other manufacturing costs included in TOTCOM. For example, to apply the PMS adjustment to TOTCOM, the average percent of HRC cost in total costs must be used. Generally, products which require less conversion costs to produce, would have larger percent of HRC cost in TOTCOM, compared to products with higher conversion costs. Thus, the use of the average HRC percent in TOTCOM would understate the effect of the PMS adjustment in certain products and overstate it in others.

We disagree with Borusan's argument that because the PMS adjustment was based on an average HRC import value it should be applied to TOTCOM using the average percent of HRC in TOTCOM. Notwithstanding the method of how the PMS adjustment factor was calculated, it was intended to be applied to the respondent's cost of HRC only, and as discussed above, the application of the adjustment directly to the cost field that includes only the cost of HRC is the most accurate and precise application of the adjustment. Therefore, for the final results we applied the PMS adjustment percent to the cost of purchased HRC reported in the DIRMAT1 computer field.

Toscelik Specific Issues

Comment 9: Application of the PMS Adjustment to Toscelik's Costs

Toscelik's Arguments:

- In the *Preliminary Results* Commerce incorrectly applied the PMS adjustment to the TOTCOM cost field, while it should be applied to the cost field STEEL because only the STEEL field is infected with PMS.
- In addition, the adjustment factor Commerce calculated should be applied only to finished goods that were produced from purchased HRC. Toscelik produces subject products from: a) self-produced coils; b) coils made from purchased slab; and, c) purchased HRC. Toscelik provided an analysis showing what percent of coil usage for pipe production was from purchased HRC. Therefore, Commerce should apply the final PMS adjustment factor calculated at *Preliminary Results* to the cost of purchased HRC reported in the STEEL cost field.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

Petitioner's Arguments:

- Commerce properly adjusted Toscelik's costs. Petitioner notes that neither Toscelik's cash deposit rate nor its assessment instructions will change as a consequence of Toscelik's arguments. As such, this is largely an esoteric matter.
- Contrary to Toscelik's claim, Commerce in its PMS adjustment did account for Toscelik's usage ratio of purchased HRC, which is evident from Commerce's Preliminary Analysis Memo. Moreover, because Toscelik's usage ratio of purchased HRC was expressed as a percentage of TOTCOM, Commerce correctly applied the PMS adjustment to TOTCOM.

Commerce's Position:

We agree with Toscelik that the PMS adjustment should be applied to the portion of raw material cost reported in the computer field STEEL that represents the cost of purchased HRC, rather than to TOTCOM. Commerce strives to "determine current margins as accurately as possible."²⁶¹ In this regard, the application of the PMS adjustment to the STEEL field is more accurate and precise as it ensures that the adjustment is applied as intended, *i.e.*, only to the cost of purchased HRC. Conversely, the application of the PMS adjustment to TOTCOM would introduce additional distortions to the calculation in the form of other manufacturing costs included in TOTCOM. For example, to apply the PMS adjustment to TOTCOM the average percent of HRC cost in total costs must be used. Generally, products which require less conversion costs to produce, would have a larger percent of HRC costs in TOTCOM, compared to products with higher conversion costs. Thus, the use of the average HRC percent in TOTCOM would understate the effect of the PMS adjustment in certain products and overstate it in others.

While we agree with Toscelik that the adjustment should be applied directly to the STEEL field, we disagree with Toscelik's proposed calculation of the adjustment. Toscelik argues that we should apply to the HRC cost the final PMS adjustment calculated for the *Preliminary Results*. However, the PMS adjustment that we applied to TOTCOM for the *Preliminary Results* was already reduced to account for the percent of HRC cost in TOTCOM.²⁶² Therefore, for the final results, we applied the full PMS adjustment percent to the portion of the STEEL cost that represents the cost of purchased HRC.

²⁶¹ See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990).

²⁶² See Toscelik Preliminary Analysis Memo at Attachment 5.

VI. RECOMMENDATION

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



Agree

Disagree

1/14/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance